LEGISLATIVE COUNCIL

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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

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1858.

PENAL CODE.

MR. CURRIE moved that two communications received by him from the Bengal Government be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

NABOB OF SURAT'S PROPERTY.

MR LEGEYT moved that a communication received by him from the Bombay Government regarding the distribution of the private property of the late Nabob of Surat, be laid upon the table and printed.

Agreed to.

OATHS.

MR. Forbes gave notice that at the next meeting of the Council he would move the first reading of a Bill to provide for the admission, in certain cases, of testimony on Oath.

CIVIL PROCEDURE.

MR. PEACOCK gave notice that he would, at the next meeting of the Council, move for the re-publication of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter."

The Council adjourned.

Saturday, November 6, 1858.

PRESENT:

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

Hon'ble Lieut. Genl. Sir J. Outram,	Hon'ble Sir A. W. Buller.
Hon'ble B. Peacock,	H. B. Harington,
P. W. LeGeyt, Esq.,	Esq., and
E. Currie, Esq.,	H. Forbes, Esq.

POLICE CHOWKEYDARS (BENGAL.)

THE CLERK presented to the Council a Petition of Inhabitants of Dacca concerning defects in the administration of Act XX of 1856, "to make better provision for the appointment and maintenance of Police Chowkeydars in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal."

MR. CURRIE moved that the above Petition be printed.

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL.)

THE CLERK reported to the Council that he had received from the Home Department, a copy of an Extract from Proceedings in the Foreign Department respecting the evasion of the provisions of Act I of 1857 (to prevent the over-crowding of vessels carrying Native Passengers in the Bay of Bengal) by vessels clearing out from Foreign Ports within the Coast limits of the Madras Presidency.

MR. FORBES moved that the above communication be referred to a Select Committee consisting of Mr. Peacock, Mr. LeGeyt, Mr. Currie, and the Mover.

Agreed to.

MERCHANT SHIPPING ACT 1854. (SINGAPORE.)

THE CLERK reported that he had received from the Home Department a copy of a Despatch from the Court of Directors regarding the Merchant Shipping Act 1854 as it affects Singapore.

MR. CURRIE moved that the above communication be printed.

Agreed to.

CIVIL PROCEDURE.

THE CLERK reported that he had received from the Home Department, for consideration in connection with the Code of Civil Procedure, an Extract of a communication from that Department to the Bengal Government on the subject of relieving the Bengal Sudder Court of a large mass of its least important business, in order to allow the regular number of Judges to dispose of the most important portion satisfactorily, and without falling into arrears.

MR. PEACOCK moved that the above communication be printed.

Agreed to.

DELHI AND MEERUT.

MR. PEACOCK presented the Report of the Select Committee on the Bill "to remove from the operation of the General Laws and Regulations

the Delhi Territory and Meerut Division, or such parts thereof as the Governor General in Council shall place under the administration of the Chief Commissioner of the Punjab."

PENSIONS.

MR. PEACOCK postponed the presentation of the Report of the Select Committee on the Project of a Law for applying the provisions of the Government Order of the 1st December 1857, which affect Military Pensioners, to Pensioners in the Civil Department, and to holders of rent-free lands.

LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

MR. CURRIE moved the first reading of a Bill "for the registration of Literary, Scientfic, and Charitable Societies." He said, in the Report of the Select Committee on the Bill "for the incorporation and regulation of Joint-Stock Companies" it was stated that—

"many of its provisions are unnecessary, if not inapplicable, to Associations not having gain or profit for their object. We think that a separate Bill should be introduced for the formation of such Societies of this class as may not desire to come under the provisions of this Bill."

The interference of the Legislature in behalf of those Societies was indeed the more necessary, inasmuch as the Joint-Stock Companies Act repealed a former law (Act XLIII of 1850) which, though in an ineffective and unsatisfactory manner, did provide expressly for the registration of such Societies, while the new Act was altogether unsuited to them. The necessity for fresh legislation on this subject had since been urged upon the Council, not only by the Petition of the British Indian Association presented on the 7th August last, but also by parties who had an immediate interest in the matter, the Managers and Secretary of the Military Orphan Society, who represented themselves as being subjected to heavy loss from their inability to empower any one to sue in their behalf. The British Indian Association remarked :—

"That the number of Associations established for the promotion of literature, science, education, charitable purposes, &c., will continue to increase, and they cannot well come under the operation of Act XIX of 1857, in consequence of many of its provisions 'being unnecessary if not inapplicable' to them. An enactment allowing Associations not established for gain or profit to sue and be sued and to hold property in their registered name is felt as a want, and required to enable them to recover their just claims, and hold property without being subject to the inconveniences incidental to transfers in the event of the death of any of the parties in whose names the property may be held."

Agreeing in these views, and thinking the case to be one of some urgency, he determined, with the concurrence of his Honorable and learned friend opposite (Mr. Peacock), and the assistance of the learned Clerk of the Council, to bring in a Bill for the purpose of giving the relief required.

He believed that few, if any, of the numerous Societies existing in Calcutta and other parts of India ever availed themselves of the option of registration given by Act XLIII of 1850. The Managers of the Military Orphan Society remarked that many of its provisions "could not possibly be fulfilled by so large a body as the Officers of the Bengal Army, in which alterations occur daily by deaths, resignations, and additions;" and the Curators of the Calcutta Public Library pointed to several of the Sections and Clauses of the Act in question—such as those requiring the half yearly audit of accounts (Section VIII. cl. 6,) and the filing and verification of them by the oath of auditors half-yearly (Section VIII. cl. 7,) and the clauses requiring the filing of the memorials of the shareholders, directors, and registered Officers so soon and so often as they occurred—as being evidently intended more for banking and trading companies than for literary, scientific, and charitable institutions, and as causing needless trouble and expense to the latter. Upon this letter of the Curators, there was a Minute by Sir C. Jackson, then he believed Officiating as Legislative Member of the Council, and concurred in by the Governor General and other Members of Council to the following effect :—

"The machinery of Act XLIII of 1850 is much too cumbrous for Companies such as those referred to in Major Marshall's letter, and will no doubt operate as a discouragement to the registration of such Institutions. I think an Act might be framed conferring on Companies exclusively formed for literary, scientific, or charitable purposes, all the benefits of Act XLIII (such as the right to register by their style, and in the name of their Secretary or other ministerial Officers, as well as the power to sue and be sued in the name of such Officer) and declaring

the other provisions of the Act, which are chiefly suited to trading Companies, inapplicable to literary, scientific, and charitable Institutions."

The Bill which he had the honor to introduce was prepared in accordance with these suggestions.

There was a late Act of the British Legislature (17 and 18 Vic. c. 112) which gave to Literary and Scientific Institutions all the legal facilities to which he had referred without even requiring the formality of registration. But it seemed to him that, if the means of registration were made sufficiently easy, there could be no objection to imposing on the Societies which might desire to avail themselves of the benefit of the Act the necessity of being registered, and it might be convenient to persons having claims against a Society that there should be a ready mode of ascertaining the person against whom the claims should be enforced. On the whole, therefore, he had thought it advisable to retain so much of the principle of the former law as required that Societies having the benefit of the Act should be registered.

The first four Sections of the Bill contained some simple provisions for registry: a memorandum of Association containing the name of the Society, its objects, and the names, addresses, and occupations of its governing body, together with a copy of the rules and regulations of the Society, was to be filed with the Registrar of Joint Stock Companies under Act XIX of 1857, and a list of the governing body showing any changes which might have taken place since the preparation of the previous list, was to be filed annually.

The next twelve Sections were taken almost *verbatim* from the Statute to which he had referred, and contained provisions for the Society suing or being sued in the name of the President, Secretary, or other Officer as determined by the rules—for the enforcement of judgment against the property of the Society—for enabling the Society to recover from the Members penalties imposed by the rules or bye-laws, and arrears of subscription—for enabling the Society to alter, extend, or abridge the purposes for which it was established, and to dissolve itself. There were also provisions for enabling Societies existing at the time of the Act coming into force, to avail themselves of its provisions.

The last Section declared what Societies might be registered under the Bill. It was somewhat more comprehensive than the English Act which applied only to Literary and Scientific Institutions, including Institutions for the purpose of adult instruction. He proposed that the new law should be extended to all educational, and also to all charitable Societies. Indeed, he thought that even a wider application might probably be given to it, and that it might extend to such Associations as the Bengal and United Service Clubs, but the advisability of this might, if the Bill should be read a second time, be considered by the Select Committee after the Bill had been published.

The Bill was read a first time.

OATHS AND AFFIRMATIONS.

MR. FORBES moved the first reading of a Bill "concerning Oaths and Affirmations." He said that, after having trespassed so long on the time and patience of the Council very lately, on the occasion of moving an amendment on that Section of the Bill for simplifying Civil Procedure which provided for the reception of evidence without oath or affirmation, he felt that the best apology that he could offer on again rising to bring the same subject forward, was to promise on this occasion to be brief. Honorable Members would recollect that the amendment which he had moved on a former occasion was withdrawn at the suggestion of the Honorable and learned Judge on his left, a suggestion to which he believed the Council generally assented, that the question would be more satisfactorily dealt with by a separate Bill, than if it were the subject of one Section out of the many of which the Civil Procedure Bill was composed. In accordance with this suggestion, the Bill of which he was presently to move the first reading had been prepared, and he desired to acknowledge the great assistance which, in its preparation, he had received from the learned Judge. There were one or two points on which he had not felt able to adopt to the fullest extent the views of the learned Judge, and he re-

ferred to them now only that, in admitting his obligations to the learned gentleman, he might not be considered as attributing to him views which he did not hold; and that, while he ascribed to him all that was excellent in the Bill, he might be considered as taking all its deficiencies on himself. He had no intention of recapitulating all that he said on the subject of oaths when he last addressed the Council, nor of again reading all that had been recorded on the question. He was well content to leave that record to the candid consideration of Honorable Members, without weakening its effect by any comments of his own, but on one or two points he desired very briefly to occupy the attention of the Council.

In the objections which were felt to the re-introduction of oaths, he could not help thinking first, that one side of the question was too exclusively looked upon, and second, that, in considering the difficulties that will attend the proposed change, the imagination was drawn upon far more largely than the memory. That some evil might attend the re-introduction of oaths, was only saying that the system sought to be introduced was human—nothing human was perfect—and all that man could hope to do was to follow that line of action which as far as he could judge would be attended with the least amount of evil. It was admitted—he believed universally admitted—that evil attends the admission of unsworn evidence; it was feared that evil might attend the re-introduction of oaths—all that he asked Honorable Members to consider and to decide was, which of the two evils was the greater, the certain and admitted evil of unsworn testimony, or the anticipated and problemetical evil of again introducing oaths? He had no doubt in his own mind which was the greater evil, and he had also no doubt of this, that, whatever objection any man or any class of men might make to having the truth of their own evidence tested by an oath, there were none who would not wish that that test should be applied to all evidence brought against them. Honorable Members of this Council might have no reason to apprehend that they would ever be in a position to make it of any personal importance, whether evidence was taken on oath or not; but before they decided to vote against this Bill, they ought to endeavor to imagine themselves in the position of those to whom it might be of importance. What consolation would it be to a man who lost property or liberty through the means of false evidence, to be told that, although, had the evidence against him been on oath, a different result would have arisen, the administration of the oath which the Court would have prescribed, might possibly have been disagreeable to the witness? Let those who could see only the evil that might attend the re-introduction of oaths say, in the case supposed, which would have been the greater evil, that the man should have lost property or liberty, or perhaps life, from false testimony borne against him, or that the witness might have been inconvenienced by the form of oath demanded of him?

He now turned for one moment to say a few words on what he had previously adverted to, that it appeared to him from what he had in private heard urged against this measure, that the imagination was more drawn upon than the memory.

It was, he believed, supposed by some, that the discretion to administer whatever oath might be considered most binding on the conscience of each particular witness, was a discretion that could not safely be given to the Courts; that witnesses would be oppressed by being made subject to oaths prescribed only for the purpose of annoyance, and that the Courts might indulge in unbecoming methods of testing the credibility of a witness. Now, he said that these were imaginary, and not practical objections, because they were not founded on any thing that occurred during the time that intervened between 1793, when this very discretion was given to the Courts, and 1840, when it was taken away. What it was now proposed to do was nothing new, it was the law of the land for forty-seven years, and he for one had never heard that during all that time witnesses were bullied by the Courts, or that the Judges descended from their high position to perform fantastic tricks. It was possible that some one isolated

Mr. Forbes

case might be adduced, but, if there were such a case, it would be an exception to the general practice, and such an exception as would serve only to prove the general rule to have been the reverse; and if in an active career that had extended over more than twenty-seven years, he could say that he never even heard of such a case, he thought he was justified in assuming that they must have been most uncommon.

After the Council had risen on the last occasion of this subject being discussed, an Honorable Member told him an anecdote which had been communicated to him by the Officer immediately concerned. It was that, on an occasion of the crime of dacoity being proved against a prisoner by abundant but unsworn testimony, he made such an appeal to the Officer who tried him, and who himself narrated the ancedote, as to induce him to put the witnesses on their oath, when one and all withdrew all that they had said against the prisoner. Now he begged the Council to keep this ancedote in mind for one moment, while he referred to a circumstance that occurred when he had last the honor to address them. It might be recollected that the Honorable and learned Chief Justice noticed that the amendment which he then moved made no provision for exempting from oaths those who had conscientious scruples to taking an oath, and that, when he attempted to defend the omission by referring to the learned Judge's own admission in the notes which he had written on the Civil Procedure Code, that in eight years not eight cases of witnesses claiming exemption on account of conscientious scruples had come before him, that is, not so often as once a year, the learned Judge said that still, even for so small a fraction, it was necessary that the law should provide. Now, if it were necessary, and he was not at all intending to argue that it is not, but if it were necessary that the law should specially provide for the contingency of a conscientious scruple that did not occur in this city so often as once a year, was it not *a fortiori* necessary that it should provide for the preservation of liberty, and perhaps of life in such a case as that referred to in the anecdote he had just referred to? Was the law to make provision for the bare possibility of a conscientious scruple, and to make no provision for the great probability of life and liberty being in jeopardy from false testimony?

Before he sat down, he wished to be allowed to say a word on what fell from the Honorable and gallant gentleman on the last occasion of this subject being under discussion. On his expressing a hope that the Honorable and gallant gentleman's experience of Courts Martial would lead him to support the motion, the Honorable and gallant gentleman said that he would wish to see all oaths before Courts Martial at once abolished. Now, when, on a question connected with Military matters, he was so unfortunate as to hold an opinion that differed from that held by the Honorable and gallant gentleman, he could not but be anxious so far to justify himself as to give the grounds of his opinion. When in 1835 the question of abolishing oaths was under discussion, it was mentioned in papers then recorded by the Sudder Dewany Adawlut, that one ground of objection to their abolition was to be found in the statement of many Military men that Sepoys who would state matters as facts before a Court of enquiry when they were not sworn, would frequently refuse to abide by those statements when put upon their oath before a Court Martial. He hoped that the Honorable and gallant gentleman would be able to admit this statement which appeared in the records of the Sudder Dewany Adawlut as some justification of his maintaining an opinion upon a subject connected with Military matters, that was not in accordance with his.

He had little to say in explanation of the several Sections of this short Bill; it had been drawn so as to include all occasions on which an oath could ever be demanded, whether from a witness, or juror, a party making affidavit, or swearing to the correctness of accounts; and the authorities whom it would concern included, besides Courts of Justice, all persons empowered by law to administer oaths and affirmations.

In the third Clause provision had been made, in accordance with the suggestion of the Honorable and learned

Chief Justice, for exempting persons who had conscientious scruples to taking an oath, and with some doubt on his own part, because, contrary to the opinion of a high authority, the Section also contained the exemption made in the old law in favor of those whose rank would, according to the prejudices of the country, make it improper to compel them to take an oath. This was a point on which, if the Bill should pass a second reading, the Council would no doubt receive suggestions and opinions from various quarters, and it might remain an open question for decision in Committee.

He would only further say that, if this Bill should pass a second reading, he hoped that those Honorable Members who represent the several Presidencies in the Council, would request the particular attention of the local Governments to its provisions, so that before it went into the Committee the Council might have the benefit of knowing what all authorities and particularly the Native Judges, thought upon the subject, and he should not consider that an assent to the second reading would bind any Honorable Member to continued support to the measure if the preponderance of opinions should be adverse.

SIR JAMES OUTRAM begged to thank the Honorable Member for Madras for the opportunity which he had afforded him of rectifying the mistake which he had observed recorded in the Official Report of the Proceedings of the Council, with regard to his opinion on the question of administering oaths to Sepoys before Courts Martial. He had intended, however, to have pointed out the mistake himself. He would now only add that, upon the second reading of the Bill, he would do himself the honor to explain more fully his views on the subject, being informed that it was not customary to do so upon the first reading.

The Bill was read a first time.

CIVIL PROCEDURE.

Upon the Order of the Day for the motion to republish the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter" being read—

Mr. CURRIE moved that the Bill be re-committed to a Committee of the whole Council for the purpose of considering certain proposed amendments, and more especially with a view to his moving for the introduction of a new Section regarding set-off.

Agreed to.

SIR ARTHUR BULLER said that, after he had proposed a Section (which had been carried and now stood as Section 9 of Chapter II) providing for the rejection of a plaint if the plaintiff's right of action appeared upon the face of it to be barred by lapse of time, the Council went back to a preceding Section (2) which prescribed the particulars to be contained in the plaint. The latter Section had been amended so as to require the plaintiff to state in the particulars of his plaint the ground upon which he claimed exemption from the law of limitation if the cause of action accrued beyond the time ordinarily allowed for commencing the suit. That being the case, it appeared to him to render unnecessary almost all of the Section which he had proposed. He should therefore move for its withdrawal; but, before doing so, he would suggest that in Section 8 the words "or that the right of action is barred by lapse of time" be inserted after the words "cause of action" in the 5th line, otherwise the Court would not have power to reject a plaint which appeared upon the face of it to be barred by lapse of time. The Section, as it now stood, was insufficient, because there might be a cause of action notwithstanding that the right to sue was barred by lapse of time.

The motion was carried, and the Section as amended passed.

SIR ARTHUR BULLER then moved that Section 9 be omitted.

Agreed to.

Section 18 provided that, in issuing the summons, the Court might order the personal appearance of the defendant or of the plaintiff.

MR. CURRIE said, he thought it desirable to have a similar provision in this Section to that contained in Clause 4 Section XVII of the Small Cause Courts Bill. He should therefore move that the following proviso be added to the Section:—

"Provided that no plaintiff or defendant shall be ordered to attend in person, who at the time is *bonâ fide* residing at a distance of more than

fifty miles from the place where the Court is held."

The motion was carried, and the amended Section then passed.

On the motion of Mr. Currie, a verbal amendment was made in Section 70.

MR. CURRIE said that, although the discussion which had taken place in the Section relating to set-off, had resulted in the omission of that Section, it seemed to be the general opinion of the Council that the right of set-off, if limited to debts, might unobjectionably be allowed. He therefore moved that the following new Section be inserted before Section 96:—

"If in a suit for debt the defendant desire to set-off against the claim of the plaintiff the amount of any debt due to him from the plaintiff, he shall tender a written statement containing the particulars of his demand, and the Court shall thereupon enquire into the same. Provided that, if the sum claimed by the defendant exceed the amount cognizable by the Court, the defendant shall not be allowed to set-off the same unless he abandon the excess."

Agreed to.

MR CURRIE then moved to restore the former Section 167, which prescribed what the decree should contain when a claim to set-off was allowed, with a few verbal alterations.

Agreed to.

MR. CURRIE also moved to transpose the new Section 32 of Chapter IV relating to cross-decrees, so that it might stand after Section 9 of the same Chapter.

Agreed to.

Verbal amendments were made in Sections 5 and 7 of Chapter V.

MR. PEACOCK said, when the Bill was before the Select Committee, it was thought that, if the Sections were numbered in order from Section 1 to the end of the final Chapter, it would be more convenient than the present mode of numbering the Sections under each Chapter separately. He therefore moved that the Sections be numbered consecutively.

Agreed to.

The Council having resumed its sitting, the Bill was reported.

MR. PEACOCK moved that the Bill, as settled in Committee of the whole Council, be published for general information, and that it be re-considered after two months.

Agreed to.

OATHS TO HINDOOS AND MAHOMEDANS.

MR. HARINGTON moved that an application be made to the Supreme Government that copies of any correspondence in the Office of the Home Secretary which might have taken place relative to the administration of Oaths to Hindoos and Mahomedans, and which might have led to the passing of Act V of 1840, be laid before the Council.

Agreed to.

PILOT COURTS (BENGAL.)

MR. CURRIE gave notice that he would, on Saturday the 18th Instant, move the first reading of a Bill to amend the law for the trial of Officers of the Bengal Pilot Service accused of breach of duty.

DELHI AND MEERUT.

MR. PEACOCK gave notice that he would on the same day move for a Committee of the whole Council on the Bill "to remove from the operation of the General Laws and Regulations the Delhi Territory and Meerut Division, or such parts thereof as the Governor General in Council shall place under the administration of the Chief Commissioner of the Punjab."

The Council adjourned.

Saturday, November 13, 1858.

PRESENT:

The Honorable the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Lieut.-Genl. Sir J. Outram,	E. Currie, Esq.,
Hon'ble H. Ricketts,	H. B. Harington, Esq.,
Hon'ble B. Peacock,	and H. Forbes, Esq.

CIVIL PROCEDURE.

THE CLERK reported to the Council that he had received from the Home