Saturday, 6th October, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

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(1860)

on a public way "in a manner so rash or negligent as to *indicate a want of due regard for human life, or in such a manner as is* likely to cause hurt or injury to any other person."

THE CHAIRMAN moved the substitution for the words in italics of the words "endanger human life or to be."

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

Similar amendments were made in Section 278, Sections 283 to 285, and Sections 334 to 336.

The Council having resumed its sitting, the Code was reported with amendments.

The Council adjourned at 5 o'clock (on the Motion of Sir Bartle Frere), till to-morrow, at 11 o'clock.

Saturday, October 6, 1860.

PRESENT:

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

His Excellency the Commander-in-Chief.
Hon'ble Sir H. B. E. Frere,
Hon'ble C. Beadon,
H. B Harington, Esq.,
A. Sconce, Esq.,
and
C. J. Erskine, Esq.,

EMIGRATION TO ST. KITTS.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor-General had assented to the Bill "relating to the Emigration of Native Laborers to the British Colony of St. Kitts."

SOOTANUTY, &c., TALOOKS.

THE CLERK presented to the Council a Petition of James Welch, Esq., Receiver of the estate of the late Rajah Rajkissen Bahadoor, praying for the passing of an Act to enable the Talookdars of Sootanuty of Baug Bazar and of Hoogul Coondy to realize their rents and dues.

MR. SCONCE said, the object of this Petition was to induce the Council to adopt a private Bill. They alleged that they were unable to adequately realize the rents due to them from their Talooks which were situated within Calcutta. He would at the present moment offer no opinion as to the existing state of the law. He would only say that this matter had been before the Lieutenant-Governor, and would read to the Council a letter written by His Honor on the subject. It was addressed to Rajah Radhakaunt Deb in reply to a memorial submitted by him. The letter was as follows:—

"I am directed to acknowledge the receipt of your letter, dated 1st September last, transmitting for submission a memorial representing the difficulty experienced by you in realizing the rents of your Talook Sootanuty, in Calcutta, and in reply to state that the Lieutenant-Governor considers the matter a fit one for the introduction of a private Bill into the Legislative Council.

You are recommended to petition the Council to pass a Bill, appending to your Petition a draft of such a Bill as you wish for. This you had better procure to be prepared by Counsel.

The Lieutenant-Governor will request Mr. Sconce to give his attention to the Petition when presented."

At present it seemed to him (Mr. Sconce) premature to adopt the Bill and to bring it in for a first reading. It was a case which came before us as an *ex-parte* statement. It seemed to him that the proper course would be to print the Petition in order that the parties on the other side might be enabled to present a Petition containing their views on the subject. Standing Order No. XXXIII provided as follows:—

"Drafts or projects of laws proposed by *private persons* must be accompanied by a Petition, praying that the same may be taken into consideration by the Legislative Council, and shall be dealt with in the manner prescribed by these "Orders" under the head 'Petitions.'"

Under these circumstances he begged to move that the Petition be printed, which he believed was the first course prescribed by the Standing Orders with regard to Petitions.

Agreed to.

PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. HARINGTON (in the absence of Mr. Forbes) moved the second reading of the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George."

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

CIVIL PROCEDURE.

MR. HARINGTON moved the second reading of the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

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

MR. HARINGTON moved that the Standing Orders be suspended to enable him to carry the Bill through its remaining stages to-day. The Council were aware that the provisions of this Bill formed the subject of two Sections in the Small Cause Courts Bill from which they were struck out in Committee of the whole Council. The provisions in question had been before the public for the last sixteen months, and no objections had been taken to them.

MR. SCONCE seconded the Motion which was put and carried.

MR. HARINGTON then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Sections I to VIII were passed as they stood.

MR. ERSKINE moved the introduction of the following new Section after Section VIII :—

"Nothing in this Act shall extend to any decision or order passed on regular appeal by any Assistant Judge in the Presidency of Bombay."

In doing so, he said that it was only the peculiarity of the system prevailing in Bombay, of which he believed the Honorable Mover of the Bill was aware, that rendered the introduction of this Section necessary.

MR. HARINGTON said, he had no objection to the introduction of the proposed Section.

The Section was then put and carried.

Section IX and the Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

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

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

POLICE.

SIR BARTLE FRERE moved the second reading of the Bill "for the regulation of Police within any parts of the British Territories in India, to which it may please the Governor-General in Council to extend its provisions."

MR. HARINGTON said, had it not been the intention to prorogue the Council to-day for some weeks, he thought he should have ventured to ask the Honorable Member of Council who had charge of this Bill to allow his Motion for the second reading to stand over for a week at least, in order that, before affirming the principle of the Bill by allowing it to be read a second time, they might have had a little more time for considering the provisions of the Bill, and for making themselves acquainted with the reasons of the measure which they were informed would be found very fully stated in the Report of the Police Commission, and in the Resolution of Government appointing that Commission. These important papers had not yet been officially communicated to the Council.

SIR BARTLE FRERE here mentioned that the papers had been presented.

MR. HARINGTON remarked that the papers had not yet been printed and circulated, and he thought that they ought to have been placed in the

hands of Honorable Members in order that they might have had an opportunity of informing themselves of their contents before being called upon to vote on the Motion before the Council. He need scarcely say that this Bill was a very important one; few more important Bills had ever come before the Council. The changes which the Bill proposed to make in the system of the Mofussil Police were very large, and would affect not only the character of the Police as a body, but also their duties, powers, and responsibilities. He was sure that the Council would agree with him that changes so vast and extensive as were proposed by this Bill should not be hastily introduced; in other words, that they should be adopted only after full enquiry into and ascertainment of what was defective in the existing system, and after careful and mature deliberation, and it appeared to him that this was especially necessary in the present case, because he had reason to know that many old and experienced officers, who differed materially on other matters, and some of whom preferred the Non-Regulation to the Regulation system, entertained very serious doubts whether the principles on which this Bill was stated to be based, however suited to England and Ireland and the three Indian Presidency Towns, were suited to the Mofussil Districts of this country. He was fully sensible of the great importance of having the Bill published at once for general information, in order that, when they resumed their sittings, they might have before them the opinions of the local Governments and of their subordinate Officers and of the public at large upon the various provisions of the Bill, and he for one should deeply regret if the publication of the Bill were delayed for weeks simply by reason of the sittings of the Council being suspended. Under these circumstances, although he must confess that the Motion for the second reading of the Bill to-day, before they had been placed in possession of the materials on which the Bill was founded, had rather taken him by surprise, he considered it to be quite consistent with his duty that he should support the Motion, but he did so on the understanding that he did not pledge himself to the details of the Bill, or indeed to the principles involved in it.

MR. SCONCE said, this was not a new Bill. It was an old friend with a new face. The Council would recollect that, just before the adjournment of the Council last year, we were pressed to pass the Madras Police Act; and though he believed he might say the Council entertained objections to pass a Bill of that kind as a general law, and some Members possibly thought the details of the Bill might be improved, nevertheless, under the urgency of the time and circumstances, the law, as submitted by the Madras Government, was adopted. Several Honorable Members of the Council, he believed, were of opinion that a change in the Police Administration, which was applicable to Madras, might not be inapplicable to the whole of India. Indeed we looked upon the Madras Bill in connection with the Code of Criminal Procedure which was at that time passing through a Committee of the whole Council; and, if he rightly recollected, the Council were prepared to embody in that Code such portions of the law enacted for Madras as should appear to be an improvement upon the system now in force elsewhere. Now as to the Bill before the Council, he desired to remark that so many different topics were mixed up in it that the more immediate object of its enactment appeared to be obscured. He was not substantially opposed to the principle advocated by the Honorable Mover of the Bill, which he took to be the reorganization of the Police; but the provisions embodied in the Bill were various and heterogeneous. First it provided for the constitution of the Police; another point related to the organization and government of the Police; another to Procedure; and another applied to subjects which were embraced and better provided for in the Penal Code now about to be passed into law by the Council. For example, the 19th Section of this Bill related to the unlawful assumption

of Police functions, the personation of Police, &c. Now he would ask the Council to refer to the Penal Code where there were better provisions for the punishment of cheating by personation. There was another Section of this Bill (Section XXII) relating to false or frivolous charges. He need not tell the Council that in the Penal Code there were provisions against making false charges. It appeared to him, therefore, that, while the Penal Code embodied the general law upon such points, it was inexpedient to introduce the same matter in a Police Bill. Again, Section XXXIV of this Bill declared a penalty for any party failing to obey a summons, an offence which was fully provided for in Section 174 of the Penal Code. Then there was another Section (XLIV) relating to prevarication by Police Officers in judicial trials. If we did not legislate for prevarication with respect to witnesses in general, as certainly we did not in the Code, he did not see why we should do so as regards the Police in this Bill. There were other instances which he might mention to the same end; and in the same manner he might refer to other points which more properly came under the Code of Criminal Procedure. He did not know if the Honorable Mover of the Bill had gone through that Code, which had received so much attention in a Committee of the whole Council this time last year. He (Mr. Sconce) could not however but express his strong conviction, that whatever Chapter of the Code we might chance to take up, contained in every way more satisfactory provisions than those laid down in this Bill.

He would not detain the Council unnecessarily long, but he might be allowed to say that all that had been done of late years to improve the Bengal Police had, in a measure, been ignored. He need not tell the Honorable and learned Vice-President that, in the course of the years 1857-58, very large charges had been incurred by the Government of India for improving the Bengal Executive Police. On the whole, taking the additional cost of Mohurrirs, Jemadars, Burkundazes, Darogahs, and Deputy Magistrates, no less a sum than about 7,69,000 Rupees were sanctioned by the Government in those two years. At the same time the total charge in the Regulation and Non-Regulation Provinces of Bengal, exclusive of Deputy Magistrates, was about 13,30,000 Rupees. His object in mentioning this was two-fold: *first*, we might reasonably expect to know what had been the result of those additional charges; and, *next*, a more important question even than that was to ask, if the Civil Police charges now amounted to 13½ lakhs, how far it was proposed to go under the new Bill? The Commission to whom the question was referred, and by whom this Bill had been drawn, had declined and were indeed at the moment unable to estimate the cost of the change which they recommended. But this scheme was prepared after the system lately introduced into Madras, and from the papers that had been printed he found that the new police was estimated at the rate of one man to every thousand of the population. Thus it was calculated that 22,000 men to be entertained at Madras would cost 24 lakhs of Rupees, or with necessary extra charges, in all 30½ lakhs. If the same estimate were adopted here, the cost of 40,000 men, which at the same rate should be required for a population of 40 millions, would amount to 57 lakhs of Rupees. It would appear then from the only data yet furnished as to the working of the new system, that, as regards Bengal, a Police expenditure, which at present amounted to 13½ lakhs, might be increased to 57 lakhs. What he entirely agreed in with the Honorable Mover of the Bill was that there should be a thorough reorganization of the Police Establishment which should secure the combined action of the whole body. At present the Police of every District, indeed of every Thannah, was unconnected, isolated, and independent; and certainly it would be a great improvement to combine the whole into one working body under a common head. He would remind the Council, however, that

Mr. Sconce

organization was quite a different matter from Procedure, and this Bill adopted both. He heartily approved of the organization provided by the Bill. The farther it was carried, the more thoroughly did he concur in the Bill; but he objected to the substantive Penal law and Criminal Procedure being embodied in a Bill required for the reconstitution of the Police Establishment.

Another matter proposed by the Honorable Mover was that the Executive functions of the Police should be separated from their judicial functions. That was a most important matter. For himself, speaking of the general principle only, he was disposed to adhere to the rule which should deprive Magistrates of the duties of Police Officers, but how far it was practicable was another question, and he must say that that was not the recommendation of the Commission, nor was it their intention that the connection of Magistrates with the Police should be discontinued. He was not speaking against the principle, but only against the supposition that by this Bill the object would be accomplished, and he could have no difficulty in satisfying the Council that the report did not go to this extent. The Commission drew up their recommendations in a series of propositions. The 25th proposition was as follows:—

"That in every District under the jurisdiction of one Magistrate, there should be at least one European Officer of Police, to be styled "District Superintendent of Police:" who should be departmentally subordinate to the Inspector General of Police, in every matter relating to interior economy and good management of the Force, and efficient performance of every Police duty; but bound also to obey the orders of the District Officer (that is, the Magistrate) in all matters relating to the prevention and detection of crime, the preservation of the peace, and other executive Police duties, and responsible to him likewise for the efficiency with which the Force performs its duty."

Here then it was clear that in the opinion of the Commissioners, Magistrates should have full cognizance and control of the proceedings of the Police.

Again it was said—

"In some parts of India this original function of the Magistrate has not been widely departed from, in other parts, extensive judicial powers have been superadded to their original and proper functions. This circumstance has imported difficulties in regard to maintaining the leading principle enunciated above; for it is impracticable to relieve the Magistrates of their judicial duties, and on the other hand it is at present inexpedient to deprive the Police and public of the valuable aid and supervision of the District Officer in the general management of Police matters.

That, therefore, it is necessary that the District Officer shall be recognized as the principal controlling Officer in the Police administration of his District. And that the Civil Constabulary, under its own Officers, shall be responsible to him and under his orders, for the executive Police administration."

Again it was said—

"That all Members of the Police Force should be bound to obey the lawful orders of the Magistrate, and that for neglect of duty or disobedience of orders the Magistrate should have the power of inflicting summary criminal penalties; such sentence to be appealable in the usual course of Law."

It appeared also that a Dispatch dated as lately as the 6th July last had been received from the Secretary of State on this subject in which it was enjoined that the Civil Police should be under the control of the Magistrates of Districts subject to the supervision of the Commissioner of the Division where such Officer existed. And what did the Police Commission say? They said—

"We trust that our propositions will show the care we have taken to preserve the responsibility of the Magistrate for the general success of the Criminal administration of the District; and to afford him prompt means of ensuring the obedience of the organized Constabulary to his lawful orders."

The Council, he thought, must now be satisfied as to the intentions of the Members of the Commission in preparing this Bill, who certainly did not propose to give effect to the

principle of practically separating the duties of the executive Police from those of Magistrates. The Commissioners admit the practical difficulties that presented themselves in dealing with the question, and the measure before them was not by any means of so thorough a character. The Bill indeed was silent on various important points of practice, and therefore did not carry out the principal object which it had been suggested to us was to be enforced. While we were considering the Criminal Procedure Code last year, one of the points discussed was the mode in which the Police should exercise their functions, that is, as to the power of examining prisoners, taking confessions, questioning witnesses, and so on. On that point this Bill was wholly silent, and that he thought was a material defect of the Bill. It was not only a defect, but something more, because the Bill allowed functions to be exercised without defining the mode in which they were to be exercised. In this respect he very much agreed with the recommendations of the Commission. In their 69th proposition it was stated as follows :—

"That the Police should not be used as an agency for the record of any evidence, confession, inquest, or the like ; but a system of keeping faithful, accurate, and minute diaries should be maintained. These diaries should specify concisely, but in detail, all duties in which any Police Officer may have been engaged, and every occurrence and information that may have required the attention of the Police within their respective ranges. All Police Officers engaged in specific detective duties should keep an accurate and minute diary of every step taken, and every information obtained in following up the clue of evidence. Such diaries should be Police documents only, and be sent to the District Superintendent, but should be open to the inspection of the District Officer."

Now he need hardly tell the Council that not dissimilar propositions were contained in the Criminal Procedure Code as it now stood. It prohibited the taking of evidence in detail. It prohibited the record of confessions, and it declared expressly the use which should be made of the information obtained by the Police.

Substantially there was no difference between the rules of the Code of Procedure and the views of the Commissioners, but the enquiries of the Police would not be regulated by this Bill but by such arbitrary bye-laws as might be from time to time framed. He had already referred to the power to be exercised by Magistrates. He would read what the 67th proposition stated. It was as follows :—

"That the Police should send to the Magistrate all such reports as he may require regarding Crime and Criminal Administration. But the Magistrate ought not to require more reports, &c., than are absolutely necessary."

If the Magistrate was to be allowed to call for any report he pleased, he (Mr. Sconce) thought that such a power was inconsistent with the declaration that the principle of the Bill was that the Magistrate should not interfere with the Executive Police functions. He thought that there was a great deal to be said on both sides. He would repeat that he rather inclined to the separation of executive from judicial functions, and he might adopt the clear and exact description of executive duties recorded on the 30th April 1857 by the Honorable and learned Vice-President as a Member of the Government. It was not therefore that he objected by any means to the separation of the two functions, but at the same time he felt, as the Commissioners seemed to feel, that much difficulty would be experienced in bringing the change into practical and consistent operation. Many Officers entertained great doubts as to so entire a change, and the better plan, he thought, was to adopt some middle course as suggested by the Commissioners. He might refer to the authority of the late Lieutenant Governor of Bengal. In his well-known Police Minute, Sir Frederick Halliday expressed a totally different opinion from the asserted principle of this Bill. In the 49th paragraph of his

Minute, Sir Frederick Halliday observed as follows :—

"There is, however, an opinion which has found favor with some persons of just weight and authority in matters of this kind, and which has indeed a certain plausibility which tends to recommend it to many, and especially to those whose experience or whose mode of thinking has been derived from European rather than from Oriental habits, against which I am especially desirous of raising my testimony in this place, tho rather, perhaps, that in the days of my smaller experience, I myself have held and advocated the opinion, which I now very heartily condemn. The opinion to which I allude is this, that Magistrates of every degree should be debarred from all judicial powers, and should have nothing but the executive duty of preventing and detecting offences, and that separate judicial functionaries should always receive and try cases of every kind committed to them by the Magistrates of various degrees. Thus it is, I believe, contemplated by some advocates of this system, that, at or near every place at which a Deputy Magistrate is stationed, there should be a Moonsiff, or a Sudder Ameen, or a Judicial Officer of some corresponding class, to try all cases sent to him by the Deputy Magistrate; and that, in the same way, all cases coming before the Zillah Magistrate, whatever their nature and importance, should be sent for trial to a judicial Officer at the Zillah Station, Native or European."

He would not detain the Council by reading at greater length the views recorded on this point by the late Lieutenant Governor of Bengal, but he thought it important to refer to the opinion expressed by a person of so great authority and experience as Sir Frederick Halliday, as some ground for hesitating to prematurely adopt the principle which by this Bill we had been asked to sanction.

Upon the whole, therefore, he would not oppose the second reading of the Bill. He accepted the second reading but under great doubts as to the course to be followed. He felt that every thing which trenched on the Penal Code and the Code of Criminal Procedure should be omitted. He heartily approved of it so far as it proposed to re-organize and reform the constitution of the Police, and to treat the whole Police as one body, not as now as the Police of each District and each Thannah separate from the Police of another. At the same time he wished it to be understood that he did not accept the second reading of the Bill in the full sense of making an entire separation between the executive and judicial functions of the Police. Even the Commission did not ask us to do that.

THE VICE-PRESIDENT said, he agreed in the remarks which had fallen from the Honorable Member for Bengal with reference to this Bill, so far as they related to the Penal Code and the Code of Criminal Procedure. It appeared to him (the Vice-President) that, when we should have these Codes in operation, there would be no necessity of having similar provisions in another Act. But that should not prevent us from passing the second reading of this Bill. At the time that the Madras Police Bill was brought into and passed by the Council, the Code of Criminal Procedure was not in such a forward state as to be passed. To enable the Madras Government, therefore, to establish a Police on the principle provided by this Bill, the Council were induced to allow the introduction into the Madras Police Bill of provisions similar to those contained in the Code of Criminal Procedure. Whereas, had the Code of Procedure been passed, he for one should have objected to the passing of the Madras Bill with the Sections in question. He thought it very impolitic to have two Acts declaring the law on the same point. If this Bill should pass the second reading and be referred to a Select Committe, as the Code of Procedure would probably be passed before this Bill was reported on by the Committee, it would be easy for the Committee to omit all the Clauses relating to Procedure.

As to the principle of separating the judicial and executive functions of the Police, he (the Vice-President) could not agree with the Honorable Member for Bengal. He (the Vice-President) had always been of opinion that a full and complete separation ought to be made between the two functions.

For these reasons he should support the Motion for the second reading of this Bill.

SIR BARTLE FRERE said, he was very much indebted to the Honorable Members who had spoken for the spirit in which they had received this Bill. He would only briefly reply to the observations of the Honorable Member for Bengal and of the Honorable Member for the North-Western Provinces. First, with reference to what had fallen from the Honorable Member for the North-Western Provinces, he (Sir Bartle Frere) would remark that he should also have been glad if longer time could have been afforded for the consideration of the Bill before the Motion for its second reading. His reason for proposing this Bill for a second reading before the vacation was two-fold—*first*, as had been observed by the Honorable Member for Bengal, the Bill was an old friend with a new face. In its main principles it was identical with the Madras Act, which had been passed last year, and which had been found to work so well. And *secondly*, the matter was one of exceeding pressing moment, as he trusted he should be able to satisfy the Council. He would beg the Honorable Member for the North-Western Provinces to recollect that the Bill in its character was strictly permissive, and that no Government was obliged to adopt it until it was satisfied that the time had arrived for its adoption. He need not remind the Council of the necessity for this, when it was considered that, unless we had our executive machinery in order for carrying out the plan, it would be vain to adopt it, and that the organization of such machinery was necessarily a work of time.

The Honorable Member for the North-Western Provinces also referred to the opinions of several old Officers who entertained doubts as to the principle of the Bill. They considered it suited well enough to England and Ireland and to the Presidency Towns, but not to the Mofussil. He (Sir Bartle Frere) would ask whether this objection was not met by an enumeration of the distant Provinces in which such a Police had been tried and had been successful. The principle had been put in practice in Oude, in part of the Bombay Presidency, in Sind and in a great part of the Madras Presidency. It had also been tried at the three Presidency Towns, which he stated on Saturday last, had taken precedence of all others in point of time as far as related to Police reforms. He did not think that a better place could have been selected for the trial than Oude, with a view to test the adaptability of such a Police to the Mofussil, and the result was that the Oude Police had been entirely successful in all those points in which this Bill was concerned. He did not refer to the particular link at which the connection between the Police and the general Government was effected in Oude. But so far as the repression of crime and the giving the Executive Government a thorough hold over the criminal class of the population were concerned, the Oude Police had proved eminently successful. The principle had been applied in the greater part of the Madras Presidency where the population was more sparse, and where in parts the people were far more difficult to control than in Bengal. He thought therefore that it could hardly be said that such a Police as was provided for by the Act was not adapted to the Mofussil, however suited it might be for the Presidency Towns.

The Honorable Member for Bengal had said that the Bill was not altogether a Police Bill, but that it trenched upon the Penal and Criminal Procedure Codes. Concurring generally in what we had heard from the Honorable and learned Vice-President, he (Sir Bartle Frere) would be quite ready hereafter to adopt the course which the Honorable and learned Gentleman had suggested, although this could not have been done at the time this Bill was framed as neither of those Codes was then in existence. But the Honorable Member for Bengal seemed a little hard to please. When certain provisions in the Bill were borrowed from the Criminal Code, he complained

that the framers of the Bill had stolen his thunder; and where provisions were omitted in the Police Bill which were contained in the Code of Criminal Procedure, he still complained that we had not adopted the provisions of that Code. In either way he (Sir Bartle Frere) was ready to meet the views of his Honorable friend, either to omit from the Police Bill provisions contained in the Codes or to borrow from them such provisions as might be necessary to make this measure complete.

The Honorable Member for Bengal next complained, that all that had been done of late years to improve the Bengal Police had been ignored. He (Sir Bartle Frere) thought he stated last Saturday clearly and distinctly what had been done in the matter in Bengal. Nothing was farther from his wish than to ignore what had been done in Bengal in the way of raising salaries and multiplying officers of trust. But if he could have gone more fully into the matter, he should have shown that beyond this what had been done was not altogether in accordance with the principles of this Bill. What was done was simply to superadd to the existing rural Police, with all its vices and defects, certain semi-military bodies imperfectly disciplined and very inadequately under the control of the Government. They were a loose and cheap and not a very good copy of the old Native Army, and performed no real Police functions except those of a protective or repressive kind, for which the Native Army used to be employed. They were in fact copies of the Punjab Police Corps. In speaking of these Punjab Police Corps on Saturday last, he had strongly expressed his sense of what we owed to them for their services during the mutiny. He (Sir Bartle Frere) believed it was quite impossible to exaggerate the value of such services. But they were services rendered as a Native Army, not as a Police; and as a branch of Police there was no doubt that these Corps were very expensive and not efficient when their few Police functions were compared with their cost. Now it was a principle of this Bill that Military duties should remain in the hands of the Military Officers of Government, and that there should be no Military or Semi-Military body not directly responsible to the Commander-in-Chief of the Army, a principle on which alone it might be said that the Army could be expected to stand.

The Honorable Gentleman then adverted to the probability of the large expenditure which would require to be incurred in order to give effect to the proposed measure in the Provinces of Bengal. He (Sir Bartle Frere) thought that in this matter the Honorable Gentleman rather anticipated the function of the Executive Government. It might be said to be an impossibility to give a good Police to Bengal without additional expenditure. It was an expense however which the Government must face and provide for. Bengal had been worse provided for as regarded a Police than other parts of the country, and the Government of India felt that it owed a large debt to Bengal in this respect. Though the Honorable Member, reasoning from the analogy of Madras, expected that the additional cost in Bengal would be about 57 lakhs, he (Sir Bartle Frere) had no apprehension that the actual expense would be so large as that, since a dense and peaceful population like that of Bengal was necessarily less expensive in the matter of Police than a country more thinly inhabited and peopled by some very unruly races like Madras.

The Honorable Member for Bengal then argued at great length in support of his opinion that, while he approved of the proposed organization of the Police, he disapproved of the Bill so far as Procedure and the Penal clauses were concerned. On this point he (Sir Bartle Frere) had already said that he was ready to have the matter to be considered in Committee. But his Honorable friend went on to say that, though the separation of the Judicial and Police functions was a principle of the Bill, and one of which he (Mr. Sconce) fully approved, it was not

the aim of the Commission, and he quoted their 24th and 28th propositions as at variance with the principle. In reply to this charge, he (Sir Bartle Frere) would remind his Honorable friend, that it was one thing to lay down a principle, and another to act upon it at once and entirely, when it was opposed to the existing system, to all existing forms of procedure, and to prejudices of long standing. Under such circumstances it was often necessary to come to a compromise. In England Police reforms were commenced in the time of Henry III, and the subject was very vigorously taken up in the time of Elizabeth, but little effectual was done until the time of Sir Robert Peel. It took a very long time to carry out the principle of a Police force separate from and independent of the Judicial Magistracy in the metropolis, and now, though more than thirty years had passed since the principle had been recognized by all the great authorities and by public opinion in England, it had not yet been fully extended throughout the United Kingdom. But every year some progress had been made, and he hoped that at no distant period the principle would be acted upon throughout India as completely as his Honorable friend could desire. The Honorable Member for Bengal had called this Bill a half and half measure. He (Sir Bartle Frere) could assure the Honorable Gentleman that nobody was more inclined that it should be made a whole measure than he (Sir Bartle Frere) was, and he should be very glad if his Honorable friend would only induce the Executive Governments to give it their support, so as to effect a still more complete severance of the Police and Judicial functions than this Bill contemplated. The Honorable gentleman, however, rather disappointed us at the conclusion of his speech by throwing out doubts as to his own entire concurrence in this principle of the Bill, by quoting the authority of the late Lieutenant Governor of Bengal as in favor of a different principle. He (Sir Bartle Frere) had every respect for that able administrator; but before he pinned his faith upon anything said on such a subject by any body in India, he should wish to know the precise circumstances under which that opinion was given and also the time when it was given. He would remind the Honorable Gentleman that in this matter opinion was progressive, and he would ask him to point out any man whose opinions on the subject had not undergone considerable changes during the past twenty years.

He hoped that he was wrong in drawing the conclusion from the Honorable Gentleman's remarks, that he recommended we should do nothing in this matter. He (Sir Bartle Frere) thought that this was a subject which imperatively called for immediate action. He might refer his Honorable friend to the authority of Sir Robert Peel and of all other English statesmen of modern days, and not the least among them to our late lamented colleague, Mr. Wilson; but lest he should say that these were merely English opinions, he would refer him to the authority of Sir George Clerk, who was better qualified than any man he knew by his long official experience both in England and in Indian public life, and by his intimate acquaintance with the manners and customs of the people, to speak on the subject. He would refer him to the authority of that great soldier and statesman, Sir Charles Napier, of Sir Charles Trevelyan, and, though last yet not least, of the present Lieutenant Governor of the Punjab. His Honorable friend (Mr. Harington) seemed surpised at his appealing to the Lieutenant-Governor of the Punjab, and he (Sir Bartle Frere) believed that Sir Robert Montgomery had expressed pretty freely his opinions on this matter, putting his Honorable friend the Member for the North-West on his guard against what he had expected would be the recommendations of the Police Commission. But the Report of the Commission was not then before him, and he (Sir Bartle Frere) had such confidence in the impartial judgment of that able administrator, and in the soundness of

the general principles of the measure, that he was quite willing to leave the decision of the matter to him. If after full consideration of all the documents on the subjects his opinion should be that the measure was inapplicable to the Punjab, he (Sir Bartle Frere) was assured that such inapplicability would be found to be due only to temporary and local circumstances.

But the greatest argument after all in favor of the measure was the financial argument. He would not repeat what had been lately said by the Secretary of State in Parliament, and by Mr. Wilson so often and so forcibly in that Council. Honorable Members were well aware that we had a large deficit to meet, which we could not do unless we made large reductions in our Civil expenditure, and the only portion of that expenditure which admitted of much immediate reduction was that on account of the Police. It was only by giving each Presidency a Police as efficient but less costly than it now possessed, that we could bring down our expenditure to a reasonable extent. We must remember that in this matter the necessities of Government were imperative. We must cut our coat according to our cloth. If we could have but one body to do a duty which had heretofore been performed by two bodies, the saving of expense was obvious.

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

SMALL CAUSE COURTS (MOFUSSIL)

The Order of the Day being read for the third reading of the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter"—

MR. HARINGTON said, he must ask the Council to allow this Bill again to be re-committed, as he wished to move the introduction of a Section the object of which was to enable the Sudder Court to obtain returns of the business disposed of by the Courts to be established under the Bill, and to issue such rules for regulating the practice and proceedings of those Courts, not inconsistent with the provisions of the Bill, as might from time to time be found necessary. The Sudder Court possessed this power under the Code of Civil Procedure, in respect to all the Courts now subject to their control, and it seemed right to give the Court the same power in respect to these new Courts which would also be subject to the general control and orders of the Sudder Court.

Agreed to.

MR. HARINGTON then moved the addition of the following Section to the Bill:—

"The Sudder Court shall have power to make and issue general rules for regulating the practice and proceedings of the Courts established under this Act, and also to prescribe forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form, provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force."

The Motion was carried; and the Council having resumed its sitting, the Bill was reported.

MR. HARINGTON moved that the Bill be read a third time and passed

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

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

PENAL CODE.

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

THE VICE-PRESIDENT said that, as this Code had been before a Committee of the whole Council at a time when some of the Honorable Members of the Council were absent and when there was not a quorum, and as some slight alterations, chiefly verbal amendments, had been made by the

Committee, he thought it right, in order to obviate all objections, to move that the Council again resolve itself into a Committee on the Bill, so as to enable any Honorable Member who was desirous to do so, to propose any amendment therein.

Agreed to.

Sections 1 to 58 were passed as they stood.

Section 59 provided in what cases transportation might be awarded instead of imprisonment.

MR. SCONCE proposed the insertion of the words "if a man" in the 8th line of the Section. He had no objection to male offenders being sentenced to transportation for seven years, instead of to imprisonment for the same term. But he thought it inexpedient to apply the same rule to women. He would put the case generally on the principle that the transportation of a woman to the Andamans or any other like place was tantamount to perpetual banishment. The indiscriminate intercourse between male and female convicts might lead to co-habitation, and it was unreasonable to expect that a woman exposed to such temptations would return to India as she left it. She might have left behind her children and husband, and mother, and thus she might be irremediably ruined as a member of a family. They had no assurance that, at the Andamans Settlement, women would be kept in close confinement, apart from the men: and in their case, transportation, instead of reforming, might corrupt them.

THE CHAIRMAN doubted the necessity of adopting the proposed amendment. It was to be assumed that proper regulations existed, with regard to prison discipline and the like, in the place to which transportation might be made, so as to prevent any improper intercourse between male and female convicts. In England no difference was made between male and female offenders, and he saw no reason why any difference should be made in this respect in this country.

The question being put, the Council divided—

The Vice-President

Ayes 2.	*Noes* 5.
Mr. Erskine.	Mr. Harington.
Mr. Sconce.	Mr. Beadon.
	Sir Bartle Frere.
	The Commander-in-Chief.
	The Chairman.

So the Motion was negatived, and after a verbal amendment, on the Motion of Sir Barnes Peacock, the Section was passed.

Sections 60 to 283 were passed as they stood.

Section 284 was passed after an amendment.

The remainder of the Code was passed as it stood, and the Council having resumed its sitting, the Bill was reported.

ABSENCE OF THE GOVERNOR-GENERAL.

The following Message from the Governor-General in Council was read by the Vice-President:—

MESSAGE No. 241.

The Governor-General in Council forwards to the Legislative Council a Resolution passed on this date, relative to the absence of the Governor-General from the Council, and to the necessity for vesting the Governor-General with certain powers during such absence.

By order of the Governor-General in Council.

W. GREY.

Secy. to the Govt. of India.

Fort William,
The 6th October 1860.

The Resolution referred to was as follows:—

Extract from the Proceedings of the Government of India in the Home Department, under date the 6th October 1860.

Resolved.—That it is expedient that the Governor-General should visit the North-Western Provinces of the Presidency of Fort William in Bengal and other parts of India, unaccompanied by any Member of the Council.

That the Honorable Sir Bartle Frere be requested to take charge of, and bring into the Legislative Council, with a view to its being passed into law, a Bill to authorize the Governor-General alone, during his absence, to exercise all the powers which might be exercised by the Governor-General in Council in

every case in which the Governor-General may think it expedient to exercise those powers.

(True Extract)

W. GREY,

Secy. to the Govt. of India.

SIR BARTLE FRERE said, he had the honor to move that the Standing Orders be suspended, to enable him to present and proceed with a Bill for the purpose of giving effect to the Message and Resolution which had just been read. It was His Excellency's desire to visit the North-Western Provinces to enable him to meet some of the Native Chiefs of Central India whom he was unable to meet last year. His Excellency desired to have the Act passed for a not longer period than three months, and if it should be necessary for him to prolong his absence beyond that period, he would apply to this Council for the necessary powers

MR. BEADON seconded the Motion, which was put and carried.

SIR BARTLE FRERE moved the first reading of the Bill.

The Bill was read a first time.

SIR BARTLE FRERE moved the second reading of the Bill.

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

SIR BARTLE FRERE moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

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

SIR BARTLE FRERE then 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 Bill to the Governor-General for his assent.

Agreed to.

PENAL CODE.

THE VICE-PRESIDENT in moving the third reading of "The Indian Penal Code," said that it was not his intention to have made any remarks upon this Code on the Motion for the third reading, nor would he have done so, had it not been for a Petition which had been presented to the Council. That Petition which purported to be signed by 332 British and Christian inhabitants of Calcutta, was presented to the Council at a very late period; and as he thought that the Code might be passed before the Petition could be printed, he deemed it right to move not only that the Petition be printed, but that the Clerk of the Council be ordered to read it at the table. The Petition was accordingly read, and it had also, he believed, been printed and circulated, so that every Honorable Member was aware of its contents.

With reference to the objections to the Code itself, he need not remind Honorable Members that the law of England to which the petitioners referred, consisted of the written or Statute law, and of the unwritten or Common law as it was called. Most of the offences provided for by the Statutes were referred to by common law terms, such as murder, burglary, and the like, so that it was difficult for a person to know whether the offence with which a prisoner might be charged amounted to that particular crime or not. Great inconvenience had been felt in England from the defective state of the law, both as regarded the Statute law and the Common law. In the time of Sir Robert Peel, by a Statute passed in the 7th and 8th of Geo. IV., an improvement of the law was effected as regarded offences against property, and in the 9th Geo. IV. as regarded offences against the person. Still much remained to be done to improve the law of England; and although the law to be administered by the Supreme Courts in India had to a certain extent been consolidated by the 9th Geo. IV. c. 74, yet the law remained very indefinite. In 1834 a Commission was appointed in England

"to digest into one Statute all the Statutes and enactments touching crimes and the trial and punishment thereof, and also to digest

into one other Statute all the provisions of the common or unwritten law touching the same and to enquire and report how far it may be expedient to combine both those Statutes into one body of Criminal law, repealing all other Statutory provisions."

The Commissioners shortly afterwards submitted a report on the subject, and he (the Vice-President) would call attention to some of the points referred to in their report, so as to show what the state of the law in England was. They said--

"The process of digesting the unwritten Criminal law involves two distinct operations. The first of which is, the collecting and arranging the widely-dispersed materials which constitute the law itself, or which, perhaps, may with greater propriety be said to constitute the evidence of what is termed the unwritten law, from which your Majesty's Courts extract the rules of Criminal law; the second branch of the process is that of extracting from the collected and arranged materials such general rules of law as they appear to warrant."

They then went on to show the difficulties under which they labored. They said that the law was contained in numerous text books, and they went on to say:—

"Even the decisions which it is thus difficult to collect, do not always clearly indicate the result of the opinions of the Judges: this is frequently left to be inferred from the ambiguous fact of a pardon having been granted. Where a conviction of a prisoner at the Assizes is afterwards set aside by the Judges in Town, the record which remains unaltered indicates the reverse of what has been the actual result of the investigation. Sometimes the omission of particular facts in a report leads to mistakes as to the effect of decisions; and sometimes a variance in the statement of different reports renders their grounds ambiguous, both which consequences we may observe are illustrated by some striking instances pointed out by Sir M Foster in his discourses. In doubtful cases, and especially where there is a conflict of judicial opinion, the weight attributed to decisions is not subjected to any certain test, but is dependent on the number and the professional reputation of the Judges, and the estimation in which particular reporters are held."

They then went on to say —

"It is in this part of our labors we have chiefly found the want of any certain authorities on which we could implicitly rely. The difficulties thus experienced in stating general rules and principles are, for the most part, to be referred to the following causes."

He would not trouble the Council by going through all the grounds from which the Commissioners stated that their difficulties arose. The following were some of them:—

"The existence of contradictory principles in the common law;—as to which it is observed that the common law is composed in a great measure of rules growing out of ancient policy and manners, which rules have been from time to time modified and restricted by exceptions founded on different and often contrary principles; so that the old reasons of the law are neither wholly retained nor wholly abolished, and its general purposes adapted to different periods of society are often at variance with each other."

"The occurrence of isolated decisions which cannot be referred to any general rules or principles."

"The great fluctuations which the Criminal law has undergone during the lapse of many centuries, and the adoption at different periods of some subtle, refined, and useless distinctions. Much of the difficulties and uncertainty attending the reduction of the unwritten law to a written form has arisen from the practice which obtained during so many centuries of altering the common law in order to suit the existing state of things. This indirect mode of supplying the defects of our early jurisprudence has rendered some branches of the common law extremely technical and complicated. And as innovations upon the ancient law of crimes by the means of a constructive enlargement of its definitions have usually been made in order to reach some case of peculiar aggravation, they have seldom been acted upon with consistency, and their extent has not been accurately defined."

They proceeded to observe:—

"In the notes to our Digest we have referred to numerous definitions of the offence of theft or larceny which not only contain various technical terms, the meaning of which is *no where accurately settled*, but differ in important respects from each other. For instance none of these definitions supplies any plain test by which the crime of theft may be distinguished from a bare trespass. Most of them indeed state that in order to constitute theft the taking must be *felonious*, but the term felonious which is made use of to define the offence of theft imports in fact only that the taking must be of such a nature as will constitute the offence of theft, or strictly speaking such as will subject the taker to certain penalties and forfeitures; and the term felonious is no where so defined as to explain in

an adequate manner what mode of taking shall be deemed essential to constitute a theft."

They then pointed out discrepancies in various parts of our law. They said—

"With regard to the *discrepancies* between the definitions of offences, it will be seen by reference to the Digest of the law of theft, that some of the definitions agreeably to the Civil law make the *lucri causa* or the intention of the thief to derive a profit from his crime, an essential part of the offence of theft, whilst others omit this, regarding an intention to deprive the owner of his property to be sufficient evidence of the crime. In some cases where the Courts have been anxious to reconcile the terms of ancient definitions with the more modern authorities, they have considered those terms to be satisfied by annexing a very vague and indefinite meaning to the term *lucrum*. A striking instance of this will be found in the case of the King *versus* Morfitt reported in Russel and Ryan's cases on Criminal law 307, where it was held to be larceny in a servant clandestinely to take his master's corn to give to his master's horses, and in which some of the Judges stated it to be the ground of their opinion that the additional quantity of corn would diminish the work of the men who had to look after the horses; so that the *lucri causa*, namely, to give themselves ease, was an ingredient in the case."

In this Code it was provided that—

"Whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft;"

and the word "dishonestly" was thus defined:—

"Whoever does any thing with the intention of causing *wrongful* gain to one person or wrongful loss to another person, is said to do that thing dishonestly."

Thus it appeared that, under this Code, injury to the owner was the ingredient in the case, so that if the intention of the person was either to cause wrongful gain to one person or wrongful loss to another, it mattered not whether the intention of the thief was or was not to derive a profit from his crime.

The Commissioners concluded by observing as follows:—

"Lastly with respect to the expediency of combining the proposed Digest of the Statute law with that of the common law into one body of Criminal law, we feel confident that such a measure would tend greatly to the improvement of the jurisprudence of the country. In support of our views upon this subject we may observe that the definitions of crimes, the nature of punishments, and the forms of Criminal Procedure originated for the most part in common law principles, but most of the unwritten rules touching crimes have been modified by Acts of the Legislature which assume the terms and definitions of the common law. And thus it happens that the language in which these Acts are expressed, and the subjects to which they refer, are commonly unintelligible without a knowledge of the common law. The actual law in regard to any particular offence lies partly in the Statutes and partly in the Reports and text Books. A reference to a single instance may be sufficient to illustrate our meaning. A modern Statute makes it essential to the statutory offence that it does not amount to an offence at common law, and thus the common law description of the offence must be referred to for the purpose of ascertaining the limits of the Statutory offence. As one Digest therefore would be imperfect without the other, this seems to be a sufficient reason for uniting them."

It appeared therefore that this consolidation of the law was considered desirable in England, although it had never yet been accomplished. Fresh Commissions had from time to time been appointed, but nothing had yet been done. A Bill had been brought into the House of Commons during the last Session, for the purpose of consolidating the law, and Lord Palmerston proposed to the House to accept the measure on the credit of the framers. One of the Members, Mr. Edwin James, he thought, having objected, Lord Palmerston said that, rather than enter upon a discussion of its provisions, he would withdraw the Bill that Session. Thus it would be seen that nothing had yet been done on the subject in England, although the matter was acknowledged to be highly necessary and beneficial. Then how, he might ask, did we stand in this country? The law in the Mofussil was the Mahomedan law as it had been modified by English Regulations and Acts, and a Mahomedan Law Officer was appointed to

each Court for the purpose of assisting the Judge. He thought it very inexpedient that such a state of things should continue. If it was considered necessary or beneficial in England that the law should be codified, how much more necessary was it in this country that codification should take place? The remarks which applied to the administration of the English Law in England, were also applicable to the administration of the same law by the Supreme Courts in India. It was difficult to say what was common law. It had been suggested that a thing was contrary to common law when it was contrary to policy. But he thought that Judges ought not to be the judges of policy, and that it should not be left to them to say that this was or that was not contrary to policy. It appeared to him therefore that, if in England it was considered advisable to have the Criminal law consolidated, there could be no reasonable objection to such a consolidation here. Why the codification in England had not yet been completed might easily be explained. Honorable Members well knew the difficulty which we had had to pass the Code through a Council consisting of a few Members. We could therefore form some idea of the difficulty which had been experienced in England in passing such a Code through the House of Commons, composed as it was of so many Members holding a variety of conflicting opinions on the subject. The difficulty had certainly not arisen from a want either of Reports or of Digests.

He desired to draw the attention of the Council to another matter, on which a great deal of misunderstanding seemed to exist. There were very few cases punishable under this Code, which were not punishable under the Common or Statute law of England. Some of the offences might differ in names, but still the general principles of both were essentially the same. He did not mean to say that there were not some offences punishable very severely under the English law, which met with far milder treatment in this Code. Take the case of murder for instance. The English law defined murder to be the killing of a man with malice prepense. Now what was meant by malice prepense? The English law inferred it from certain acts, though in fact it might not exist. If a man was engaged in an unlawful act, and in doing it killed another, it was presumed that he meant to commit murder. Suppose, by way of illustration, that a man shot at a hen for the purpose of killing and stealing it, and killed a boy, not knowing that the latter was hiding behind the bush; according to the English law, because he was guilty of an unlawful act in shooting at the hen, he would, by the construction of law, be held to have had a malicious intent against the boy, and he was liable to be hanged. But this Code did not allow any presumption of malice, but got rid of all such difficulties by providing that culpable homicide was not murder unless the act by which death was caused was done with the intention of causing death, or with the intention of causing such bodily injury as the offender knew to be likely to cause death, or as was sufficient in the ordinary course of nature to cause death, or with the knowledge that the act was so imminently dangerous that it must in all probability cause death, or such bodily injury as was likely to cause death. For instance, if a man gave a slight blow to another who had a diseased spleen, and who died in consequence of that blow; if he knew that that man was laboring under such a disease, and that the blow was likely to cause his death, he ought to be punished for murder. But if he was ignorant of the man having a diseased spleen, and gave him a box on the ear, and death ensued, it would not be right or proper to hang him, and this Code therefore made provision accordingly. It was true that a man had no right to jeopardize another's life, but still he ought not to be punished for murder in respect of an act which, he (the Vice-President) would not say, might be tantamount to an innocent act, though it was something like it.

The Vice-President

He would not detain the Council unnecessarily, but he desired to call their attention to the form in which this Code was prepared. The Code began by declaring where it was to take effect. The second was a Chapter of General Explanations. It did not provide explanations for all cases indiscriminately, but only for those cases where difficulty might arise, when it would be necessary to refer to this Chapter to see what the meaning of the Code was. It was therefore simply an interpretation Clause of the Act.

From what was stated in the Petition, the petitioners seemed to consider that the English law was a special or local law. Now he apprehended that it was not a special or local law within the meaning of this Code. A special law was defined in the Code to be a law applicable to a particular subject. For instance, the Post Office Act was a special law. There were in that law certain provisions which would be superseded by this Code when it came into operation, such as counterfeiting and forging Post Office stamps and the like, which more properly fell under the general law. But there still remained some offences peculiarly applicable to the Post Office, such as the non-delivery of a letter and the like, which required to be summarily punished before a Magistrate, and would be better provided for in a special law. Then again a local law was defined in the Code to be a law applicable only to a particular part of British India, such as, for instance, the Conservancy laws of Calcutta, Madras, and Bombay. It was probably not necessary or expedient that every one of the offences therein described should be declared an offence throughout the Mofussil. It might be desirable to extend some of them to the whole of India. Yet such of them as were not applicable should not be included in a general Code and declared to be offences in the Mofussil. These therefore were the special and local laws within the meaning of the Code, and he saw no reason why the petitioners should object to that part of the Code which provided that nothing contained in it should repeal, alter, or vary any special or local law. He did not mean to say that the Code consolidated the whole of the Common law of England, but many of its general principles had been adopted by the Code.

The next was a Chapter of punishments. The punishments were death, transportation, penal servitude, imprisonment of two descriptions, namely, simple and rigorous (that is, with hard labor), forfeiture of property, and fine. There was a question as to whether flogging should be included as one of the punishments; but for the present flogging had been omitted from this Code, and the question had been referred to a Select Committee for consideration. He did not think that there was anything in the punishments which could be objected to as being opposed to the Common or Statute law of England.

Another objection which had been urged against the Code was, that soldiers were excepted from it, at least soldiers beyond 120 miles from the Presidency. It must be remembered however that by the law under which we acted, the Charter Act, we were expressly prohibited from making any law inconsistent with the Articles of War for the punishment of mutiny and desertion. There was, however, a certain class of offences which were not strictly Military offences, for which soldiers might be tried and punished by the Supreme Court if within 120 miles from the Presidency, but if beyond that limit, by Courts Martial. It was stated that they would then be subject to the English law. Even if this should be so, we could not alter that provision, but must allow the anomaly to exist. To remove all doubt upon the subject, we had provided as follows by Section 5 of the Code:—

"*Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4 W. IV. c 85, or of any Act of Parliament passed after that Statute, in any wise affecting the East India Company or the said Territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers*

and soldiers, whether in the service of Her Majesty or of the East India Company, or of any Act for the Government of the Indian Navy, or of any special or local law."

The trial of soldiers 120 miles beyond the Presidency depended upon the 20 and 21 Vic. c. 66, s. 55, and there was a similar provision in the Articles of War for the Queen's Troops when in India. The Section ran thus:—

"Any officer or soldier who shall be serving in the Territories of any Foreign State or in any Country under the protection of Her Majesty or the said Company or at any place (other than Prince of Wales Island, Singapore, and Malacca), in the Territories under the Government of the said Company, and situated above 120 miles from the Presidencies of Fort William, Fort St. George, and Bombay, respectively, and who shall be accused of having committed treason or of any other crime which if committed in England would be felony, or of having committed any offence against the person or property of any subject of Her Majesty or any other person entitled to the protection of Her Majesty or of the Government of the East India Company or of any State in alliance with the said Company, may be tried by a General Court Martial to be appointed by the General or other Officer Commanding-in-Chief in such place for the time being, and if found guilty shall suffer death or be liable to be kept in penal servitude, or to transportation for life or for a term of years, or other punishment according to the nature and degree of the offence as by the sentence of any such General Court Martial shall be awarded, provided always that no sentence of a General Court Martial for any such offence shall be carried into execution until the same shall have been confirmed by the General or other Officer Commanding-in-Chief as aforesaid, and such Officer may, if he shall think fit, suspend, mitigate, or remit the sentence, or in the case of a sentence of death commute the same to a sentence of penal servitude or transportation for life, or for any certain term of years not less than fourteen, or to imprisonment with or without hard labor for such period of time as to him shall seem fit, provided also that any person who may have been so tried as aforesaid shall not be tried for the same offence by any other Court whatsoever."

And then by the Articles of War passed under the Act, it was provided that no punishment should be of

"such a nature as shall be contrary to the usages of English law in regard to the punishment of offenders."

The next Chapter of the Code contained General Exceptions, and was framed to prevent the necessity of repeating in every Penal Clause a considerable number of limitations. Probably many of the erroneous impressions which had been formed of this Code had arisen from an imperfect acquaintance with or an insufficient study of its provisions. Now one of the Exceptions provided as follows:—

"Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it."

A mistake of law ought not of course to be excepted. It was not the case in England, and it would be dangerous to allow the plea of justification that the offender did not know the law. Then the Code went on to provide for offences committed by a child. The provision in the Code was the same as in England where the law declared that nothing was an offence which was done by a child under seven years of age. The Code then proceeded to provide for offences done by a child above seven years of age and under twelve, who had not attained sufficient maturity of understanding to judge of the nature and consequences of the act. But these were cases that would not, he (the Vice-President) thought, often occur. If a case of the kind should arise, the Judge could refer to the Chapter of exceptions which was framed in clear intelligible terms, instead of referring to English law which was contained in hundreds of law-books. The Code also adopted the same rule as in the English law with regard to insanity, by providing:—

"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

If a question as to insanity should arise, the Judge would have to see what the law provided about insane

persons, and this he could more easily ascertain by referring to this Code than to the numberless English decisions. Then there was an exception with regard to drunken persons. All this could not of course be provided for in the definitions of offences, but it had been done by the exceptions. There was another important matter connected with this Chapter to which he would very briefly allude, and that was the right of self-defence. It might be considered that this matter should not be laid down in this Code. He thought however that it should not be left unsettled and undefined, but that it should be clearly laid down in the general law of the land. He thought it very desirable that it should be laid down by law how far a man was justified in defending himself or his property, and this had been done by a short Chapter in this Code, pretty nearly in accordance with the principles of English law.

The next Chapter treated of abetment. Under the English law there were principals in the first degree, and were principals in the second degree; accessaries before the fact, and accessories after the fact. A man who with his own hands committed the act was a principal in the first degree, and those who were present aiding and abetting were principals in the second degree. The distinction between principals in the first degree and principals in the second degree was unknown to the most ancient writers on the English law, but the rule was adopted by the Judges in consequence of the mischief which resulted from treating what were now termed principals in the second degree as accessories after the fact, in consequence of which they could not be convicted before the principals had been brought to trial. By this Code no distinction was made between principals in the first degree and principals in the second degree. If a man were present, aiding and abetting in the commission of a murder, he would be tried for committing the offence; if he caused the murder to be committed, but were absent at the time, he would be liable to be tried and punished for abetment. When two persons were present and committed a murder, it might be very difficult to prove which of them with his own hands committed the act. If both were present aiding and abetting each other, it was quite immaterial, he (the Vice-President) thought, as to who struck the blow, and they were both liable to be punished. But if a man was absent and caused the murder to be committed, he was only chargeable as an abettor. In England, the law of abetment did not apply in treason, or in misdemeanors. In cases of treason, the law was so stringent that a man was charged as a principal, if he instigated the crime. He (the Vice-President) saw no reason why the law of abetment should apply only in cases of felonies and not in all cases. It was very necessary that a prisoner should know what he was charged with. If charged with an offence committed in his absence he would be charged with abetment so that he might come prepared to meet it. The rules laid down in the Code on this subject followed very much those contained in the English law. For instance, when one act was abetted and a different act was done, the abettor ought not to be liable to be charged with the offence committed unless it was a probable consequence of the abetment. This was laid down by Section 111, which provided as follows:—

"When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment".

That was the same as the English law; but instead of being obliged to refer to the English law, every Judge in the Mofussil would have this Code before him, and would find the rule and the following Illustration given in the Code:—

"A instigates a child to put poison into the food of Z and gives him poison for that purpose. The child, in consequence of the insti-

gation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y."

The following was another text given in the Code :—

"When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect."

If we turned to our law-books, we would find the same rule laid down almost in the same words. He would not trouble the Council by going minutely into the matter. What he wished to show was that the Code was very much in accordance with the principles of English law. We had endeavored to do our best. We should be very glad if any one would point out where it was wrong. Even now, if any one were to do so, he (the Vice-President) for one would feel very thankful to him and would give his suggestions his best consideration. In America their Codes were not perfect, but were subject to revision every three years. He did not know of any errors in the Code as it now stood. But we were not infallible, and if there should be any mistakes, the Judges always had the power of giving a nominal punishment and there was also the power of pardon vested in the Government.

Then there was a Chapter of offences against the Army or Navy. They were very few in number. Section 131 provided as follows :—

"Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Section 139, however, provided as follows :—

"No person subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this Chapter."

This Chapter was not intended for soldiers or sailors who were subject to the Articles of war. But if a non-military man went and induced a soldier to commit an offence, that man ought to be punished, and he (the Vice-President) did not see that there was anything in this Chapter to object to. Nor did he see what there was to complain of in the next Chapter of offences against the Public Tranquillity. According to the English law, three persons were sufficient to constitute a riotous assembly, whereas by this Code there must be at least five. The petitioners had not complained of any specific Clause or delinition in the Code. If they had done so the Council would no doubt have given their earnest attention to the remarks or suggestions of the petitioners in order to correct any thing that might be found to be unjust or erroneous. The petitioners stated only that the Common law of England was familiar to them. They probably made this statement, because they had not fathomed the depths of the law with which they professed to be familiar. There were some who boasted of what was called the flexibility of the Common law. For his own part, he objected to that flexibility and preferred a written law by which the Judges were to be bound. He did not complain of the Common law. It had come down from age to age, but like every thing else it was susceptible of improvement and progress. If the matchlock of one age was to be superseded by the rifle of a subsequent age, he saw no reason why there should not be progress in law. Chapters IX and X related to offences by or against public servants, and to contempts of

the lawful authority of public servants. He would not trouble the Council with any remarks on these Chapters, particularly as they had already been fully considered in Committee, and there was, he thought, nothing in them to object to.

Then there was Chapter XI relating to false evidence and offences against public justice. He trusted it would operate as a check upon the benamee system so prevalent in this country. Nothing was more common than that, as soon as a decree had been obtained, false claims were got up for the purpose of protecting the property of the losing party. Under this Code, therefore, it was made a punishable offence. He (the Vice-President) saw no difference between a man who made a fraudulent conveyance to defeat a particular creditor, and one who did so to defeat his creditors generally, no offence punishable by the law of England.

There were only four cases in the whole Code in which a man might be sentenced to death, and even then it was left discretionary with the Judge, instead of passing a capital punishment, to sentence him to transportation. He should be glad himself if capital punishment could be abolished altogether, though probably the time had not yet arrived for such a measure.

Then there was a Chapter of offences relating to Coin and Government Stamps, and a Chapter of offences relating to Weights and Measures, to which he presumed there could be no objection. There was also a Chapter of offences affecting the Public Health, safety, convenience, decency, and morals, which would include cases of nuisance. Then there was a Chapter of offences against the human body, including hurt and grievous hurt. There was a definition of grievous hurt. In England the words "grievous bodily harm" were used, but not defined. In England there was sometimes very great difficulty in deciding, whether an act amounted to theft. There would be no such difficulty under this Code by which a dishonest misappropriation of property was made an offence, the term "doing a thing dishonestly" being defined to be the doing of that thing with the intention of causing wrongful gain to one person or wrongful loss to another. In England, however, the law required that there must be an intention to despoil the owner. Of the two, he had no doubt that the definition laid down in the Code was the correct text. The Code further contained an explanation which provided that—

"A dishonest misappropriation for a time only is a misappropriation within the meaning of this Section."

He thought there could be no objection to such a provision. It appeared to him that a servant who misappropriated his master's property with the intention of restoring it after a time, ought to be punished. He had no more right to steal his master's property for a time than for ever. It was no answer for a trustee who misappropriated his trust property to say that he intended to put it back again. The fact was that, when once a man made away with property in that way, it generally happened that he never had the means of making restitution. So with regard to the thief, the probability was that, when he stole another's property, he would never change his mind about restoring the same to the owner.

Under the Chapter of offences relating to Religion, he desired to say a few words. There was a Clause in this Chapter concerning which it had been said that we had gone beyond the proper bounds of legislation. The Clause was as follows:—

"Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

It was said that this Clause would prevent a Missionary from performing his duty. He (the Vice-President) thought however, that the intention necessary to constitute the offence had

not been sufficiently adverted to by those who objected to the Section There was no objection to a person's going to another to argue with him about his religion and with the honest intention of convincing him that the views and opinions which he entertained were erroneous. It was a mistake to suppose that the intention of the Missionary was to wound the feelings of the person whom he intended to convert. He had thought it right to draw attention to this Section, because it appeared to him that there was a great misunderstanding as to the real effect of it.

Then there was a Chapter of offences relating to Documents and to trade or property marks, and a Chapter relating to Criminal breach of contracts of service. The latter provided for the case of a man contracting to carry another on a journey and leaving him in the middle of a jungle, as well as for the case of a nurse attending upon a sick child and leaving it suddenly. It would be insufficient to leave such cases to the Civil Courts The Chapter also provided for breaches of contract of labor. For instance, a man who by voluntary engagement was taken from one part of India to another at the expense of another man, ought to be punished if he broke his engagement. It was no more than the case of the Coolies who went to the West Indies and other Colonies.

With reference to the Chapter of offences against Marriage, there was one offence punishable under this Code which was not punishable under the English law. He meant the Section concerning adultery. On this subject the Bombay Government had sent up a large mass of papers expressing a desire that the punishment should be more severe, and that women should be punished for adultery in order to put a stop to the frequency of the crime among the Natives. He must confess, however, that in his opinion what had been done by the Code was all that the Legislature ought to do. The Law Commissioners did not make adultery an offence in the Code as originally framed by them. With the contract between the husband and wife, the law did not profess to deal, but left both free in respect to the offence of adultery. With reference to this subject, the authors of the Code observed as follows :—

"We considered whether it would be advisable to provide a punishment for adultery, and in order to enable ourselves to come to a right conclusion on this subject, we collected facts and opinions from all the three Presidencies. The opinions differ widely. But as to the facts there is a remarkable agreement.

The following positions we consider as fully established: first, that the existing laws for the punishment of adultery are altogether inefficacious for the purpose of preventing injured husbands of the higher classes from taking the law into their own hands; secondly, that scarcely any native of the higher classes ever has recourse to the Courts of law in a case of adultery for redress against either his wife, or her gallant; thirdly, that the husbands who have recourse in cases of adultery to the Courts of law are generally poor men whose wives have run away, that these husbands seldom have any delicate feelings about the intrigue, but think themselves injured by the elopement, that they consider their wives as useful members of their small households, that they generally complain not of the wound given to their affections, not of the stain on their honor, but of the loss of a menial, whom they cannot easily replace, and that generally their principal object is that the woman may be sent back. The fiction by which seduction is made the subject of an action in the English Courts is, it seems, the real gist of most proceedings for adultery in the Mofussil. The essence of the injury is considered by the sufferer as lying in the '*perquod servitium amisit*.' Where the complainant does not ask to have his wife again, he generally demands to be reimbursed for the expenses of his marriage."

They then went on to say—

"Nobody proposes that adultery should be punished with a severity at all proportioned to the misery which it produces in cases where there is strong affection and a quick sensibility to family honor. We apprehend that among the higher classes in this country, nothing short of death would be considered as an expiation for such a wrong. In such a state of society we think it far better that the law should inflict no punishment than that it should inflict a punishment which would be regarded as absurdly and immorally lenient.

There is yet another consideration which we cannot wholly leave out of sight."

—and this was a matter to which he desired to call the particular atten-

tion of the Council with reference to the remarks of certain Members of the Bombay Government on this subject—

"'Though we well know that the dearest interests of the human race are closely connected with the chastity of women and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state of society in this country which may well lead a humane man to pause before he determines to punish the infidelity of wives. The condition of the women of this country is unhappily very different from that of the women of England and France. They are married while still children. They are often neglected for other wives while still young. They share the attentions of a husband with several rivals. To make laws for punishing the inconstancy of the wife while the law admits the privilege of the husband to fill his zenana with women, is a course which we are most reluctant to adopt. We are not so visionary as to think of attacking by law an evil so deeply rooted in the manners of the people of this country as polygamy." †

The Code, as it now stood, although it did not punish the offence as regarded the husband or the wife, provided for the punishment of the stranger or the third party, the man who, knowing or having reason to believe a woman to be the wife of another, has sexual intercourse with her. He (the Vice-President) thought that no gentleman signing the Petition, could, as a Christian, object to such a provision. The law provided protection to a man in respect to his property, but that was a small matter as compared with the protection which a man required in respect of what was far nearer and dearer to him, namely, his family honor. A man who entered another's house and robbed him of his property would be punished, and he saw no reason why a man who seduced another's wife and thereby rendered him miserable for life ought not to be punished also. He would ask Honorable Members to look at the wretchedness to which the husband might be subjected. His house, instead of being a home to him, might become a desolation. His children, instead of being a source of comfort and happiness, would probably only be a misery to him by reminding him of one who had once been dear to him. To this part of the Code at least, he (the Vice-President) thought there could be no objection.

With these remarks he begged to conclude his address to the Council, thanking Honorable Members for the attention and perseverance they had shown, and the great assistance they had afforded to him in amending and preparing the Code which he was happy to say, was at length completed, and which he hoped and believed would tend to the public good and to an improved administration of public justice in this country.

MR. BEADON said that, after the very able and clear explanation of the scope and nature of the Code, which they had just heard from the Honorable and learned Vice-President, it was quite superfluous for him to add anything, and he begged to apologize to the Council for taking up their time at this late hour of the day. But he was reluctant to give his vote for the third reading of this Bill without stating very briefly and generally the reasons for his assent.

He had given his most careful and respectful attention to the Petition which had been presented to the Council, praying that the Code might not be made applicable to the Presidency Towns or to British Christians; and though he highly commended the spirit in which the Petition was conceived, and thought the petitioners perfectly right in endeavouring to protect themselves against what they believed to be an invasion of their privileges and a dangerous innovation in the Law, yet he confessed that he could not find a single reason urged in the Petition which would justify the Council in hesitating to pass the Bill or in at all restricting its operation.

It would have been of great assistance if some of the Gentlemen who had signed that Petition, and who were highly competent to give an opinion on the various points which had come under discussion, had favored the Council with their suggestions on any part of the Bill at an earlier stage of its progress. But they had not done so. It could not be said that the proceed-

ings of the Council had not been sufficiently open, or that the public had been taken by surprise, for, independent of the fact that the Code had been before the world for the last 25 years, it was well known that the subject had more recently engaged the attention both of Parliament and of the Government and the Legislature in India, that the Bill was published more than a year in the Gazette, that it had since been revised by a Select Committee, and that for the last two months the Council both at ordinary and extraordinary sittings had been engaged in going through it, Clause by Clause, in Committee. During that time Members of the Press had been invariably present and had published reports of the proceedings in the newspapers. He did not think therefore that any body could complain of any want of notice or publicity. The only suggestion which the Committee had received from without was on the subject of flogging, and in deference to that suggestion the punishment of flogging had been taken out of the Code, and the question had been again referred to a Select Committee. But it was now too late to bring forward objections to the principle of the Bill. The time had gone by for that, and he did not think that the Council was called upon to stay legislation because at the eleventh hour the petitioners had been led, erroneously as he believed, to believe that their interests would suffer from it, and that they would be aggrieved by its operation. He felt quite convinced that, if those Gentlemen had studied the Code more carefully, and had made themselves masters of its provisions, they would have been convinced that its tendency, so far from being to over-ride or set aside the Criminal Law of England, was in strict accordance with the principles of that law, and that its object was to confirm those principles, to extend them in supersession of the remnants of Mahomedan law by which some of our Mofussil Courts were still guided, and to collect and consolidate in one comprehensive and systematic Code, which should be not only a guide to our Judges but the basis of all future legislation, the laws which were now only to be found scattered over many volumes and in the recorded decisions of the Courts. Wherever there had been a departure from existing English law, as for instance in making adultery a criminal offence, the framers of the Code had not followed any theoretical views of their own, but had adopted the conclusions of the most eminent jurists and thinkers of almost every civilized age and country, and had acted in accordance with the general opinion of Englishmen at the present day. It was because he believed and knew that this Code was substantially the Criminal law of England modified to suit local circumstances and to provide for the punishment of various crimes which might be said to be indigenous to this country, that he gave it his hearty support.

He had for nearly a quarter of a century been connected with the public service, and though he could not say that he was in India when the Code first saw the light, he remembered the discussions to which it gave rise almost immediately afterwards, and had had the advantage of hearing it criticised by the eminent Members of the Calcutta Bar of that day, and defended by the illustrious statesman who was the chief framer of the Code, and by whose name it would probably be known to posterity. But those criticisms were directed rather against the peculiar and unusual phraseology of the Code and against the exact and philosophical terms with which crimes, familiar to our ears by other names, were described, than against any change in the substantial law which the Code involved. He could remember the strenuous opposition made to the law whereby European British subjects were in matters of Civil Justice made amenable to the Mofussil Courts. He also bore in mind the opposition more successfully made to the law which had been proposed for rendering them amenable to the same Courts in Criminal matters. But he did not remember that any such opposition had been offered to the

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Penal Code, or that any serious objection was ever brought against it except that it would not be understood by those who would have to administer it in the Mofussil. At any rate it certainly was never supposed that the learned Judges who administered the Law in the Presidency Towns would be puzzled by the Code, or that in their hands it would be used as an instrument to deprive British Christians of their privileges. He might add that, from 1836 up to the present time, there was nothing which had been made the subject of such constant reproach against the Government of India as its tardiness in passing into law the Penal Code which had been prepared and made ready to its hand by Lord Macaulay's Commission.

He could not conclude without expressing his deep sense of the obligation which the Government and the country owed to the Honorable and learned Vice-President, through whose able and untiring exertions the Code had at last been brought into a state in which it could safely be adopted as the universal Law of India. Nobody who had attended the deliberations of the Council could have failed to be struck with the assiduity and devotion with which the Honorable and learned Gentleman had applied himself to his arduous task, and the acute discrimination he had brought to bear upon every part of it. Every one in short must admit, and especially the Members of this Council, that without his assistance it would have been impossible to pass this Bill. The full benefits which India would derive from the labors of the Honorable and learned Gentleman had yet to be developed; but he (Mr. Beadon) was greatly mistaken if, when the Code became law and was administered under the guiding direction of the Honorable and learned Gentleman sitting as the Chief Judge of an united Court, and superintending the administration of justice throughout the Presidency of Bengal, this great monument of his legislative ability were not highly and universally appreciated, and if he were not regarded as one of the greatest benefactors that India ever possessed.

SIR BARTLE FRERE said that after what had fallen from His Honorable Colleague, he would not detain the Council beyond a few minutes. He would not say a word about the Code itself after the very able exposition of the Honorable and learned Vice-President. Nor would he allude to the Petition except with an expression of regret at its having been the only exception to the unanimity with which he had hoped all classes would have congratulated the Honorable and learned Vice-President on the completion of a work on which so much learning and ability had been expended, which had been so carefully prepared, and to which after devoting years of labor to its completion his Honorable and learned friend had been permitted to put the finishing stroke. It would be presumptuous in him (Sir Bartle Frere) to attempt any eulogy of such a work, and he would therefore make no further allusion to the merits of the Code or the ability displayed in its preparation. These had been acknowledged by the most learned lawyers both in this Country and in England. But he felt that they owed a debt of gratitude to the Honorable and learned Vice-President for his unwearying patience and forbearance, his perseverance, and his truly English determination and love of perfect and thorough work. He also thought that to the Officers of the Council, both to those who now and to those who formerly held office, the emphatic thanks of the Government and of this Council were due.

The Motion was then put and carried, and the Code read a third time.

SIR BARNES PEACOCK moved that Sir Bartle Frere be requested to take the Code to the Governor General for his assent.

Agreed to.

EMIGRATION TO THE FRENCH COLONIES.

MR. BEADON moved, that the Council resolve itself into a Committee on the Bill "to authorize and regulate the emigration of Native laborers to the French Colonies;" 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.

Section I (the repealing Clause) was passed after the inclusion of Section III, Act XXIV of 1852, commonly called the Crimping Act.

Sections II to IV were passed as they stood.

Section V was passed after an amendment.

Sections VI to VIII were passed as they stood.

Sections IX and X were passed after verbal amendments.

Section XI was passed as it stood.

Sections XII and XIII were passed after verbal amendments.

Sections XIV to XVIII were passed as they stood.

Section XIX was passed after a verbal amendment.

Sections XX to XXVII were passed as they stood.

Section XXVIII was passed after verbal amendments.

Sections XXIX and XXX were passed as they stood.

After Section XXXI was passed with verbal amendments—

MR. BEADON said, he wished, with reference to the proviso which had been added to this Clause by the Select Committee, to explain that it was the intention of the Government of India, when forwarding the Act to the Secretary of State, to point out to Her Majesty's Government the necessity felt by the Council for empowering the Governor-General in Council, in case of necessity, to suspend the emigration of Native laborers to the French Colonies in the same manner as he could now by law suspend the emigration of Native laborers to our own Colonies. If, in consequence of the introduction of that proviso, the French Government should object to sign the Convention, it would be open to Her Majesty's Government, if they should think fit, to explain to the French Government that the law was only permissive, and to prohibit the Governor-General in Council from exercising the power reserved to him by the Act. In that case, however, this Council would have done its duty and the responsibility would rest with Her Majesty's Government.

The Preamble and Title were passed as they stood, and the Council having resumed its sitting, the Bill was reported.

MR. BEADON moved that the Bill be read a third time and passed.

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

MR. BEADON moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

UNIVERSITIES BILL.

The Order of the Day being read for a Committee of the whole Council 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"—

SIR BARTLE FRERE said, he had received a very urgent application from the Vice-Chancellor of the University of Calcutta, requesting him to use his best endeavors to get this Bill passed before the next examination. He had a few amendments to propose in the Bill, which he hoped would not occupy the time of the Council at this late hour, beyond a few minutes. He should move that the Council resolve itself into a Committee of the Bill, and that the Committee be requested to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I provided as follows:—

"It shall be competent to the Chancellor, Vice-Chancellor, and Fellows of the Universities of Calcutta, Madras, or Bombay respectively to confer such Degrees as the said Chancellor, Vice-Chancellor, and Fellows of any such University shall appoint by any Bye-laws or Regulations made and passed by them in the manner provided in the said Acts and submitted to, and approved by the Governor in Council or Lieutenant-Governor of the Presidency in which such University is situated."

SIR BARTLE FRERE proposed the insertion of the words "and to

grant such Diplomas or Licenses in respect of Degrees" after the word "Degrees."

MR. BEADON said, he also had an amendment to propose in this Section, which, he thought, would override the amendment of his Honorable friend opposite (Sir Bartle Frere). He (Mr. Beadon) thought it contrary to the course of previous legislation and to right principle, to empower the Universities to confer degrees which had not received the express sanction of an Act of this Council. He would not then enter into the question whether any of the particular degrees now proposed to be created were such as ought to be granted by the Universities or not, though the Council was aware that there was some difference of opinion on this point. All he desired was to give the Universities the power of conferring these particular degrees which they represented to be necessary in addition to those already sanctioned by law, and not to give them unlimited power with the sanction of the local Governments to confer any other degrees which they might think proper to create, and which might differ at each University. He should therefore move the omission of this Section, and the substitution of the following:—

"In addition to the degrees which the Chancellor, Vice-Chancellor, and Fellows of any of the said Universities have power to confer, it shall be competent to the Chancellor, Vice-Chancellor, and Fellows of the said Universities to confer the several degrees of Licentiate of Laws, Doctor of Laws, and Licentiate of Civil Engineering."

SIR BARTLE FRERE said, he was afraid that the amendment of his Honorable friend opposite (Mr. Beadon) would not meet the case, because, while it embodied the principle objected to by those who disapproved of the Bill, it did not effect what the promoters of the Bill desired. He believed that his Honorable friend had already discussed the matter in the Senate of the Calcutta University. This Bill had however been brought in at the pressing instance of the Senate. He (Sir Bartle Frere) was but a most unworthy Member of the Senate himself, and had taken no part in this ck. when he should could not help thinking "I printed together. Senate had discussed such a matter a had formally decided it, and asked the Government to take the necessary steps to give effect to their decision, that it would be presumptuous for us to set ourselves against the Senate and to pretend to be better judges than they were of what the University required. This Bill was accordingly brought in to meet the wishes of the Vice-Chancellor and the Senate. They had asked him to endeavour to have the Bill passed before the Recess. Farther than this, he had no wish or interest in the matter. If it was the sense of the Council, he would gladly withdraw the Bill; otherwise he must beg his Honorable friend's pardon for opposing his amendment.

MR. BEADON said that all that he had to say further was that the amendment suggested by him proposed to confer upon the Senate of the several Universities the three degrees asked for by the Calcutta University in addition to those which the law already prescribed. He believed that in England the Universities had not the power of themselves to create new degrees, and that either an Act of Parliament or a Royal Charter was required for the purpose.

The question being put, the Council divided:—

Ayes 2.	*Noes* 5.
Mr. Beadon.	Mr. Erskine.
The Chairman.	Mr. Sconce.
	Mr. Forbes.
	Mr. Harington.
	Sir Bartle Frere.
	The Commander-in-Chief.

So the Motion was negatived, and Sir Bartle Frere's amendment was put and carried.

SIR BARTLE FRERE proposed other amendments which were severally carried and which made the Section run as follows:—

"It shall be competent to the Chancellor, Vice-Chancellor, and Fellows of the Universities of Calcutta, Madras, or Bombay respectively to confer such Degrees and to grant such Diplomas or Licenses in respect of

Chancellor, Vice-Chan- ... of any such University ...all have appointed or shall appoint by any Bye-laws or Regulations made and passed or to be made or passed by them in the manner provided in the said Acts, and submitted to and approved by the Governor-General in Council as far as regards the University of Calcutta, or by the Governor in Council of Madras or Bombay as regards the Universities of Madras and Bombay respectively."

The remainder of the Bill was passed as it stood; and the Council having resumed its sitting, the Bill was reported.

SIR BARTLE FRERE moved for a suspension of the Standing Orders, to enable him to move the third reading of the Bill.

MR. BEADON seconded the Motion, which was put and carried.

SIR BARTLE FRERE then 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 Bill to the Governor General for his assent.

Agreed to.

POLICE.

SIR BARTLE FRERE moved that the Bill "for the regulation of Police within any parts of the British Territories in India to which it may please the Governor-General in Council to extend its provisions" be referred to a Select Committee, consisting of Mr. Harington, Mr. Sconce, Mr. Erskine, and the Mover.

Agreed to

PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. HARINGTON moved that the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George" be referred to a Select Committee, consisting of Mr. Sconce, Mr. Erskine, and Mr. Forbes.

Agreed to.

LICENSING OF ARTS, TRADES, &c.

MR. HARINGTON (in the absence of Mr. Forbes) moved that a communication received from the Madras Government, relative to the Bill "for imposing a Duty on Arts, Trades, and Dealings, and to require Dealers in Tobacco to take out a License," be laid upon the table and printed.

Agreed to.

The Council adjourned at 5 o'clock on the Motion of Sir Bartle Frere, till Saturday, the 24th November 1860.

Saturday November 24, 1860.

PRESENT:

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

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

MESSAGES.

The Vice-President read Messages, informing the Legislative Council that the Governor-General had assented to the following Bills:—

The Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

The Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter."

The Bill "for providing for the exercise of certain powers by the Governor-General during his absence from his Council."

"The Indian Penal Code."

The Bill "to authorize and regulate the Emigration of Native Laborers to the French Colonies."

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.

† INCOME TAX.

THE CLERK presented to the Council a Petition from the Inhabi-