Saturday, 18th August, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

Saturday, August 18, 1860.

PRESENT :

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

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble C. Beadon,	A. Sconce, Esq.,
H. B. Harington, Esq.,	and
	Hon'ble Sir M. L. Wells.

CARNATIC ESTATE.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor General had assented to the Bill "to repeal Act XVI of 1859" and the Bill "to explain Act XXX of 1858 (to provide for the administration of the estate and for the payment of the debts of the late Nabob of the Carnatic)."

DIVORCE LAW (NATIVE CHRISTIANS.)

THE CLERK presented to the Council a Petition from Lallchund Mookerjee and others, praying for a divorce law affecting Native Christians.

SIR BARTLE FRERE moved that the above Petition be printed

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. FORBES presented the Report of the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca.")

INCOME TAX.

SIR BARTLE FRERE presented the Report of the Select Committee on the Bill "to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices);" and said that he proposed at a later period of the day to move for a suspension of the Standing Orders with a view to carrying the Bill through its remaining stages.

VACATIONS (CIVIL COURTS.)

MR. SCONCE moved the first reading of a Bill "to amend the law relating to vacations in the Civil Courts within the Presidency of Fort William in Bengal." He said, the Bill which he now had the honor to offer to the consideration of the Council applied to the Bengal Presidency alone, and its object was to amend the law in force for the purpose of regulating holidays in the Civil Courts of that Presidency. The law, as it existed in Bengal at present, sanctioned two periodical vacations, the Dusserah, a Hindoo Festival, and the Mohurrum, a Mahomedan one. In the former case, the Courts were closed for thirty days, and in the latter for fifteen days, making altogether forty-five days. But it happened that the Courts, under the orders of the Sudder Court, enjoyed much longer holidays than those sanctioned by law, the holidays being in all sixty-seven days. So that although forty-five days might be said to be the legal holidays, there were still twenty-two days, which, though not illegal, were sanctioned by the Sudder Court over and above the law. It had often been a subject of complaint, that too much time had been consumed both by the legal and extra holidays taken by the Civil Courts. The total period for the Courts being closed was sixty-seven days, and it was now proposed, not by the law to reduce that number, but to change the law so far as it absolutely required the Courts to be closed for fifteen days during the Mohurrum and for thirty days during the Dusserah. The Sudder Court already had the power in a special case to disallow a part or the whole of these holidays, and it seemed to be desirable to extend the power of the Court in that respect generally as regards all the Courts. He (Mr. Sconce) proposed, therefore, to set aside the law as it now stood and to substitute another requiring the Sudder Court, under such rules as the Government might issue, to publish annually a list of holidays to be enjoyed throughout the year. The law as it now stood was exceptional, for it specified only two of the

festivals observed as Native holidays; and he might observe that the holidays observed in other public Offices were allowed without the authority of any law. He proposed, therefore, little more now than to extend to the Civil Courts the rule as to holidays which applied to other Offices. The words of the enacting Clause of the Bill which he was now about to introduce were as follows:—

"Subject to such orders as may from time to time be issued by the Governor-General of India in Council or by the local Government, the Courts of Sudder Dewanny Adawlut in the Presidency aforesaid shall prepare a list of days to be observed in each year as close holidays in such Courts and in the Courts respectively subordinate to them, and such list shall be ordinarily published at the commencement of each year in the Official Gazette of the Presidency or place in which each Sudder Court is held."

That was simply the proposition which he now ventured to make, and he begged to move that the Bill be read a first time.

The Bill was read a first time.

WRECKED BOATS.

MR. SCONCE moved the second reading of the Bill "for the preservation of property recovered from Wrecked Boats"

SIR BARTLE FRERE said, he had read through this Bill very carefully, and he begged, before the Motion for the second reading was carried, to suggest to the consideration of his Honorable friend, the Member for Bengal, the necessity of making a very considerable change in the Bill before it was finally passed into law. In the first place he would remark that he believed here and everywhere else the Magistrate of a District exercised in his general capacity the function which might be called the general prerogative of the Government, to take care of all property of which the owner was unable to take care for himself, to retain possession of the property until the owner applied for it, or to make such other disposition as he might consider most proper or necessary; or in the event of there being no claimant, ultimately to dispose of the property for the benefit of the Crown. The mode in which the Bill had been drafted was to create a new office of Receiver of Wrecks, an office which would be created not only in those places where wrecks were common, but also in those places where wrecks were of rare occurrence. He (Sir Bartle Frere) did not know whether it would be possible to point out the particular localities where the Bill would be required; but it struck him very much on reading the Bill, that it would be very much improved if the main provisions were shortened, and the duties which were to be discharged by the Receiver were to be left in the hands of the Magistrate of the District, with the power, now proposed to be conferred on the Receiver, to take charge of wrecked property, to call upon the community to assist him in recovering the property, to make over the property to the owner, if there was any, or to take it for the Government if there was no owner, and to allow salvage if the law did not already authorize the Magistrate to do so. It appeared to him (Sir Bartle Frere) that the Bill, by creating an office which was not required, would relieve the Magistrate of duties which already devolved upon him, and he (Sir Bartle Frere) was disposed to think that it would rather complicate instead of simplifying matters.

There were one or two provisions of the Bill to which he entertained particular objection, and which he would take leave to point out to the Honorable Member with a view to their amendment when the Bill went into Committee. Section V was the Section to which he would draw particular attention. It provided as follows:—

"In places where no Receiver of Wreck shall be appointed, or when the Receiver or the person deputed by him shall be unable to attend as above required, if any person assist in the preservation of any portion of a boat, or of the cargo, or any article belonging to the boat, the person so assisting, or one of them, shall be bound to prepare an inventory of the property recovered, and furnish a copy of the same to the Receiver of Wreck or to the nearest Police Officer, and any person as aforesaid who shall without good

cause fail to comply with the provisions of this Section, shall be liable to a fine of twenty Rupees."

Now he (Sir Bartle Frere) thought his Honorable friend would see, upon consideration, that this was a most dangerous provision to enact, for it would only have the effect of deterring parties from rendering assistance in cases of wrecks. To require the lower orders of natives to prepare an inventory of property they might have saved from wrecks, and subject them to a fine of twenty Rupees if they failed to do so, was, he must say, a most injudicious course they could adopt, and one which would never answer. The object should rather be to give Magistrates the power of assisting boats wrecked, and of awarding salvage to those who assisted in the recovery of the wrecked property, but not, as this Section proposed to do, to throw upon an illiterate person a responsibility which did not now exist.

MR. SCONCE said, he was happy to assure the Council that he thoroughly agreed with all that his Honorable friend had said as to the general principle of the Bill. It was not his (Mr. Sconce's) purpose in any way to weaken the powers of a Magistrate, but rather to strengthen them; for the first Section provided:—

"It shall be lawful for the local Government to appoint or require the Magistrate of any District to appoint one or more Receivers of Wreck in such District, and any Receiver so appointed shall be guided by such instructions, not contrary to any of the provisions of this Act, as the Magistrate, with the sanction of the local Government, may issue, to give better effect to the same."

It would be seen, therefore, that the Receiver, whoever he might be, would be entirely subordinate to the Magistrate. He had inadvertently omitted to provide in the Bill, as it was his purpose to have done, that any Police Officer might be appointed a Receiver, but at the same time it should be remembered that Police Stations might be situated at considerable distance from the rivers, and that it might be desirable to appoint other persons than Police Officers to exercise the duties of Receivers. As he had said before, it was not his purpose to weaken the power of the Magistrate, and if that purpose could be more fully brought out in Committee, he should be glad to adopt the suggestion of the Honorable Member. As to his remarks with respect to Section V, which required parties who assisted in carrying off property to account for them, he (Mr. Sconce) would only say that that was based on the assumption that it was unlawful for strangers to pilfer property they were asked to protect. He might refer the Council to the English Act 17 and 18 Vic. c. 104, s. 443, which provided that all cargo and other articles belonging to such wrecks should be delivered to the Receiver; and any person, whether he was the owner or not, who secreted or kept possession of such articles as he had saved from the wreck, should incur a penalty not exceeding £100. He (Mr. Sconce) had adopted that provision in the English Act, and he considered it right and proper that, in order the better to prevent strangers from seizing and secreting wrecked cargo, should be added a preliminary provision requiring all persons concerned in the recovery of such property to give a definite account of their proceedings That was his view in introducing the 5th Section of this Bill, and Section 450 of the Merchant Shipping Act would be found to embody not very dissimilar provisions; but at the same time he was ready to adopt the suggestions of the Council.

THE VICE-PRESIDENT said, it appeared to him that Section V was open to the objection which had been taken by the Honorable Member (Sir Bartle Frere.) It did not provide, as in the English Act, that, if any person secreted or kept possession of wrecked property, or refused to deliver the same to the Receiver, he should be liable to a penalty, nor that he should make an inventory of all property of which he should take possession, but that all persons assisting in the recovery of wrecked property, who should neglect or refuse to make out an inventory of the same, should be so liable. Now

a dozen persons might assist in the saving of a wrecked boat, none of them might take away any property, but might merely assist in saving the same. If every one of them was to be compelled to prepare such an inventory, it would certainly, as remarked by the Honorable Member (Sir Bartle Frere), deter persons from assisting in such cases.

Section II was also open to a great deal of objection. Under that Section the Receiver might compel any person he pleased, no matter who he was, or where he resided, to leave his business and go and assist in the recovery of a wreck. It would not be right to enact a provision in such general terms. The Section ran as follows:—

"When any boat is in distress, or stranded, or sunk on the shore of the sea, or on or near the bank of any tidal or inland river in British India, the Receiver of Wreck shall proceed to the place where the accident occurred, and unless the person in charge of the boat shall decline his assistance, he shall require all persons present, and others whom he may summon, to assist in preserving the boat, the lives of the crew, and the cargo, and any article belonging to the boat. The Receiver, if unable to act as herein provided, may by an order in writing depute any other person to exercise the authority by this Act in him vested."

Now he (the Vice-President) recollected the case of a steamer which had been wrecked in the river some short time ago, and her engines were lost. It would be very hard in such a case to take persons from their occupations and to keep them engaged for several days in assisting in recovering the wreck. It seemed to him that the Section in question gave too extensive a power. If the Honorable Member for Bengal agreed to alter these and other provisions in Committee, he (the Vice-President) would vote in support of the second reading; otherwise he considered the Bill to be open to very serious objections, and he should vote against it.

MR. BEADON said, the Honorable Member for Bengal, in framing this Bill, had made a mistake in applying the principle of the English Act, which related exclusively to wrecks at sea; whereas the proposed Bill was to be applicable to the wrecks of boats, and not only to wrecks at sea but in creeks and inland rivers also. Now, if officers were to be appointed throughout the country, whose special duty it would be to look after these wrecks, and to receive a commission for the same, great abuses would arise, which ought certainly not to be allowed. It appeared to him that the duty which the Bill imposed on Receivers of Wreck ought to be performed by the Police with a few simple rules to guide them. He would therefore suggest to his Honorable friend whether the better course would not be to withdraw the Bill altogether, and to bring in another, framed in accordance with the suggestions of his Honorable friend opposite (Sir Bartle Frere) and of the Honorable and learned Vice-President, because he (Mr. Beadon) was of opinion that unless this Bill underwent a radical change, it was not one which the Council could support.

MR. SCONCE said it was not difficult for him to satisfy the Council that the main objection taken by the Honorable Member on his right (Mr. Beadon) was entirely a mistake. The Honorable Member had said that the English Act referred exclusively to wrecks at sea. He (Mr. Sconce) would ask the permission of the Council to read the first two lines of Section 441 of the Merchant Shipping Act, which were as follows:—

"Whenever any ship or *boat* is stranded or in distress at any place on the shore of the sea, or *of any tidal water*."

Thus it would be seen that the Act did not merely apply to wrecks of ships at sea, but also of boats in tidal waters, and therefore it appeared to him, in drawing up the Bill, that the provisions of that Act were very appropriate to the rivers in this country, which were in fact inland seas.

The Honorable and learned Vice-President had taken certain objections to Section II, and he (Mr. Sconce) would say he had some scruple in adopting the apparently arbitrary provisions of this Section; but in framing the Bill, he (Mr. Sconce) had

endeavored to keep as closely as possible to the English Act, and a power recognized there might, he thought, be safely adopted here. In the English Act, it was provided that, on receiving intelligence of a wreck, the Receiver should forthwith proceed to the spot,

"and upon his arrival there, he shall take the command of all persons present, and assign such duties to each person, and issue such directions as he may think fit, with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof; and if any person wilfully disobeys such directions, he shall forfeit a sum not exceeding fifty pounds."

Again—

"The Receiver may, with a view to such preservation as aforesaid of the ship or boat, persons, cargo, and apparel, do the following things, (that is to say.)

(1) Summon such number of men as he thinks necessary to assist him.

(2) Require the master or other person having the charge of any ship or boat near at hand, to give such aid with his men, ship or boats as may be in his power.

(3) Demand the use of any waggon, cart, or horse, that may be near at hand;"

a penalty of £100 being prescribed for every one refusing to comply with the above.

THE VICE-PRESIDENT said, that applied to vessels stranded and in distress, not to sunken boats which were to be recovered for the benefit of the owners.

MR. SCONCE said, the English Act applied to boats in distress or stranded and to wrecks; and in preparing this Bill, his object was to provide as effectually as possible for the preservation of wrecked property. It might be that the provisions in this Bill could be amended. He had no intention to override the better judgment of the Council, and if it permitted the Bill to be read a second time, the necessary alterations might be made by the Select Committee to which it was his intention to refer the Bill.

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

PENAL CODE.

THE VICE-PRESIDENT moved that the Order of the Day for the adjourned Committee of the whole Council on the Indian Penal Code be postponed until after the disposal of the other Orders of the Day.

Agreed to.

CRIMINAL JUSTICE (SUPREME COURT).

The Order of the Day being read for "Sir Mordaunt Wells to call the attention of the Council to the evidence given before the Indigo Commission by the Honorable Mr. Eden, a Member of the Bengal Civil Service, so far as his evidence referred to the administration of Criminal Justice in Her Majesty's Supreme Court"—

SIR MORDAUNT WELLS said, the subject to which he was about to call the attention of the Council was one of the deepest importance, because he was certain that every one in India, whether European or Native, must take the deepest interest in the administration of Criminal Justice, as upon it depended the safety of life and property. In consequence of the extraordinary statements made before the Indigo Commission by a Member of the Bengal Civil Service, having reference to the administration of the Criminal law in the Supreme Court of Calcutta, he (Sir Mordaunt Wells) felt it was his imperative duty as one of the Judges of that Court to call the attention of the Council, and more especially of the Executive Government, to some of the statements made by the Honorable Ashley Eden before that Commission. He (Sir Mordaunt Wells) wished it to be distinctly understood, that it was not his intention, in the remotest degree, to touch upon the grave and important question lately under the consideration of the Indigo Commission. He would endeavor scrupulously to confine his observations to such portions of Mr. Eden's evidence as related exclusively to the administration of the Criminal law in the Supreme Court. He could not allow this opportunity to pass, without stating that, having been present on two occasions and read all the evidence, he wished to express his opinion that the strict impartiality and great

ability evinced throughout the enquiry by the President of the Indigo Commission was beyond all praise. He believed also that the three Gentlemen who were elected to represent different interests in the Commission had displayed great diligence. A fifth Gentleman who took part in the enquiry was his friend, Mr. Temple, and the patience, and skill with which that Gentleman had endeavored to elicit the truth was entitled to the highest commendation. He made this observation as he felt assured that the proceedings of a Commission so constituted would have due and proper weight, and hence the necessity for correcting the errors in Mr. Eden's evidence. He had reason to believe that the report of the Indigo Commission was almost, if not quite, completed. Until therefore a decision were come to, it would be wrong to make the slightest allusion bearing on the Indigo question. But he was able to enter into the present question and steer quite clear from the Indigo question which had nothing whatever to do with certain portions of the evidence of Mr. Eden, which in his opinion related exclusively to the administration of Criminal Justice in Her Majesty's Supreme Court. Mr. Eden had a perfect right to express his opinion freely and unreservedly on any point legitimately appertaining to the question submitted to the Indigo Commission for investigation. Mr. Eden might be right, or he might be wrong, as regards the opinions he had expressed to the Commissioners—that must be determined by others hereafter. He (Sir Mordaunt Wells) felt it his imperative duty, as one of the Judges of the Supreme Court, to notice the direct and unequivocal charge made voluntarily by Mr. Eden, that the Criminal law was administered partially in the Supreme Court. He was not here to utter one word that could be construed as in any way imputing to Mr. Eden the intention of wilfully misrepresenting circumstances to the Commissioners Mr. Eden was a perfect stranger to him (Sir Mordaunt Well), and he should observe towards him that courtesy which every Gentleman was bound to exercise in discussing the sentiments of others. On the 21st July, Mr. Eden appeared before the Indigo Commission, and after a few general observations, he launched out upon the question of Criminal Justice as administered in Her Majesty's Supreme Court at Calcutta. In question 3579, he was asked by Mr. Fergusson:—

"In such instances as you have mentioned was it not a gross dereliction of duty on the part of the Government not to prosecute the Europeans?"

Mr. Eden replied—

"There certainly was a failure of justice, which in my opinion may to a certain extent be attributed to the strong bias which the Governor and many of the Officers of Government have always displayed in this particular; this may also partly have arisen from the difficulty which exists under the present law of obtaining a conviction against Europeans, as for instance in the case in which a Planter named Dick *alias* Richard Aimes, was murdered by a European Planter, named Young, a French Planter named Pierre Aller, and some Native servants, in which the Frenchman and the Natives being amenable to the Courts of the country, were imprisoned for life, whilst Young, the European British subject, not being subject to the jurisdiction of the local Court, was tried in Her Majesty's Supreme Court in Calcutta, and was acquitted on precisely the same evidence as was brought against the foreigner and Natives, who were convicted in the District Court, the sentence being upheld by the Nizamut Adawlut."

Had Mr. Eden confined his evidence to the question of the cultivation of Indigo, he (Sir Mordaunt Wells) should have been silent. But Mr. Eden went on, and distinctly and unequivocally made the charge that justice could not be obtained at the Supreme Court in Calcutta. He (Sir Mordaunt Wells) scarcely thought that any Gentleman, however great his experience, would have ventured to have made such a sweeping charge in respect of a case which had been tried a year before he was born. He grounded his opinion on that case, and boldly asserted that there was a failure of justice in the Supreme

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Court. He (Sir Mordaunt Wells) doubted not that Mr. Eden fully believed in the truth of the serious accusation he made against the Supreme Court; but whilst he (Sir Mordaunt Wells) refrained carefully from attributing to Mr. Eden motives inconsistent with that proper and correct feeling which invariably actuated Gentlemen in the discharge of their public acts, he was bound to say that he believed the statements made by Mr. Eden to be the consequence of an amount of ignorance quite inexcusable in a Gentleman holding an important office under the Government, and consequently possessing the means of obtaining correct information upon any subject he might wish to be examined upon before the Indigo Commission. He (Sir Mordaunt Wells) thought some of Mr. Eden's statements respecting the Calcutta Juries most unguarded, and conveying a most serious charge; for if the individuals who sit upon the Juries deliberately acted partially in the verdicts they returned, then undoubtedly they violated their oaths and would deserve the censure cast upon them by Mr. Eden. Now, he (Sir Mordaunt Wells) was free to admit that, unless the charge, boldly and distinctly enunciated by Mr. Eden, could be satisfactorily met, it would be the bounden duty of the Executive Government of India to take such steps as they might consider necessary to counteract so great an evil as the one the existence of which, Mr. Eden unhesitatingly asserted, did at present exist and which if true amounted to a positive denial of justice. He (Sir Mordaunt Wells) must say that he thought an examination of the report of Young's case would satisfy any reasonable and unprejudiced mind, that the verdict of the Jury was one perfectly justifiable under the circumstances, and in making that statement, he (Sir Mordaunt Wells) did not intend to express an opinion as regards the decision of the Sudder Court in upholding the verdict of the local Court on the occasion of the trial of some of the supposed accomplices of Young. All that he was contending for was that Mr. Eden was not justified in bringing a charge of partiality against the Jury, simply on the ground that the Local Court and Nizamut Adawlut arrived at a different conclusion. He (Sir Mordaunt Wells) had taken the trouble of looking into the records of that remarkable trial, and he would state to the Council the particulars of it. Before doing so, however, he would read to the Council Mr. Eden's opinion as to the Grand Jury. He said:—

> "It never fell to my lot to have to commit any Planter, but judging from my experience as a Justice of the Peace, in obtaining convictions against Europeans, I consider that very great practical difficulties exist. For instance, I have committed Europeans to the Supreme Court, the Bill has been thrown out by the Grand Jury under circumstances which led the Government to direct a recommittal on the same evidence."

So that, according to Mr. Eden, the Grand Jury who had taken a solemn oath to administer justice, had thrown out Bills against Europeans, because they had a strong bias in favor of them, and so did Mr. Eden charge all Petty Juries with being corrupt, inasmuch as they had in his opinion been influenced by party feeling in their verdicts. But to proceed with the case in question. The trial was held before two Judges, Sir Charles Grey, the Chief Justice, and Mr. Justice Ryan. He (Sir Mordaunt Wells) had obtained lists both of the Grand and Petty Juries that served on that occasion. In the Grand Jury list he found that out of twenty-three Jurors who found a true Bill against the Planter, seventeen were merchants. Eleven of these gentlemen were directly or indirectly interested in Indigo, so that a majority of the Jury might have prevented the case from going on, and yet Mr. Eden had said that there was a feeling of partiality shown to the Europeans. As to the Petty Jury, it was composed of most intelligent men, a great majority of them being head clerks in public departments, a class of men free from all prejudices and perfectly unconnected with mercantile interests, and one of them being employed in the office of Messrs. Gilmore and McKilligin, two of the gentlemen who

had found a true Bill. Now what interest could these gentlemen have had to find a verdict contrary to their consciences? The Chief Justice, Sir Charles Grey, commenced his charge by stating—

"that the Jury would have to determine between conflicting and contradictory evidence, when the one set of witnesses or the other must be perjured."

It appeared from the report that the only direct evidence of the death of the man supposed to have been murdered was the finding of some hair, alleged to be the hair of Richard Aimes. The Chief Justice told the jury,

"that with reference to the hair, he was far from thinking that it had been proved to be even of the same color as that of Aimes. A horse had been previously dug up, and it was for them to say whether or not it was *human* hair. It had been spoken to by two women and the barber with certainty, and he must say *with too much certainty.*"

The Jury retired to consider their verdict, and, after an absence of fifteen hours, pronounced a verdict of not guilty. In the face of all this, Mr. Eden stated that there was a failure of justice in the Supreme Court, and that he placed more reliance in the decision of the Sudder Court. He (Sir Mordaunt Wells) desired to make no attack on the Sudder Court, but he would only remark that Mr. Eden had declared his preference to the decision of a Court which decided on paper. When a case was sent up to the Sudder Court, the Judges recorded their opinion and confirmed a sentence of death, by simply reading over the paper depositions, so that the Judges decided cases of life and death on paper. He certainly admired their moral courage, but for his part, he would rather forego the highest salary than consent to decide questions of fact in that way. But Mr. Eden was quite satisfied with that decision and took that to be conclusive evidence, that the Judges of the Supreme Court and the Jury were wrong. But this was not all, though Sir Charles Grey had summed up the evidence favorably, the Jury had been locked up for fifteen consecutive hours—those men who were charged with having been actuated by feelings inconsistent with their oaths. Now he did not for a moment question the decision of the Sudder Court. No doubt, the Judges had discharged their duties conscientiously and had arrived at what they believed to be a correct conclusion. Nor would he impute a wrong motive to the Magistrate who committed the prisoners, nor would he take upon himself to question the decision of any of the Officers of Government. But he would ask why should Mr. Eden do so resting his assertion on such a case which occurred thirty years ago The administration of justice even under the most favorable circumstances was a very difficult task, and the man who would impute a wrong motive to any judicial body administering justice to the best of their ability, was not in his opinion qualified to hold a judicial office. In his (Sir Mordaunt Wells's) judgment Mr. Eden had hit upon the most unlucky case for his purpose in which he had completely failed In question 3580, he was asked—

"Then you consider that in that case justice was obtained in the Mofussil Courts and denied in the Supreme Court?"

He answered:—

"I consider that the Judges of the Court of Nizamut Adawlut are fully as competent to come to a decision on the evidence before them, as a Calcutta Petty Jury. I shall therefore consider that in this instance a failure of justice occurred in the Supreme Court."

It was impossible not to be struck with the sneering tone which pervaded Mr. Eden's answer to this question. Here was a gentleman stating with an unerring certainty that there was a failure of justice. "Moreover," said Mr. Eden, further on,

"If the murder was not committed, where is Dick *alias* Richard Aimes, who has never appeared since?"

It never struck Mr. Eden's mind that it was a common thing even in England for two English varies to

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arrive at different conclusions even on the same evidence. "No," said Mr. Eden, "such could not be the case." The Supreme Court was wrong and the Sudder right. It was well known that in England Juries very often took different views of a case. Was it proper, therefore, to say that one of them was corrupt? He (Sir Mordaunt Wells) desired to speak of the Sudder Court with the greatest respect, for he had sought advice from that Court, and had received from them the greatest courtesy and civility. But then the question was put to Mr. Eden—

"But as a Magistrate and Justice of the Peace, would you not commit an offender, if you believed him guilty on the evidence, irrespectively as to your opinion as to what might be the view taken by a Calcutta Petty Jury or Grand Jury."

He replied—

"As a Judicial Officer, if the evidence was very clear in any case before me, I should commit; but as an Executive Officer, I should hesitate to take up many cases against Europeans, which under the circumstances I should consider incumbent on me to proceed with."

He then went on to say—

"Of the evidence against the parties particularly in the cases you have mentioned, I am not prepared to speak without a reference to the cases, but the exemption to which you allude was probably explained in my previous answer, in which I noticed the great bias which has always existed in favor of Planters from the very beginning."

Then the question was asked:—

"Then do you consider that the Government officials have sacrificed justice to favor the Planters?"

Mark the reply—

"I consider that it has frequently been the case, and I have stated so in my official reports. I confess I have favored my own countrymen in several instances."

What a statement for a gentleman to make. A gentleman coming out for the Civil Service might lack judicial knowledge and experience, but he certainly did not lack honor and moral principle. Mr. Eden commenced by charging the Government and its officers with sacrificing justice to favor the Planters, and by making the broad admission that he had himself so favored them, he supposed that that would throw greater weight on the truth of his statement. Having done so, Mr. Eden thought he could go on and make this nice attack—

"I think if the Courts are good enough for natives, they are good enough for Europeans; if they are not good enough for natives, they are not fit to have any jurisdiction at all over any one."

Very logical indeed, as some persons might consider. Mr. Eden then went on to make the following wholesale attack upon the Supreme Court—

"As far as I am myself concerned, I would sooner be tried, if innocent, in the local Sessions Court with an appeal to the Nizamut, than in the Supreme Court. If guilty, I would prefer the Supreme Court and a Calcutta Jury."

Could any thing more insulting be said of the Court to which he (Sir Mordaunt Wells) had the honor to belong? Whatever Mr. Eden's opinion might be of a Calcutta Jury, he (Sir Mordaunt Wells) entertained a very high opinion of them as a body of men assisting the Judges of the Supreme Court in the administration of justice. Was this statement to be made use of here and elsewhere and permitted to go uncontradicted?

The doctrine set forth in the introductory part of the answer was altogether fallacious, and a speech delivered by his (Sir Mordaunt Wells') learned predecessor, Sir Arthur Buller, in the course of a former debate in the Council, contained a passage which had a direct bearing on the subject, and which he would read to the Council. It was as follows:—

"Would the evil be in any way the less to the Native, if it were felt also by the European? If it were an evil, which was susceptible of being increased or diminished according to the surface over which it was spread, then he could imagine some reason in the argument. But if we found a certain number of persons subject to an imperfect system, which we

admitted must be remedied, and which we vowed our intention of remedying as soon as possible, and if we found at the same time certain others who, by no force or fraud of theirs, but by our own deliberate acts, and the acts of the Imperial Legislature, had been specially exempted from it, and were painfully alive to its imperfections—upon what principle would we compel the latter to become fellow-sufferers with the former? Certainly, not on the principle of the greatest happiness of the greatest number. Certainly, not on the principle of doing equal justice to all. He could imagine our doing so on no other principle than that of doing equal injustice.

No one could object to any thing in the shape of legislative favoritism more strongly than he did—no one more strongly than he did, to exclusive privileges, which worked real injustice, or excited abiding discontent. No one could subscribe more readily or more loyally to the doctrine of equal laws for all. But then, while holding these principles steadily in view, he could not shut his eyes to the actual state of things around him. He was not there a philosopher, to propound a perfect theory, or to enunciate metaphysical truths. He was simply a legislator dealing with men and things as he found them—dealing with a state of society full of anomalies, and having to carry out a great change in the manner least obnoxious to the different interests which must be affected by it. Well! What did he find? He found, on the one hand, a small but highly civilized community, long accustomed to good laws and to a good administration of them. He found, on the other hand, vast masses but lately emancipated from barbarism, and inspired with no traditionary reverence for equal laws or incorruptible justice. The former contrasted the Mofussil Courts with those by which they were now protected, and they deprecated a change with horror. The masses found in these Courts a safeguard far better than any that their forefathers ever enjoyed or dreamed of, and they accepted them with perfect content.

It was impossible to add anything to this truly eloquent declaration. But it was necessary to examine the ground for the assertion in the latter part of the answer, and he would now state to the Council, from documents examined by himself, and also from his own personal knowledge of the working of the Criminal law in the Supreme Court, that Mr. Eden's attack upon the Supreme Court was altogether groundless. He had presided over six Sessions, and he had just concluded the seventh. The great trial which took place a few Sessions ago, and which was presided over by the Chief Justice and Mr. Justice Jackson, afforded the best illustration as to whether justice was sacrified to favor Europeans or not, and it was the most complete contradiction to the assertion made by Mr. Eden. In that case an Englishman was charged with a native of rank, and though a great deal had been urged on the Jury as to the former high position and respectability of the European prisoner they found him guilty, and the same activity that was displayed by the authorities in arresting and bringing down the native, was also displayed in apprehending the European. During his term of office, he had tried between sixty and seventy Europeans. He had an official return which shewed that of the seventy-one cases in which he had read the depositions, only six had been thrown out by the Grand Jury; the Petty Jury had convicted in fifty-two, verdicts of not guilty were entered against ten, and three pleaded guilty. The first case he would mention was a a remarkable one, as showing the strictest impartiality on the part of the Jury. A European of the name of Henry Watson had, in a violent passion, struck a fellow native servant with a *lattee* or stick, and no sooner he did so, than the man was found in the arms of the European, the latter attending on him with the utmost solicitude. The Jury, by his direction, found him guilty of murder, and he had the painful duty cast upon him to sentence the prisoner to death. But he (Sir Mordaunt Wells) knew well that it was a very proper case which called for a mitigation of sentence, and he accordingly called on the Lieutenant-Governor, who took the deepest interest in the case, and having fully satisfied himself as to the circumstances, commuted the sentence to one of penal servitude. Could it be said that the Jury had acted partially in this case? The next case was that of a soldier, who was tried for shooting a native under the most peculiar circumstances. The man had accompanied the soldier to a place some four or five miles from the place where he was encamped. Midway between that place and the camp, was found the dead body of the native with a shot-wound through the leg. The soldier having

arrived without the man, was afterwards suspected and arrested. There was an utter absence of all motive for the commission of the crime, and the defence of the prisoner was that he suspected the native was leading him astray to entrap him, and as that occurred in an unsettled District, he suspected some foul play and in a hasty moment shot him. He (Sir Mordaunt Wells) stated his view of the law, as bearing on the facts proved in the case, and the prisoner was found guilty. Was there any failure of justice in this case? Then again there were three European Soldiers who were tried for robbing a Native in Calcutta, and in spite of the appeal that was made in their behalf the Jury again convicted. Again, he would ask was there a failure of justice in this case? It mattered to him very little what Mr. Eden's opinions were, but all he wished was that there should be a most emphatic denial of his charge against the Juries in the Supreme Court. There was another case, and it was one which occurred under the most distressing circumstances, and although it was proved that the murdered man was diseased and would not have survived more than a few weeks, even if he had not received the blow, still he (Sir Mordaunt Wells) stated to the Jury that if the act of the prisoner accelerated the death of the deceased even by a single minute, still it would be the duty of the Grand Jury to find a Bill and they did so.

He would not trouble the Council with any more details, but content himself with saying that he did not believe that in a single case had there been a failure of Justice.

He was certain that the native population, instead of sympathising with Mr. Eden, reposed great confidence in the criminal administration of Justice in Her Majesty's Supreme Court. He had tried between 200 and 250 native cases, and read the depositions in all. Of these the Grand Jury threw out twenty-five, and there were sixty-nine verdicts of not guilty by the Petty Jury, so that comparing the number of natives acquitted with the number found guilty, the percentage was in favor of the natives.

[Sir Mordaunt Wells here described the practice of the Judges of the Supreme Court in reading over the depositions two or three times so as to make themselves acquainted with the cases they had to try.] He could state most emphatically that during his term of office not a single prisoner had been improperly acquitted.

The prosperity and greatness of the Queen's Indian Empire would depend upon the bringing about a system of judicature that would secure to all Natives and Europeans security for life and property. He believed, and in saying what he was about to state, he did not speak authoritatively, but judging of the public acts of the Governor-General, he (Sir Mordaunt Wells) believed that His Excellency entertained sound views on this all-important question. He believed that his Honorable friend (Sir Bartle Frere) was anxious to carry out such changes as might lead to a better and sound administration of justice. An ominous silence seemed to him to prevail at present with respect to the question of subjecting Europeans to the Mofussil Courts. Now that the Criminal Procedure Code and the Penal Code were about to be passed, he was most anxious that Mr. Eden's statements should not go home uncontradicted and unexplained, to be used by certain individuals for the purpose of inducing Parliament to pass an Act, the effect of which would be at once to subject Europeans to the Mofussil Courts. As for himself (Sir Mordaunt Wells), he was willing to assist in any manner that might be considered useful in extending the principle of the English law throughout Bengal, and he believed the Natives would greatly esteem a system of judicature that would afford ample security for life and property. He believed that the first step to be taken in bringing about a radical reform of the Courts would be to separate the administrative from the judicial system, and, as far as practicable, procure the services of trained lawyers, uproot the appeal system, and aim at a firm and speedy administration of justice.

He had intended concluding with a motion on the subject of local Courts, but he believed the question would shortly come before the Council. In conclusion, he begged to express his warm thanks to the Council for their courtesy and kindness in permitting him to make this explanation on a subject he was personally and deeply interested in as one of the Judges of the Supreme Court.

SIR BARTLE FRERE said that he never addressed the Council with greater reluctance than on the present occasion, and as his Honorable and learned friend had concluded his speech without making any motion, he (Sir Bartle Frere) would willingly have abstained from any further remarks but for the very pointed appeal which had been made to him both personally and as a Member of Government. He deeply regretted that his Honorable and learned friend had not left the task he had undertaken to the Chief Justice of the Supreme Court (Sir Barnes Peacock) who had ever shown himself so ready and so able to defend the honor of the Court when he thought it necessary. He (Sir Bartle Frere) still further regretted that his Honorable and learned friend had not waited until the Indigo Commission submitted their report. The learned Judge had paid a well deserved tribute of praise to that body, and had justly remarked on the conscientious spirit in which they had performed their difficult task. Looking to the mode in which that Commission had been appointed, and to the manner in which they had discharged their duties he (Sir Bartle Frere) could not but think it would have been the better and more dignified course if the learned Judge had waited for the report of the Commission and had seen how it dealt with the evidence on which he had commented.

The whole of that evidence was given on oath, and, as evidence on oath deserved, he (Sir Bartle Frere) thought, to be treated in a spirit very different from that evinced by the Honorable and learned Judge. Witnesses of the most widely discordant views had been sought out and examined by the Commission, and pressed to state their opinions on the questions before them. It struck him (Sir Bartle Frere) as a proceeding which was neither necessary nor desirable, that a Member of that Council which had so formally appointed the Commission should get up and select for comment, in the terms used by the learned Judge, one portion of the evidence of one witness, before the Commission before they knew the view which the Commission itself was disposed to take of the evidence.

He (Sir Bartle Frere) had attentively read the whole of Mr. Eden's evidence, with a view to discover the points to which the Honorable and learned Judge had taken exception; and so far from its appearing to him (Sir Bartle Frere) in the light described by his learned friend, the evidence struck him as that of a diligent and careful observer, who had taken great pains to collect facts as the groundwork of his opinions, and who expressed those opinions with a manly frankness and impartiality, which, whatever one might think of the opinions themselves, ought to have secured him against such attacks as those of his learned friend. It was true the evidence was not very complimentary to any class of tribunals or to any part of the administration. The witness had with impartial freedom found fault with almost every branch of the Government Service, and even with the Government itself, on whose proceedings he had commented in no measured terms—but so far from thinking this a ground for blaming him, he (Sir Bartle Frere) considered the witness entitled to every credit for his courage and candour, whatever one might think of his opinions, and looking to the strong sense of duty which could alone induce a man to come forward and incur the odium of passing such sweeping censure on so many branches of the public service, he (Sir Bartle Frere) felt that the witness deserved honor for his courage rather than such treatment as his evidence had received from the Honorable Judge.

It was not his (Sir Bartle Frere's) purpose to follow his Honorable and learned friend through all the detailed

remarks he had made on the evidence—or through the history of the various cases which the learned Judge had described with such minuteness, but he (Sir Bartle Frere) must protest against the inference drawn by the learned Judge that the evidence showed anything approaching what the learned Judge had stigmatized "as a deliberate intention of attacking the administration of justice." As an instance of the unfair inferences which the learned Judge had drawn, he (Sir Bartle Frere) would only refer to what had fallen from him regarding the case of Dick Aimes. His Honorable and learned friend had dwelt at great length on this case having occurred before Mr. Eden was born. Now, he (Sir Bartle Frere) considered that the fair inference from this circumstance was that Mr. Eden purposely took a case so far removed from the present time, as to obviate all chance of exciting personal feeling. This at least was as obvious an inference as that which the learned Judge had drawn.

Again, the learned Judge had at great length argued that Mr. Eden's evidence was a grave attack on the "Jurymen of Calcutta." He (Sir Bartle Frere) could discover no ground for this assertion. The learned Judge had stated that Mr. Eden charges the Grand Jury "with throwing out bills contrary to evidence." A moment's consideration would have shown his Honorable and learned friend that Mr. Eden could not possibly mean any thing of the kind, for the simple reason that nobody but the Grand Jurymen themselves could possibly tell what evidence was laid before them. The main objection urged to Grand Juries is that they sit with closed doors, and that nobody can even tell exactly what is the evidence on which they find or ignore bills. Again the Honorable and learned Judge stated that Mr. Eden had asserted in his evidence that the Petty Jury "perjured themselves, and were corrupt."

SIR MORDAUNT WELLS explained that what he meant to say was that the charge was one of partiality. Perjury did not apply to a case of that kind.

SIR BARTLE FRERE continued. He was very glad he had misunderstood or rather misheard his Honorable and learned friend, for he had noted down at the time the words as he had heard them. He (Sir Bartle Frere) could discover in Mr. Eden's evidence nothing which even by implication amounted to an assertion that the Petty Jury ever gave verdicts inconsistent with their oaths. Mr. Eden's opinions were directed, simply to the comparative merits of two different methods of administering justice. Now on this point he (Sir Bartle Frere) would only remind his Honorable and learned friend that there is no single institution of which Englishmen are most justly and generally proud, with which they do not frequently find fault, without any one thinking the worse either of the institution attacked or of the person who found fault with it. At one time or another, everything from Magna Charta to the Bill of Rights and the Reform Bill, Liberty of the Press, Trial by Jury, and the Habeas Corpus Act are all freely canvassed and found fault with. In the Honorable and learned Judge's own profession there was, and always had been, a vigorous controversy between the advocates of Courts of Equity and those of Law. Did any one blame Lord Brougham or Lord Campbell for all the hard things they had said in their life time regarding that particular division of jurisprudence to which they had not been originally trained? or did those opinions prevent such men from being considered ornaments to the Bench of that Court whose mode of proceeding they had in earlier days attacked without mercy?

The Honorable and learned Judge had allowed himself to be carried away into an attack on the Sudder Court, and he had made assertions regarding the practice of that Court, which he (Sir Bartle Frere) believed to be incorrect, and which he felt sure his Honorable and learned friend would be glad to have an opportunity to explain. He had stated that the Sudder Court decided questions of life and death on paper evidence. Now he (Sir Bartle Frere) believed

that this statement was incorrect in point of fact. The verdict was passed and the sentence pronounced by the lower Court.

(SIR MORDAUNT WELLS, the VICE-PRESIDENT, and MR. HARINGTON here severally corrected this statement by pointing out that the final sentence was pronounced by the Sudder.

MR. FORBES remarked that Sir Bartle Frere's statement was correct as regarded Madras).

SIR BARTLE FRERE continued. He was obliged to his Honorable friends for correcting him as regarded Bengal, where he had supposed that the practice was the same as in Madras and Bombay, but even as regarded Bengal, he felt sure Sir Mordaunt Wells would, on consideration, see the injustice of his remarks, implying that the Sudder Court in pronouncing sentence on the record of a conviction arrived at by the lower Court was acting in a manner inconsistent with the duty of a conscientious Judge.

Into the learned Judge's detailed examination of the several replies of Mr. Eden to the questions in pages 3 to 7 of his evidence, he (Sir Bartle Frere) would not enter. He could only say that he could find no foundadation for the assertion of the Honorable and learned Judge, that Mr. Eden attributed the unavoidable "uncertainty of the tribunal" to "wrong motives." He (Sir Bartle Frere) could discover no solitary phrase imputing motives of any kind.

So, again, with regard to the "sneer" on which his Honorable and learned friend had dwelt so much, so far from the evidence being given in a sneering spirit, it appeared to him (Sir Bartle Frere) to be given with all the seriousness befitting the occasion. Again, the Honorable and learned Judge had dwelt with great bitterness on Mr. Eden's admission, where he says "as a young Assistant I confess I have "favored my own countrymen in "several instances," and had drawn from it a most unfair inference, as though it were Mr. Eden's habit to act contrary to his duty as a Magistrate, and to feel no shame in the admission. He (Sir Bartle Frere) could not but think that more consideration was due to such admissions made by a man situated as Mr. Eden was, who could have no possible motive for making them save a desire to point out defects in our administration and to get them remedied.

As for the admission itself, he (Sir Bartle Frere) could only say, that if, in looking back at his earlier days when passion even for doing justice was stronger than experience and judgment, his Honorable and learned friend could now in maturer years find nothing whatever to regret, he (Sir Bartle Frere) sincerely envied him.

The Honorable and learned Judge had justified the course he had taken by his jealous regard for the honor and character of the Court to which he belonged; but he (Sir Bartle Frere) could not allow him to monopolize the right to value, and if need be, to defend the Supreme Court. It was an institution of which all Englishmen in India were justly proud, and which we are all prepared to defend from any real attack. Indeed the fairer inference from Mr. Eden's evidence would have been that we wanted more Supreme Courts, that we ought to have them in every large Town—and this brought him to the part of Sir Mordaunt Wells' remarks, in which he commented with such severity on Mr. Eden's answer to the 3606th question. His Honorable and learned friend seemed to think that there was some secret conspiracy to do away with the Supreme Court, and that certain unnamed parties in England were joined with parties he did not name in this country to get rid of the institution, and he connected with this design in some mysterious way the Criminal Code on which the Council was now engaged, and the Code of Criminal Procedure which was afterwards to occupy their attention, and His Honorable and learned friend had justified his taking up Mr. Eden's evidence on the ground that it was necessary to rouse public attention to the matter, because there was "an ominous silence about the subjection of Europeans to the Mofussil Courts."

Sir Bartle Frere

As for any "ominous silence", he (Sir Bartle Frere) must say he was not aware of its existence. He did not think they were in any danger of being allowed to forget the subject, and as the Honorable and learned Judge did not appear to stand alone in his misapprehension on the subject of the probable effects of the Penal Code and of the Code of Criminal Procedure becoming law, he would trouble the Council with a very few remarks on the subject. He (Sir Bartle Frere) wished he could have appropriated to himself the compliment which the Honorable and learned Judge had paid him, in saying that he believed he (Sir Bartle Frere) entertained very sound views on the subject. But he (Sir Bartle Frere) could lay claim to no views which were not, he believed, shared by all Members of the Government here and in England. Now when the Honorable and learned Judge spoke of certain parties in England as engaged in their design against the rights of British subjects, and spoke of the "sinister views" of such parties, who were the persons who were likely to be implicated? Macaulay, alas! was dead—but among those who had lately taken the most prominent part in the reform of our Indian Judicial administration, which had given such alarm to the Honorable and learned Judge, were men like Mr. Ray Cameron, Sir Edward Ryan, Mr Robert Lowe, two Vice-Chancellors, and a Master of the Rolls, omitting many names of Indian legal authorities of the highest eminence, who having been connected with the Company's Courts might be less satisfactory to the Honorable and learned Judge; besides these there were the leading Statesmen of all parties in Parliament, without whose general consent no such alteration of the law could be carried. Did his Honorable and learned friend really suppose that such men as he had named had really entered into a conspiracy against the rights of Englishmen in India? He (Sir Mordaunt Wells) had done no more than justice when he stated that the present Government of India in this country was sincerely anxious for sound judicial reform, and he (Sir Bartle Frere) hoped that their views were, as the learned Judge had stated, thoroughly sound. But he would put it to his Honorable and learned friend whether he was likely to further the cause of such reform by giving his authority to groundless suspicions as to the object and tendency of that portion of the good work on which the Council were now engaged?

He begged his Honorable and learned friend would consider what were the essentials of the excellence of that description of judicial administration which he in common with other Englishmen in India so much noticed in the Supreme Court? First, there was a trained and independent bench of the highest character for learning and integrity. Then there was a Bar, also trained and independent and second in ability to no Bar out of England. Then there was a body of attornies of the highest professional character. A well paid and ample establishment of interpreters and all other officers of the Court, and such an amount of work as admitted of all the safe-guards which we most value in the administration of justice—entire publicity—*viva* evidence—the parties face to face and in ope

Let his Honorable and consider how many of excellence were Government to bes of them were either the power of Govern rate out of its reach at to financial pressure. I that the Government and cil were now and had been for time past engaged in supplying present defects in the Judicial Administration as far as was in their power, and he left it to his Honorable and learned friend to decide, whether it was not better for the interests of justice to support the Government and that Council in the efforts they were making, rather than to throw unfounded suspicion on their motives, and thus lend the weight of his authority to an agitation which would delay or prevent any result to the labors of all the Indian Judicial Reformers

who had for years past been working in that field of usefulness.

THE VICE-PRESIDENT said, it was not his intention to prolong this discussion. He was much indebted to his Honorable and learned friend for having brought the matter to the notice of the Council. He thought that, whatever Mr. Eden's opinion as to the administration of justice in the Supreme Court might be, if the Judges entertained a different opinion from Mr. Eden, they were perfectly justified in expressing it. As he (the Vice-President) understood his Honorable and learned friend, he had not denied Mr. Eden the privilege of entertaining or expressing his own opinions as to the administration of justice in the Supreme Court. What his Honorable and learned f[illegible] had endeavored to show was th[illegible] by their sile[illegible] forward and to have given their [illegible] which he had ments. It [illegible] tion of criminal had made [illegible] Eden Be that ho[illegible] His Honora[illegible] oath. tion was, [illegible] had far mo[illegible] with the qu[illegible] opinions v[illegible] than he [illegible]. Eden's a question [illegible] He (the Vice[illegible] upon such [illegible] and wa[illegible] in only [illegible] and learned [illegible] had take[illegible] in coming [illegible] Eden ha[illegible] experience [illegible] cutta Ja[illegible] the administra[illegible] Presid[illegible] he justice in this city? [illegible]d learned friend had [illegible]ience in that respect [illegible]ce-President) had. [illegible]esident) had presided [illegible]riminal Sessions and [illegible]rt in another. Mr. [illegible]nd fault with the Cal[illegible]es. But he (the Vice[illegible]ent) could say from what he had seen that the Juries here were, in his opinion, quite as good as many of the Juries in England. There was not a single case at the Sessions at which he presided, in which they had returned a verdict, in which he (the Vice-President) did not concur. He believed that they acted most fairly and most justly in every case, and did their duty to the best of their ability. He (the Vice-President) had not had so much personal experience as his Honorable and learned friend, as to whether any feeling of partiality had been shown by the Jury towards Europeans. In the case which he had tried, and which was alluded to by his Honorable and learned friend, that of Sibkissen Banerjee, who, together with a European, Dr. Crawford, was tried for uttering a forged will, the Jury did not exhibit the slightest feeling of partiality for the European—they did not find one guilty and the other not guilty. But they found both guilty, and while the native was sentenced to transportation for fourteen years, the European was sentenced to penal servitude for an equivalent period according to the scale laid down by the law of the land, so that both were tried and convicted together, and were sentenced to an equal amount of punishment. In other cases which he had tried against Europeans no feeling of partiality was shown.

Mr. Eden was asked in question 3575—

"Can you point to any particular records, printed or other, in support of your assertion regarding acts of violence?"

He said—

"I beg to hand in an abstract of forty-nine serious cases of murders, homicide, ryot, arson, dacoity, plunder, and kidnapping, which have occurred from the year 1836 to 1859, some of which I have taken from records which came before me during my incumbency, others from printed Nizamut Reports, and all from authenticated papers."

He was then asked—

"Could you state how many of these cases came under your personal knowledge as Magistrate?"

"I only remember two cases," answered Mr. Eden. So that of the forty-nine cases specified in the list given in by him, in which Europeans had not been brought to justice, only two had come under his personal observation. Mr. Eden was then asked by Mr. Fergusson—

"In the forty-nine cases which you forwarded out, as having occurred during the last 30 years, is it not the case that, in more than half of them, Europeans have not been

accused, or, if accused, have been acquitted?"

He answered—

"There are scarcely any one of these cases in which the European or principal manager of the concern has ever been put upon his trial, although in many of them the Judges trying the cases have expressed strong opinions that such Europeans were themselves implicated in them; and it is to this impunity and freedom from responsibility that I attribute the constant recurrence of those violent outrages."

Then he was asked—

"In such instances as you have mentioned, was it not a gross dereliction of duty on the part of the Government not to prosecute the Europeans?"

And then one of the reasons which he gave was the difficulty which existed under the present law of obtaining a conviction against Europeans in the Supreme Court. He did not speak of the expense or inconvenience of sending down Europeans from a distance, but he expressed his opinion that it was difficult to obtain a conviction against them. Now that was the assertion which his Honorable and learned friend had endeavored on behalf of the Supreme Court to contradict. His Honorable and learned friend had had experience of Criminal trials in the Supreme Court, and came forward and said that, in the cases in which he was concerned, he saw no partiality. He would read the question and answer together. The question was—

"In such instances as you have mentioned was it not a gross dereliction of duty on the part of the Government not to prosecute the Europeans?"

Mr. Eden replied—

"There was certainly a failure of justice which in my opinion may to a certain extent be attributed to the strong bias which the Governor and many of the Officers of Government have always displayed in favor of those engaged in this particular cultivation."

In the first place Mr. Eden attacked the Government and the Officers of Government, and he then went on to say—

"This may also partly have arisen from the difficulty which exists under the present law of obtaining a conviction against Europeans, as for instance in the case of a planter named Dick *alias* Richard Aimes, who was murdered by an European planter named Young a French planter named Pierre Aller, and some native servants, in which the Frenchman and the natives, being amenable to the Courts of the country, were imprisoned for life, whilst Young, the European British subject, not being subject to the jurisdiction of the local Court, was tried in Her Majesty's Supreme Court in Calcutta, and was acquitted on precisely the same evidence as was brought against the foreigner and natives who were convicted in the District Court; the sentence being upheld by the Nizamut Adawlut."

Now Mr. Eden did not state simply that the planter was charged with the murder of Dick, but he asserted that the man was actually murdered, and that the Englishman was acquitted. Now what would that lead to, if it went home uncontradicted? His Honorable and learned friend had referred to the case, and had found that it was a case which was tried by Sir Charles Grey and Mr. Justice Ryan. If what had been stated by Mr. Eden were true, those two eminent Judges must have been blameable. But his Honorable and learned friend had shown that there was a question at the trial as to whether the man was dead at all. He might or might not have been dead; at any rate there was not in the opinion of the Chief Justice sufficient evidence of the fact. The mere fact however of the man not being there was conclusive proof in Mr. Eden's mind of his death. It might have been that the Court and Jury were wrong in point of fact. But the question was, whether they ought to have found the man guilty of murder upon the evidence then before them? It appeared however that the other parties who were tried in the District Court, were sentenced to imprisonment for life, and that this sentence was upheld by the Nizamut Adawlut. He (the Vice-President) would only observe that, if a man was found guilty of murder, he ought to be sentenced to be hanged, unless there were any mitigating circumstances to induce the Court to commute the sentence to transportation for life. If the evidence left any

doubt on their minds as to the guilt of the prisoner, they were bound by the law, which they were sworn to administer, to give the benefit of it to the prisoner. There was, as he had said, in that case an entire absence of proof as to the death of the man, and the only evidence produced was some human hair as was supposed, but which, as we had heard from the Honorable and learned Judge, turned out to be that of a chesnut horse.

Mr. Eden was then asked—

"Then you consider that in that case justice was obtained in the Mofussil Courts and denied in the Supreme Court?"

He replied—

"I consider that the Judges of the Court of the Nizamut Adawlut are fully as competent to come to a decision on the evidence before them, as a Calcutta Petty Jury."

He (the Vice-President) had had no time to look into the case, but his Honorable and learned friend had taken the trouble to do so, and had said that the only evidence which was produced to prove that the man was dead was the hair to which he (the Vice-President) had already referred. Mr. Eden might be perfectly right in saying that the Sudder Court was as fully competent as a Calcutta Jury to determine a case of murder: but he (the Vice-President) could not agree with him. He (the Vice-President) thought that there was great difference between Judges deciding cases on paper and a Jury trying a case with the facts before them. Mr. Eden might have meant that the Mofussil Judge who tried the case had the same opportunity of arriving at the truth as a Calcutta Jury, but he distinctly mentioned the Sudder Court. Now he (the Vice-President) did not think that Judges who merely decided on paper were as competent as a Jury who had the evidence before them. The Sudder must act on the judgment formed by the Sessions Judge. He (the Vice- President) did not mean to say that if a Sessions Judge found a man guilty of murder on insufficient evidence, the Sudder Court would not overrule him, but still they must to a great extent rely on the judgment of the Sessions Judge. Mr. Eden then went on to say—

"I therefore consider that in this instance a failure of justice occurred in the Supreme Court."

Mr. Eden might be right or he might be wrong in supposing that the murder was committed in that particular case; but he (the Vice-President) thought he gave a very bad reason for his opinion. But then said Mr. Fergusson to him—

"If I tell you that I was in the Supreme Court during the whole of that trial, and with a strong feeling against the prisoner, and that I and most other gentlemen in Calcutta considered it impossible to find him guilty on the evidence, would it alter your opinion in any manner?"

"No," said Mr. Eden, "as, with those facts before them, and commenting on those facts, the Sudder Court subsequently convicted the remainder of that party as accessories to the murder on that evidence."

Now he (the Vice-President) would not say that there was a failure of justice in the Sudder Court because the Supreme Court had come to a different conclusion. But was it only in cases where a conviction followed that justice was done? Mr Eden's reasoning was nothing more than this, that because the Sudder Court had convicted the accessories to the murder, the Supreme Court could have no excuse for acquitting the principal. Mr. Eden appeared not to have looked into the evidence himself but founded his opinion upon the judgment of the Sudder Court. Besides what proof did he adduce that the evidence was identically the same in both cases. The Honorable and learned Judge had told us that the case was tried by two Judges, so that the Judges and the Jury were all wrong, because the Sudder Court happened to convict the supposed accomplices of the murder. Now let us examine Mr. Eden's logic. Mr. Eden went on to say—

"Moreover if the murder was not committed, where is Dick *alias* Richard Aimes, who has never appeared since."

But the question was not, where was Dick; his disappearance was not conclusive evidence of the murder. Did Mr. Eden really think that, because Dick had not appeared for the last 30 years, the Supreme Court ought to have convicted the prisoner? Mr. Eden might and, as he (the Vice-President) thought, did entertain that opinion, but it did not follow that, because he entertained that opinion, the Judges and the Jury were wrong. The question was not whether Dick was dead or alive—but whether there was a failure of justice because the prisoner was acquitted upon the evidence then before the Court. But, said Mr. Eden, if innocent, he should not like to be tried by the Supreme Court. That was an attack on the Court just the other way, for if it meant any thing at all, it meant this, that, if innocent, he could not expect to be acquitted. Now, be it remembered, this was all upon oath. He (the Vice-President) would read Mr. Eden's own words on this point. He was asked by Mr. Fergusson—

"In the present state of the Mofussil Courts, and with the present Judges who preside in them, would you like to see any European friend tried in them?"

Mr. Eden answered—

"I think that, if the Courts are good enough for the Natives, they are good enough for Europeans. If they are not good enough for Natives, they are not fit to have any jurisdiction at all over any one. As far as I am myself concerned, I would sooner be tried if innocent in the local Sessions Court, with an appeal to the Nizamut, than in the Supreme Court. If guilty, I would prefer the Supreme Court and a Calcutta Jury."

So that if Mr. Eden were guilty, he would not be afraid to be tried by the Supreme Court, for he was certain to be acquitted; but then he failed to explain why he, being a European whom a Jury would acquit even if he were guilty, was afraid of being convicted if he were innocent. Now he (the Vice-President) had no wish to express any opinion with regard to Mr. Eden's evidence, but he thought that his Honorable and learned friend was quite right, when he saw such an attack, to look into all the cases, to bring his experience to bear upon the matter, and to deny that the Court, of which he was one of the Judges, was open to the attack which had been made against it, lest it should be supposed that the Judges by their silence acquiesced in Mr. Eden's statements. Mr. Eden was quite at liberty to entertain any opinions he pleased and he might express them, but the Judges were also entitled to express theirs.

He (the Vice-President) could only repeat that, as far as his experience of the Calcutta Juries went, they were quite as good as any in England. As regarded the Grand Jury, he thought it was rather hard to blame them, for they simply determined whether there was a sufficient case to warrant their sending the case before a Petty Jury. In the case of Dick, the Grand Jury found a true Bill. He thought it was not necessary to trouble a Grand Jury when cases were committed by a Justice of the Peace or a competent Officer. But he (the Vice-President) desired to speak from the little experience that he had, not as Mr. Eden did from reports, that the Grand Jury at the Sessions hold before him had not thrown out a single Bill when they ought to have found a true Bill, or *vice versâ*.

It did not follow that because the Petty Jury acquitted a prisoner, the Grand Jury were wrong. It was not his (the Vice-President's) intention to go any further into the question, but he wished to state that he fully concurred in all that had fallen from his Honorable and learned friend.

MR. SCONCE said, he desired to make only one remark with reference to what the Honorable and learned Judge near him had said upon the subject of the record of the trial of certain parties who were convicted by the Sudder Court in Dick's case. He himself know nothing of the trial referred to, whether held in the Supreme Court or in the Sudder Court. But he understood his Honorable and learned friend to say that the record which he held in his hand was the record upon which the Sudder Court gave judgment. Now he rather apprehended

that the depositions referred to by his Honorable and learned friend were copies or translations of the preliminary information or deposition taken by the Zillah Magistrate, and transmitted by that Officer to the Clerk of the Crown. But the record of the trial laid before the Sudder Court was of a different character; that record undoubtedly would exhibit the depositions taken by the Circuit Court, and both as to the men examined and the information elicited from the witnesses might considerably differ from the depositions taken by the Magistrate. He believed he might assure the Honorable and learned Judge that in the depositions he had read, he had not read the trial referred to the Sudder Court.

SIR MORDAUNT WELLS said, what he intended to say was that the papers in question were the depositions in the case referred to. He was not aware and did not mean to say that the papers were the papers of the trial referred to the Sudder Court.

THE VICE-PRESIDENT said he was sure that his Honorable and learned friend, in referring to the depositions in question, never intended to say one word against the Sudder Court.

SIR MORDAUNT WELLS said, he had no hesitation in saying that such an intention was farthest from his mind. He must also say that, had he been examined before the Indigo Commission, he could not have taken upon himself to say that the Sudder Court were wrong in their decision in the case referred to. He would further emphatically state that, allowing that Mr. Eden had a perfect right to hold any opinions he pleased, and irrespectively of whatever views others might take of the matter, Mr. Eden had not informed himself as to the facts of the case in question.

SIR BARTLE FRERE said, he would only observe with reference to what had fallen from the Honorable and learned Vice-President, that he feared he might have been misunderstood as expressing concurrence with the views contained in Mr. Eden's evidence. It was not his intention to offer any opinion either for or against those views, many of them were matters of opinion, some almost of taste, for instance the declaration on which both his Honorable and learned friends had dwelt so long and with such emphasis, as to the Court by which he would like to be tried. For his own part, he (Sir Bartle Frere) would prefer being tried by neither, though, if forced to choose, he might have a prejudice in favor of a Judge and Jury of his own countrymen; all he had wished to insist on was that evidence given on oath before a Commission, constituted as the Indigo Commission was, ought not to be liable to be discussed as Mr. Eden's had been by his Honorable and learned friends, while no report of the Indigo Commission was yet drawn up, that the Supreme Court might have stood upon its own character without noticing the criticism contained in the evidence, and that, if the Honorable and learned Judge still thought the evidence required notice, the Legislative Council was not the place in which such notice ought to be taken.

SIR MORDAUNT WELLS said, he was not aware of any other place where he could have done so. He objected on principle to making any observations from the Bench, which were not strictly connected with his judicial business.

THE VICE-PRESIDENT said, the Indigo Commission was not appointed to pronounce any opinion regarding the Supreme Court, but simply to enquire and submit a report on the subject of Indigo cultivation. His Honorable and learned friend therefore could not have gone and volunteered his evidence before that Commission. But when he found that Mr Eden's evidence before the Commission contained an attack upon the Supreme Court, his Honorable and learned friend was quite right in coming forward to show that the statements of that gentleman were not correct.

INCOME TAX.

SIR BARTLE FRERE moved that the Council resolve itself into a

Committee on the Bill "to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices)" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

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

SIR BARTLE FRERE moved that the Bill be read a third time and passed.

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

SIR BARTLE FRERE moved that Mr. Beadon be requested to take the above Bill to the Governor-General for his assent.

Agreed to.

INDIAN FINANCES.

SIR BARTLE FRERE begged to mention that it was the intention of Government to proceed with the measures which had been introduced and left in a partially incomplete state by the Right Honorable Mr. Wilson, and to proceed with them in accordance with the views which had been stated to the Council by that gentleman. He (Sir Bartle Frere) hoped next Saturday to state the alterations which were proposed to be made in the Bill "for the licensing of Arts, Trades, and Professions" and which had had the Right Honorable Gentleman's sanction; and at some future sitting of the Council, it was proposed to proceed with the Bill "to provide for a Government Paper Currency."

INDIAN 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 Bill.

A verbal amendment was made in Section 11 Chapter II.

Sections 1 to 4 of Chapter III were passed as they stood.

THE CHAIRMAN moved the introduction of the following new Sections after Section 4 :—

"In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment."

"In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which such offender might have been sentenced to imprisonment."

The Sections were severally agreed to.

Section 5 was passed as it stood.

Sections 6 and 7 were passed after verbal amendments.

Section 8 provided as follows :—

"In every case in which an offence is punishable with flogging, it shall be competent to the Court to sentence such offender to flogging not exceeding thirty stripes with a rattan."

SIR MORDAUNT WELLS said, he did not approve of the punishment of flogging adults. It was inconsistent with the spirit of modern legislation, and inapplicable to a civilized country.

THE CHAIRMAN said that, in many parts of India, large bodies of natives regarded imprisonment as tantamount to the punishment of death. To such persons flogging was a most merciful punishment, and he therefore thought it would be advisable to retain it.

SIR BARTLE FRERE concurred with the Honorable and learned Chairman, and said that he could speak from his own experience that flogging was a very useful punishment, particularly in several parts of the country where the people were in a state of semi-barbarism, and where they could not bear an amount of imprisonment which was absolutely trifling to men of more civilized habits. A very short period

of confinement in the best managed and most healthy jail was sufficient to kill a man who had been used all his life to roam in the *jungle* or desert You could not fine men who had no property, and the most merciful punishment was to give a flogging for all but the most serious offences or for such as required only a very short imprisonment.

MR HARINGTON also expressed himself in favor of flogging as a suitable and proper punishment f r certain offences in this country, whatever might be the state of public feeling at home.

MR. BEADON said, it had been found that corporal punishment was more effectual in deterring persons from the commission of disgraceful crime than imprisonment, while in many places, owing to the unhealthiness of the jail or the precautions rendered necessary by its insecurity, it was really more merciful to flog a man moderately than to imprison him. He was quite sure that, if the Mofussil Officers were consulted, they would unanimously declare in favor of the continuance of flogging as a punishment.

SIR MORDAUNT WELLS said, he would defer to the opinions of his Honorable friend opposite (Sir Bartle Frere) and the Honorable Member on his right (Mr. Beadon) that flogging was absolutely necessary as regards Natives. He objected, however, to flogging Europeans, and would therefore propose the addition of the following words to the Section—

"which shall not be inflicted upon any European above the age of sixteen."

The question being put, the Council divided—

Ayes 3.	*Noes* 4.
Sir Mordaunt Wells.	Mr. Forbes.
Mr. Sconce.	Mr. Harington.
The Chairman.	Mr. Beadon.
	Sir Bartle Frere.

So the Motion was negatived.

THE CHAIRMAN moved the addition of the following words to the Section :—

"which shall not be inflicted upon any female."

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

Section 9 provided as follows :—

"Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited but shall not be excessive."

SIR MORDAUNT WELLS drew the attention of the Council to the state of the law in England where, if a man were committed for the non-payment of an excessive fine, he might get out a writ of *Habeas Corpus*, and there was his remedy.

MR. HARINGTON said, here the party would have an appeal.

SIR MORDAUNT WELLS said, that was quite a different thing. He had lately seen, while looking over the decisions of the Sudder Court, a case in which, if he was not mistaken, his Honorable friend on his right (Mr. Sconce) was one of the Judges before whom the appeal was heard. The case was that of a Native Zemindar who had appealed against the sentence of the Court below imposing a fine of five thousand Rupees, but whose petition was not finally disposed of until several weeks after the imposition of the fine. Independently of that, the expense of an appeal must be taken into consideration. Was it reasonble to expect that a person who was not able to pay a fine, could afford to pay the expense of an appeal against the payment of that fine? Now he (Sir Mordaunt Wells) would say that, in the case of a fine, we ought to limit it, because in India the writ of *Habeas Corpus*, the Bill of Rights, and Magna Charta were practically of no force. Was an Assistant Magistrate of 3, 4, or 5 years' standing to have the power of fining a man three thousand Rupees? It would probably cost the man about two or three hundred Rupees to appeal to the Magistrate, and probably the same sum to appeal to the Judge, and then again to the Sudder Court. He (Sir Mordaunt Wells) would propose to limit the power as regards Magistrates to five hundred Rupees. If the Magistrate was not satisfied with the adequacy of

that amount, he could send the man to the Sessions for trial.

MR. HARINGTON said, in effect there would be little if any difference between the two remedies. In the one case the remedy was by a writ of *Habeas Corpus*, in the other it would be by an appeal, which in the Criminal Courts involved scarcely any expense, and there was no reason why the remedy should not be applied with the same degree of expedition in the one case as in the other. He had no decided objection to the suggestion of the Honorable and learned Judge, that the amount of fine should be limited, but he might remark that the Section was framed by the Law Commissioners very much as it now stood. The Select Committee had only thought it necessary to add the concluding words, which required that the fine should not be excessive. These words were taken from the English law.

THE CHAIRMAN said, this Code had to define offences, and to declare the punishment for them. The Code of Procedure would limit the amount of fine to be imposed by particular Officers. The Honorable and learned Judge had spoken of the *Habeas Corpus*. But he (the Chairman) was not sure that any Court could interfere in such a case. For instance, suppose a Court of competent jurisdiction like the Court of Exchequer, were to commit a man for non-payment of a fine, and he applied to the Court of King's Bench for a writ of *Habeas Corpus*. If it were granted, the return to the writ would show that the person was detained by sufficient authority. With reference to the question whether the law could lay down any specific sum as a maximum of fine, he (the Chairman) felt great difficulty. The matter was fully considered by the Law Commissioners, and he could not do better than read the words of the Law Commissioners relating to this subject. They said—

"Fine is one of the most common punishments in every part of the world, and it is a punishment the advantages of which are so great and obvious that we propose to authorize the Courts to inflict it in every case, except where forfeiture of all property is necessarily part of the punishment. Yet the punishment of fine is open to some objections. Death, imprisonment, transportation, banishment, solitude, compelled labor, are not, indeed, equally disagreeable to all men. But they are so disagreeable to all men that the Legislature, in assigning these punishments to offences, may safely neglect the differences produced by temper and situation. With fine the case is different. In imposing a fine it is always necessary to have as much regard to the pecuniary circumstances of the offender, as to the character and magnitude of the offence. The mulct which is ruinous to a laborer is easily borne by a tradesman, and it is absolutely unfelt by a rich zemindar.

"It is impossible to fix any limit to the amount of a fine which will not either be so high as to be ruinous to the poor, or so low as to be no object of terror to the rich. There are many millions in India who would be utterly unable to pay a fine of fifty Rupees; there are hundreds of thousands from whom such a fine might be levied, but whom it would reduce to extreme distress; there are thousands to whom it would give very little uneasiness; there are hundreds to whom it would be a matter of perfect indifference, and who would not cross a room to avoid it. The number of the poor in every country exceeds in a very great ratio the number of the rich. The number of poor criminals exceeds the number of rich criminals in a still greater ratio. And to the poor criminal it is a matter of absolute indifference whether the fine to which he is liable be limited or not, unless it be so limited as to render it quite inefficient as a mode of punishing the rich. To a man who has no capital, who has laid by nothing, whose monthly wages are just sufficient to provide himself and his family with their monthly rice, it matters not whether the fine for assault be left to be settled by the discretion of the Courts, or whether a hundred Rupees be fixed as the maximum. There are no degrees in impossibility. He is no more able to pay a hundred Rupees than to pay a lac. A just and wise Judge, even if entrusted with a boundless discretion, will not, under ordinary circumstances, sentence such an offender to a fine of a hundred Rupees. And the limit of a hundred Rupees would leave it quite in the power of an unjust or inconsiderate judge to inflict on such an offender all the evil which can be inflicted on him by means of fine.

"If, in imitation of Mr. Livingston, we provide that no fine shall exceed one-fourth of the amount of the offender's property, no serious fine will ever be imposed in this country without a long and often a most unsatisfactory investigation, in which it would be necessary to decide many obscure questions of right purposely darkened by every artifice of chicanery. And even if this great practical difficulty did not exist, we should see strong objections to such a provision in a very large class of cases. Take the case of a corrupt judge who has accumulated a lac of rupees by his illicit practices. A fine which

should deprive such a man of the whole of his fortune would not appear to us excessive. And certainly we should think it most most undesirable that he should be allowed to retain 75,000 Rupees of his ill-gotten gains. Again: take the case of a man who has been suborned to commit perjury, and has received a great bribe for doing so. Such a man may have little or no property, except what he has received as a bribe. Yet it is evidently desirable that he should be compelled to disgorge the whole. No man ought ever to gain by breaking the law; and if Mr. Livingston's rule were adopted in this country, many would gain by breaking the law. To punish a man for a crime, and yet to leave in his possession three-fourths of the consideration which tempted him to commit the crime, is to hold out at once punishments for crime, and inducements to crime. It appears to us that the punishment of fine is a peculiarly appropriate punishment for all offences to which men are prompted by cupidity. For it is a punishment which operates directly on the very feeling which impels men to such offences. A man who has been guilty of great offences arising from cupidity, of forging a bill of exchange, for example, of keeping a receptacle for stolen goods, or of extensive embezzlement, ought, we conceive, to be so fined as to reduce him to poverty. That such a man should, when his imprisonment is over, return to the enjoyment of three-fourths of his property, a property which may be very large, and which may have been accumulated by his offences, appears to us highly objectionable. Those persons who are most likely to commit such offences would often be less deterred by knowing that the offender had passed several years in imprisonment, than encouraged by seeing him, after his liberation, enjoying the far larger part of his wealth.

"We have never seen any general rule for the limiting of fine, which we are disposed to adopt. The difficulty of framing a rule has evidently been felt by many eminent men. The authors of the Bill of Rights, with many instances of gross abuse fresh in their recollection, could devise no other rule than that excessive fines should not be imposed. And the authors of the Constitution of the United States, after the experience of another century, content themselves with repeating the words of the Bill of Rights.

"It will be seen that in cases which are not very heinous we propose to limit the amount of fine which the Courts may impose. But in serious cases we have left the amount of fine absolutely to their discretion; and we feel, as we have said, that, even in the cases where we have proposed to limit, such a limit will be no protection to the poor, who in every community are also the many. We feel that the extent of the discretion which we have thus left to the Courts is an evil, and that no sagacity and no rectitude of intention can secure a judge from occasional error. We conceive, however, that if fine is to be employed as a punishment, and no judicious person, we are persuaded, would propose to dispense with it, this evil must be endured. We shall attempt in the Code of Procedure to establish such a system of appeal as may prevent gross or frequent injustice from taking place."

Now the Code of Procedure, which had already passed a Committee of the whole Council, had not had an appendix added to it, and that was in consequence of this Code not having been passed. There was also a provision regarding the amount of fines in that Code, so that every thing had been done, as far as the framers of this Code were concerned, to prevent any injustice being committed, and with reference to the admirable note of the Law Commissioners which he had just read, the Select Committee had considered it unnecessary to alter the Section proposed by the Commissioners except laying down, as in the Bill of Rights, that the amount of fine shou'd not be excessive.

SIR MORDAUNT WELLS said, he was much obliged to his Honorable and learned friend for having informed him as to the difficulty of putting a limit to the amount of fine in the Penal Code. He thought that his Honorable and learned friend's explanation was most satisfactory, and that it would be quite impossible to limit the amount of fine in the Penal Code.

The Section was then put and carried.

Sections 10 to 21 were also severally passed as they stood.

Section 22 provided as follows:—

"All offences falling within the following Chapters of this Code and thereby made punishable with imprisonment, and not with fine only, shall be punishable with flogging in addition to any other punishment with which such offences are thereby made punishable (that is to say).

Chapter VII—(Offences relating to the Army and Navy).

Chapter XI—(Offences against Public Justice).

Chapter XII—(Offences relating to coin and Government Stamps).

Chapter XVI—(Offences affecting the human body).

Chapter XVII—(Offences against property).

Chapter XXII—(Criminal intimidation, insult and annoyance). Also the offence of abetting any of the said offences. Also attempts to commit any of the said offences."

The Chairman

MR. SCONCE said, he had a strong objection to the introduction of this Section, the principle of which was to subject to flogging all persons who might be sentenced to imprisonment for any of the offences described in the six Chapters quoted. According to this Section, a person convicted under Section 10 Chapter VII, of the offence of wearing the sash of a soldier, or who wore a feather on his cap, was subject to thirty stripes. So also a person convicted under Section 6 of the same Chapter of harbouring a deserter, was subject to the same punishment. There were many other offences in the same and other Chapters to which he thought that flogging was not applicable; for instance, cases of culpable homicide and even assaults. What he particularly objected to was the form in which it was now proposed to apply the punishment to Chapters in a lump. Another objection which he had to the Section was, that it proposed to inflict flogging in addition to any other punishment to which a person was liable in respect of the same offence. It had been urged by the Honorable Member near him (Mr. Beadon) that the principal reason for adhering to flogging as a punishment was that imprisonment might be avoided; and if we imprisoned and flogged both, the punishment of flogging must be justified on some other ground than that referred to.

SIR MORDAUNT WELLS also objected to this Section, and repeated that he was strongly opposed to the infliction of corporal punishment on adults. He earnestly besought the Council to pause before they conferred such a power upon the Judges and Magistrates. He foresaw clearly that the consequence would be that he would be charged with partiality towards Europeans. People would say that here was an English Judge who would not flog a European, though the poor natives in the Mofussil had to submit to this most degrading punishment.

SIR BARTLE FRERE repeated that corporal punishment was an absolute necessity in the case of uncivilized persons. Except in such cases and in cases of brutality, it would not be resorted to. For his own part, he would far prefer to leave it to the discretion of a Judge.

MR. SCONCE said, if flogging were to be confined to uncivilized people, he should be glad if his Honorable friend would name the Districts in Bengal to which the rule would apply, and exempt the others. He would not leave it to the discretion of a Judge to inflict a punishment which, when once inflicted, was irrevocable. Other punishments operated more in the way of moral restraint: flogging was recommended, because it inflicted physical suffering. It did not act on the mind, but on the flesh, and might degenerate into vengeance. As at present advised, he (Mr. Sconce) was not disposed to extend the discretion to all Magistrates, of whom many were young and inexperienced, and some might be hasty and intemperate.

SIR MORDAUNT WELLS said, when we were discussing the Arms Bill the other day, it was urged as a reason against continuing the power of making domiciliary visits in search for Arms, that flogging was a barbarous punishment, and that the local Magistrates were not persons to be relied on. He did not think there were fifty out of the six hundred and fifty Members in the House of Commons, who would vote in favor of such a law, and here was this Legislative Council composed of eight Members going to introduce such a provision into the Penal Code for the whole of India, and to give any Magistrate of three years' standing the discretion of inflicting corporal punishment. If there was any thing more odious than another, it was the system of leaving large discretion in the hands of Magistrates and Judges. Public feeling against the flogging system was never so high as at this moment. It was true that flogging existed in the Army and Navy. But many of our public men in England entertained opinions that flogging did not repress offences. Even as regards Natives, nothing

would be more degrading to a Zemindar or Baboo than to be publicly flogged. If, as the Honorable Member of Council opposite (Sir Bartle Frere) had said, the punishment was required for barbarous countries, let us have a Code for civilized countries and another Code for barbarous countries. In either case, he would much prefer the punishment of hard labor. But as for flogging, he protested that, in the 19th century, such a punishment should be introduced into a law, and he would therefore propose to get rid of it altogether.

MR. HARINGTON said, he thought that the Honorable and learned Judge labored under some misapprehension in respect to the punishment of flogging, and that he imagined that they were now for the first time introducing that punishment. This, however, was not the case. In the Presidencies of Madras and Bombay, and in the Punjab and in Oude, as also within the limits of the Presidency Towns, flogging was one of the punishments in use. Throughout the Presidency of Bengal also it was included in the list of punishments until the year 1834, when it was discontinued by a Regulation passed by Lord William Bentinck. The effect of the discontinuance was generally considered to have been injurious, and as remarked by the Honorable Member of Council opposite (Mr Beadon), a strong feeling prevailed in favor of the revival of the penalty. The Select Committee on the Penal Code had to consider, whether they would do away with the punishment where it might now be inflicted, or whether they would retain it in those places, and restore it where it had been discontinued. They decided upon the latter course. Their reasons for the decision to which they came would be found in the Report presented to the Council, which he saw reason to think the Honorable and learned Judge (Sir Mordaunt Wells) could not have read. In that Report the Select Committee said—

"The most important are those in the Chapter "Of Punishments" which, with some others, we proceed to notice. We propose to include flogging among the punishments to be provided for offences. The Law Commissioners in a Note to this Chapter of the Code as prepared by them have stated the reasons why they did not think it desirable to place flogging in the list of punishments. We entirely concur with them in the opinion that it is a mode of punishment open to serious objection when inflicted for atrocious crimes with a severity proportioned to the magnitude of those crimes But moderate flogging as a punishment for certain classes of offences not of the most heinous kind has, we think, many advantages over other punishments, especially in this country. It is a punishment which, by the English Law now in force in the Supreme Court, may be inflicted for many offences. We believe that in India a sentence of imprisonment for a short term of years does not strike either the offender or the by-standers with the same fear as a sentence of flogging, while the latter punishment has this great advantage over imprisonment, that the offender escapes the evil influence of a jail. Such a system of prison discipline may indeed be hereafter devised as will (like the reforms alluded to by the Law Commissioners as being under consideration at the time of their report) be more salutary to offenders than stripes; but the expediency of this mode of punishment should at present be considered with reference to the existing system of prison discipline in the jails of India.

"We are satisfied that there is, among those who have considered this question, a very general concurrence of opinion in favor of flogging rather than imprisonment as a punishment for the less heinous kind of offences."

MR. FORBES would remind the Committee that the punishment of flogging had not very long ago been introduced into the Criminal Code of England by the late Sir Robert Peel, to meet cases in which men, without any real intention of injuring Her Majesty, had fired at the Queen for the sole purpose of enjoying the public notoriety of a trial for high treason, in full confidence that the penalty of treason would not be inflicted. Corporal punishment, though no doubt a very minor punishment to death was, in the cases to which he referred, only nominally a diminution of punishment for the offence for which these persons were tried, and was in reality an enhancement of punishment because, as the punishment which the law awarded to the crime of high treason was not inflicted in these cases, the offenders got off altogether without punishment, so that to

Sir Mordaunt Wells

inflict corporal punishment upon them was really and truly an aggravation of punishment, although nominally it was a diminution. For a disgraceful offence, the punishment was tolerated in England, and had, as he had shewn, been adopted very recently for a new class of offences, and he could see no reason why it should not be retained in India where it had always been in force.

The learned Judge had made some observations which were apparently intended to fix a charge of inconsistency against those Members who now supported this Section, but who had objected when the Arms Bill was under debate to certain propositions made from the North-Western Provinces to introduce into that law, a power to flog those who did not produce a certain quota of Arms that might be demanded from them. He thought the charge was not fairly made. On the occasion to which the learned Judge referred, the question was not whether flogging should be a punishment inflicted for a specific offence after conviction by a Judicial Officer, but whether the whole of the male inhabitants of one village should be flogged on mere suspicion of concealing Arms, because they had not been able to produce the same number of weapons in proportion to population as had been found in another village, and he must maintain that this was a very different thing from a proposal to make flogging a legal punishment after regular judicial conviction of some specified offence.

With reference to the learned Judge's remarks about wealthy Zemindars and respectable Baboos, and the impropriety of subjecting them to this punishment, he would remark in the first place, that it was not wealthy Zemindars or respectable Baboos who committed the offences for which it was proposed to prescribe the punishment, and in the second place that, practically, the objection started by the learned Judge had not been experienced. Corporal punishment had been allowed by law in the Madras Presidency for the last sixty years, and he had never yet heard of an instance of its improper infliction. He was certain that the Magistrates of Southern India would deeply regret being deprived of the power to award this punishment, and he should support the Section.

After some further discussion, the consideration of the Section was postponed until after the consideration of the Chapters to which it referred, so that the Council might have an opportunity of considering the offences to which flogging was applicable and those to which it was not applicable.

The Council then resumed its sitting.

INCOME TAX.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices)."

WRECKED BOATS.

MR. SCONCE moved that the Bill "for the preservation of property recovered from Wrecked Boats" be referred to a Select Committee consisting of Mr. Beadon, Mr. Harington, Mr. Forbes, and the Mover.

UNIVERSITIES.

MR. FORBES moved that a communication received by him from the Registrar of the Madras University he laid upon the table and referred to the Select Committee on the Bill "for giving to the Universities of Calcutta, Madras, and Bombay the power of conferring Degrees in addition to those mentioned in Acts II, XXII, and XXVII of 1857."

Agreed to.

The Council adjourned at 6 o'clock on the Motion of Sir Bartle Frere, till Tuesday, the 21st instant, at 7 o'clock in the morning.