

**LEGISLATIVE COUNCIL
OF
INDIA**

VOL. 4

JAN. - DEC.

1858

P . L .

PROCEEDINGS OF

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858

Published by the authority of the Council.

A. SAVILL & CALCUTTA PRINTING AND PUBLISHING COMPANY (LIMITED),
NO. 1, WESTON'S LANE, COBBITTOUR.

1858.

MR. FORBES' motion being proposed—

SIR. JAMES OUTRAM said, he understood the proposition to be for an enquiry to be made through the Judicial Officers. His objection was that the enquiry should not be confined to Judicial Officers. He was not sure if the rules of the Council would permit his proposing such an amendment, but he thought that information should be sought from all classes, whether Europeans or Natives, and whether Government Servants or not. The object was to ascertain what were the true feelings of the Natives on this subject, and they were not so likely to attain that object if the enquiry were confined to official channels.

THE VICE-PRESIDENT said that the Honorable Member who last addressed the Council had anticipated him in the objection which he had intended to make to the proposition of the Honorable Member for Madras. The doubt in his (the Vice-President's) mind was as to the power of the local Governments to call for information from non-official persons. The amendment of the Honorable Member for Bombay was calculated to have that effect; but as it had been negatived, he did not see what amendment could be grafted upon the original question, which would have the same effect.

MR. FORBES then withdrew his motion, and made the following amended motion, namely, that the Clerk of the Council be directed to address the Government of India and the local Governments, and to request them to obtain and transmit the opinions of the several Judicial and Revenue Authorities, European and Native, and of such other persons as the local Governments might think fit, upon the question of the re-introduction of Oaths, and also upon the proposition of Her Majesty's Commissioners that all Oaths and Affirmations be dispensed with, and generally to invite the opinions of the public upon the subject.

Agreed to.

MR. LEGEYT said, he thought that, before dismissing the subject, they should come to a distinct understanding as to what was to be done,

either that a Select Committee should be appointed for the purpose of considering and settling the letter to be addressed; or that the letter, when drawn up by the Clerk of the Council, should be circulated among the Members, and brought forward at the next Meeting, when it might be proposed that the following letter be sent to the Government of India and the local Governments. This would have the advantage of ensuring a wider circulation, for the letter would be read, and reported in the newspapers, and men's minds would be turned towards the matter, before the official communications reached them.

After some conversation—

MR. LEGEYT moved that the Clerk be directed to frame and circulate the letter among the Members of the Council, and that the letter be afterwards submitted to the Council for adoption.

Agreed to.

RYOTWAR ARREARS (MADRAS PRESIDENCY).

MR. FORBES gave notice that he would on Saturday next move for a Committee of the whole Council on the Bill "for the better recovery of Arrears of Revenue under Ryotwar Settlements in the Madras Presidency."

The Council adjourned.

Saturday, November 27, 1858.

PRESENT:

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

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

ACTS OF THE COUNCIL.

THE CLERK reported to the Council that he had received from the Home Department a Despatch from the Secretary of State for India reviewing Acts I to XIX of 1859.

LIMITS OF FORTS (PRESIDENTY TOWNS, &c.).

THE CLERK reported that he had received from the Home Department papers regarding the limits of the Forts at the Presidency Towns and in the Straits Settlement, which it was proposed to exclude from the jurisdiction of the Commissioners of Police and Municipal Commissioners.

OFFICE OF CORONER (STRAITS SETTLEMENT).

THE CLERK reported that he had received a communication from the Governor of the Straits Settlement on the subject of the abolition of the Office of Coroner in that Settlement, or its limitation to the precincts of the Towns only of the several Stations.

MR. PEACOCK moved that the above communication be printed.

Agreed to.

SMALL CAUSE COURTS (MOFUSSIL).

MR. HARRINGTON moved the second 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."

SIR ARTHUR BULLER said, he hailed with great satisfaction the appearance of this Bill. He looked upon it as a move in the right direction, and peculiarly opportune and valuable at the present moment, as he thought the Council were in no slight danger of marring all its attempts at judicial reforms by beginning at the wrong end. They had disposed, he hoped satisfactorily, of the principal difficulties of Procedure, but they had still to deal with the more important question of the reform of our Courts. He thought he was not wrong in calling that the more important question, for surely the interests of justice were far more substantially secured by the trustworthiness and efficiency of the functionaries by which it was administered than by any simplicity or perfection of Procedure; and when he spoke of the danger of their beginning at the wrong end, his fear was that, instead of directing their best efforts so to

purify and improve our Courts of first instance that they should be the least likely to go wrong, they might be induced to leave them too much as they were, and to expend their ingenuity and their resources in devising the best means of correcting their errors after they had been committed. This fear was the more natural, because the course he was deprecating not only offered a more inviting opportunity for the exercise of their legislative invention, but because it had the additional attraction of being essentially the course recommended by the high authority of the Royal Commissioners. He welcomed this Bill, therefore, as boldly enunciating an opposite principle. He welcomed it because he saw in it a deliberate, and, as far as he could judge, a well considered plan to supplant, wherever it could be done, the existing Courts in which they had no faith, by better and more trustworthy tribunals. He fully felt the boldness of questioning any scheme which had the sanction of gentlemen of such experience and acknowledged ability as the Royal Commissioners. But nevertheless he would not shrink from declaring his strong conviction that the scheme, as developed in the Blue Book, was open to many serious objections, but eminently to the objection of beginning at the wrong end. It elaborated with the greatest care a wide-embracing, though still, he believed, impracticable system of appeals. But it did nothing to elevate the character of the inferior Courts of original jurisdiction; and leaving them in their normal state of inefficiency, it multiplied their chances of doing mischief by on the one hand extending their jurisdiction, and on the other by taking away in the vast majority of cases the right of appeal, which was the only safeguard they possessed against the certainty of not unfrequent failure of justice.

The great merit of this Bill on the contrary was that it boldly enunciated the principle of prevention and not of cure, and struck at the root of the real mischief. It was useless disguising or hesitatingly admitting the fact that the Moonsiffs' Courts were utterly untrustworthy. Such was notoriously the

case; and instead of taxing their ingenuity to discover the sort of superstructure that should sit most safely upon that rotten foundation, they had far better devote their best energies to the repairs of the foundation itself, for in his belief the cunningest scheme of appeals they could devise would do but very little towards defeating the organized and time-honored corruption of the existing Courts.

[Here Sir Arthur Buller was obliged to resume his seat; being prevented by indisposition from proceeding farther.]

THE VICE-PRESIDENT said, he entirely agreed with the Honorable and learned Member who had just spoken, and regretted that indisposition had prevented his saying more. The Bill might to some seem open to the objection, that it proposed but a partial remedy, and that it established Courts only in certain Districts. The Bill originally proposed by the Honorable and learned Member (Mr. Peacock) provided for the establishment in every village and in every locality of Small Cause Courts having final jurisdiction except in reserved cases, or on what was known as special appeals on points of law. It must, however, be admitted that the large body of evidence elicited by the re-publication of that Bill, showed a general opinion that Moonsiffs could not be trusted with that jurisdiction. He did not pretend to say whether that opinion was right or not, but he thought that the Honorable and learned Member and the Council had exercised a sound discretion in not attempting to force the Bill on the community in opposition to a feeling so generally entertained. On the other hand, the Council had the recommendations of Her Majesty's Commissioners, which would leave the jurisdiction of the Moonsiffs much as it was, with the old system of appeals.

This Bill was framed on a correct principle, but the measure was to be regarded as experimental. The new Courts would be introduced at first into certain places, and, when tested, he had no doubt that in a few years they would be extended. He therefore saw nothing in the objection that

the Bill would favor certain localities, for other places would ultimately share in the benefits.

In addition to what had fallen from the Honorable and learned Member who preceded him, he must say that, not only as regards Courts of first instance, but also as regards all Courts, the Code of Civil Procedure was an imperfect remedy, and they must hope that a reform of the Courts would be among the measures of judicial reform to be introduced by their successors, if not by themselves.

The Select Committee on the Procedure Bill had considered several schemes for the re-constitution of the Courts, but feeling that financial and other considerations might retard the adoption of any one of their schemes, and the creation of new Courts which it involved, they had thought fit to present the Code of Procedure, as being, so far as it went, a remedial measure. He must repeat, however, that it was to be considered as an instalment only in the way of judicial reform. He would further say that, although his Honorable and learned friend had accurately described the Moonsiffs' Courts as the root of the evil, he thought that they must look higher also, and to the very top of the tree, and that no substantial good would be done until some measure was devised by which the Sudder Court was relieved from the great pressure of work which at present clogged its action.

Another most important consideration connected with the constitution of improved Courts of original jurisdiction was, that some solution, satisfactory to a large and increasing class of the community, might thereby be afforded of that question which, however shelved for a time, must ever recur, and must sooner or later be decided, namely, the provision of competent tribunals for the trial of Europeans at such a distance from the Presidency Towns as to make the wide Criminal jurisdiction of the Supreme Courts sometimes nugatory, and always most difficult and expensive.

Taking this Bill as far as it went, he thought that the Council was under great obligation to the Honorable Member for the North-Western Provinces for its introduction.

MR. LUGREY said, no one felt more deeply than he did the weight of obligation under which the Council lay to the Honorable Member for the North-Western Provinces for the introduction of the present Bill. But he was sorry he could not support the Bill. In bringing it forward, he was sure that the Honorable Mover had felt that the Code of Civil Procedure, the rules contained in which were proposed to be followed for the disposal of cases under this Bill, was an imperfect and insufficient measure. He had no objection to the principle involved in this Bill, of conferring final jurisdiction on Courts of original jurisdiction, but he confessed he did not approve of the Bill as brought forward in its present shape, and he would have much preferred if the whole question of the re-constitution of the Courts had been first brought forward. He looked upon the Bill as a patchwork and piecemeal sort of legislation.

Probably this Bill would pass, but it would take some time before it came into operation, since the several local Governments would probably have different views as to how these Courts should be constituted, and by whom they should be presided over. If, therefore, instead of this Bill, a measure had been brought forward having the effect of forcing on the question of the constitution of the Courts, it would have been the first step in the right direction. That the judicial administration, of this country required improvement, had never been denied. The question had been before the Legislature for several years past, and had been fully discussed. Very little, however, had proceeded as yet from that discussion. The Bill "for the more easy recovery of small debts and demands" which was suffered to drop still-born at an advanced period of gestation, and the present Bill, were the only practical attempts which had been made to amend the present course of the administration of Civil Justice; for the Civil Procedure Bill (he spoke particularly in reference to the Presidency of Bombay) would not alter it in any material point. The judicial administration required improvement, not from the untrustworthiness of the Native Judges, for he believed there was no

great extent of corruption among them. In his opinion there were not more faithful or assiduous Officers of Government than the Native Judges; but they did not give satisfaction, and why so? The cause he thought was attributable solely to the Procedure. He observed that all persons—plaintiffs, defendants, and witnesses—united in condemnation of our Courts. Defendants complained probably because they were compelled to pay their debts, but plaintiffs had just cause of complaint. They complained of the tedious process of recovering what was their due, and of the still more tedious process of putting the decree (when they obtained one) into execution. Witnesses complained of being taken and detained from their homes at a very inadequate remuneration. All these classes of non-contents had united in the outcry against the present system, to which no sufficient answer had yet been given. But now the time had arrived when a remedy must be devised, and that remedy was a total re-organization of the Courts from the lowest to the highest. He would propose only two classes of Courts, namely, Small Cause Courts with original jurisdiction limited to a certain sum, and Courts in each district composed of three Judges having final jurisdiction. The Small Cause Courts should be presided over by Judges possessing the confidence of the people. But he would not give the present Courts final jurisdiction. The verdict of the country was against such a measure, and he could not see how the Council could force upon so large a population as that of India any thing short of what he had proposed.

This Bill however did not go far enough. It provided for final jurisdiction under fifty Rupees, and so far so good. But it did not meet the universal objection advanced to giving certain Judges that power. If it was intended that Natives should not preside over these Courts, then there must be European Judges only. He thought himself that Natives should not preside over these Courts, and that they should be presided over by Europeans. But such a general innovation would require the gravest deliberation before it was adopted.

If the Civil Procedure Bill was not sufficient to make the administration as perfect as it should be, and he took the very introduction of this Bill to be an admission to that effect, he would respectfully advocate the postponement of the present Bill till measures had been adopted for determining the question of a reform in the constitution of our Civil Courts. If this should be conceded, he was prepared to move for the appointment of a Select Committee to enquire and report on the subject, with instructions to report progress monthly to the Council till its labors on the subject were completed. In the course of six months, he thought, the Committee would have ample materials from which to prepare a law, which, he believed, might be perfectly satisfactory to Government and the public. He did not think the Code of Procedure would answer. Its elaborate provisions were not necessary, and they must adopt a much more simple procedure. The present system was unsuited to the genius of the people and was far beyond them. They were not prepared for the niceties of our judicial system.

Under this view of the subject, he should feel it his duty to oppose at present the second reading of this Bill.

MR. PEACOCK said, every one who knew anything of the Courts of Justice in this country must be anxious to see them improved. The constitution of new Courts presented various and great difficulties, not only on financial considerations, but also on account of the materials from which the Courts must be composed. But he had no doubt that these difficulties would eventually be got over. The Select Committee on the Civil Procedure Bill had anxiously considered this question, but had not come to a final conclusion.

He was surprised however to hear the Honorable Member for Bombay speak as he had done, when he expressed a wish that some one should introduce a Bill to force on a consideration of the question. Such a speech might have come from one who had not been a Member of the Select Committee on the Civil Procedure Bill, but the Honorable Member was a Member of

that Committee. Why the Honorable Member had changed his opinion, since that Committee presented their Report, he (Mr. Peacock) knew not; but he found it stated as follows in the Report of that Committee:—

"The important subject of the constitution of the Civil Courts has been much considered by us, and various schemes (chiefly concerning Bengal and the North-Western Provinces) have been proposed for consideration; as yet we are not prepared to report upon this subject, and we do not think it necessary to delay the Report on the several Bills and the further progress of this Bill, through its subsequent stages, until schemes have been matured for all the Presidencies, and until sanction has been attained for the increased expenditure which it seems probable will be necessary whatever schemes may be ultimately adopted. When the Bills relating to Criminal Procedure have been revised by Select Committees, and when it has been considered in what mode and among what Courts jurisdiction in Criminal matters should be distributed, and also to what extent Appeals in Criminal cases should be allowed, the subject of the constitution of the Courts and the several schemes devised may be more conveniently discussed in the form of a separate Bill. The Bill prepared by us, as it now stands, provides a form of Procedure fitted equally to the Civil Courts at present established, and to those which may hereafter be substituted for them."

Now the Honorable Member had signed that Report. Had he since changed his views? Why did he now wish some one to force on a consideration of the matter and that this Bill be postponed? The Council could not provide for the constitution of the Courts without consulting the Executive Government, and probably the Home Authorities, upon the financial question necessarily involved in it. The Select Committee had therefore thought it better that the Code should not be delayed on this account. The Honorable Member for Bombay, however, who had signed the Report of that Committee, and who had agreed to it, with one exception (he, Mr. Peacock, believed), now came forward to propose a postponement of the Code of Procedure, and to say that that Code was cumbersome. Why did he not oppose it, when the Bill was in Committee? He (Mr. Peacock) should have thought from his speech that the Honorable Member had not been a Member of that Committee.

He was glad to see this Bill brought forward. He was an advocate for passing the former Bill "for the more easy recovery of small debts and demands." But such strong objections had been made to giving Moonsiffs final jurisdiction even to the extent of fifty

Rupees, that he did not press the third reading of that Bill. Her Majesty's Commissioners had about the same time reported that, if the Code of Procedure were passed, there would be no necessity for Small Cause Courts.

This Bill would enable the local Governments, with the sanction of the Supreme Government, to establish Small Cause Courts, and, without waiting for sanction, to invest certain existing Courts with Small Cause jurisdiction. It enabled the local Governments to appoint better Judges than now existed for the trial of small causes where such Courts might be considered most necessary, and it gave them final jurisdiction under fifty Rupees. Under these circumstances he was determined to give the Bill his support.

He could not think it necessary, after what the Select Committee had stated in their Report, to appoint another Committee to consider the constitution of the Courts. The Honorable Member for Bombay could bring the question again before the Select Committee, or if he wished to press the whole Council to a decision upon the subject, he could bring in a Bill of his own. There was nothing to prevent him from adopting that course.

[MR. LEGEY. —The Select Committee was discharged.]

The Select Committee had not been discharged so far as the question of the re-constitution of the Courts had to be considered, as he (Mr. Peacock) understood it. It was easy for the Honorable Member to introduce a Bill. Why should he wish that some one else should do that which it was competent to himself to do?

MR. RICKETTS said that, after the good reasons given by the Honorable and learned Member (Mr. Peacock) for the delay in bringing forward the general question of the re-organization of the Courts, it was useless for him to say anything on the subject. They were all aware how anxious all classes were that the question should be pushed forward. Only a few days ago, a paper had been communicated to the Legislative Council by the Government of India, being an extract

Mr. Peacock

from a letter addressed by it to the Bengal Government, relative to the necessity of relieving the 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. It had lately been determined that the system of full benches for hearing special appeals should not be interfered with. Of course expense was augmented by that system; but seeing that all parties—pleaders, suitors, Judge, and Government—had expressed approval of it, it was not thought proper for the sake of a small saving to alter it. It appeared from the Report of the Select Committee on the Civil Procedure Bill that the question of the re-organization of the Courts was postponed on the ground of expense; but it was very desirable that the re-organization of the Courts should be effected without any delay that could be avoided.

MR. HARRINGTON said, he would endeavor to answer the objections of the Honorable Member for Bombay, first thanking the Honorable and learned Judge on his left (Sir Arthur Buller) and other Honorable Members for the favorable notice taken by them of his humble efforts in bringing in the present Bill.

The charge made by the Honorable Member for Bombay against the Bill was the same as had been brought against other measures introduced by him, namely, that it was piecemeal legislation, but he apprehended that all legislation partook more or less of that character.

If he had understood the Honorable Member rightly, he did not object altogether to the Bill so far as it went, but he considered that it did not go nearly far enough. Now it was just this objection of not going far enough which had been the means of depriving the North-Western Provinces and the Lower Provinces of the Presidency of Bengal at least, for the space of nearly four years, of the great benefits which might have been expected to result from the establishment of Courts of Small Causes in those Provinces, and which, if the views of the Honorable Member for Bombay were adopted by

a majority of the Council, would, he ventured to predict, have the further effect of postponing the establishment of Courts of that description for an indefinite period. The same objection had already proved itself in one instance a fatal apple of discord, and, if acted upon in respect to the Bill under discussion, such, he feared, would again be its character.

In the year 1854, Mr. Mills and himself were engaged, under the orders of the Supreme Government, in preparing a Code of Civil Procedure for the use of the Courts of the East India Company in the three Presidencies, but knowing how urgent was the demand throughout the country for Courts which should have power summarily to dispose of petty actions of debt and the like according to a simple mode of procedure, they put aside for a time the work on which they were specially employed, and drew up a Bill for the more easy recovery of small debts and demands which they at once submitted for the consideration of the Governor General in Council, and which, on the establishment of this Legislature, was transferred to it exactly, he believed, in the form in which it had been prepared by Mr. Mills and himself.

In that Bill it was proposed that the Government should have power to constitute separate Courts of Small Causes for the trial of the simpler classes of suits, wherever the amount of litigation promised to afford sufficient employment for the Officers appointed to preside in those Courts, and, where such was not the case, to invest any of the Judges of the existing Courts with Small Cause Jurisdiction, who might be reported by the Sudder Courts qualified in all respects to exercise the same. This provision for the gradual introduction of a system of Courts of Small Causes, as fitting instruments could be found for successfully carrying it out, met with the cordial approval, he believed he might say, of nearly all the local authorities who were consulted at the time, and who must be regarded as amongst those best qualified to give an opinion on the subject. Amongst the authorities who supported the proposition of Mr. Mills and himself, were the pre-

sent Lieutenant-Governor of Bengal and the late Lieutenant-Governor of the North-Western Provinces, Mr. Colvin. The Select Committee, however, to whom the Bill was referred for report, took a different view. They thought that the Bill did not go far enough, and they accordingly recommended, and a Committee of the whole Council adopted their recommendation, that the Section which Mr. Mills and himself had introduced should be struck out, and that a new Section should be substituted for it by which the Court of every Moonsiff in the Country without distinction would, simply by the passing of the Bill, have been constituted a Court of Small Causes for the trial of suits up to the amount of fifty Rupees.

The opinion of the public on this amendment was invited by the republication of the Bill, and as was noticed by him in the remarks which he had ventured to address to the Council in introducing the present Bill, the result of the invitation was an almost unanimous verdict in favor of the Section proposed by Mr. Mills and himself, and against the amendment adopted by the Committee of the whole Council on the recommendation of the Select Committee. He would not take up the time of the Council to-day by reading again the opinions elicited on this point. Those opinions were embodied in the printed papers which were in the hands of Honorable Members, and any Honorable Member could refer to them if he pleased.

Before the subject again came under discussion, the Code of Civil Procedure prepared in England by Her Majesty's Commissioners for the use of the Civil Courts in this country was received in Calcutta, and as the framers of that Code declared that the procedure which it prescribed would, in the simpler classes of suits, be equally expeditious and economical with that followed in the Courts of Small Causes at Calcutta, Madras, and Bombay, a plausible ground presented itself for postponing the further consideration of the Bill before the Council, and it had continued quietly to slumber in the Office of the Clerk of the Council from that time to this, nor did he think that, in so far as the particular amend-

ment of the Select Committee to which he had been referring was concerned, its repose would ever be disturbed, for he could not conceive that in the face of the strong and decided opinion, which had been so generally pronounced against the amendment in question, the Council would insist upon it as a condition of any Bill of this nature which might be passed that it should be enforced at once throughout the country. As had been remarked by him on a former occasion, he did not think that this course would consist with their duty to the public.

Had the original proposition of Mr. Mills and himself been allowed to stand, and looking to the very favorable reception which it had so generally met with, he certainly did think that it was a subject of deep regret that it had been put aside for the amendment proposed by the Select Committee on the Bill, there could scarcely be a doubt that Courts of Small Causes would long since have been established at the Sudder Stations of the different Districts and in all the principal Towns and Cities in the interior to the great benefit of the people residing in those places; but the objection mentioned by him was raised, and what had been the consequence? Why, at the end of 1858, instead of the greater part of the country being covered with Courts of Small Causes, they were engaged in debating only whether a Bill, for the establishment of Courts of that description, should be allowed to be read a second time.

The Honorable Member for Bombay in the speech which he had just delivered, had given them a sketch of the Courts which he was anxious to see established, but without further information, and indeed until the plan of the Honorable Member had assumed a more definite shape, it was difficult to form an opinion as to its merits. If, however, the Honorable Member would bring in a Bill embodying the scheme of Courts which he was disposed to prefer to the plan proposed by him (Mr. Harington), he promised to give it his best attention, and to divest himself, as far as possible, of those feelings of favoritism which every parent was supposed to entertain for his own offspring, in order that he might subject the

measure of the Honorable Member to a fair and impartial comparison with the Bill introduced by him, and should the result of that comparison be favorable to the scheme of the Honorable Member and that scheme should appear to him suited to the part of the country which he had the honor to represent, he would at once abandon his own Bill and support the Bill of the Honorable Member. But he begged the Honorable Member to bear in mind the great length of time that the subject of the future constitution of the Courts in this country had been under the consideration of the Council, and that up to the present time little, if any, progress had been made towards the solution of this very difficult question. If therefore the Honorable Member really contemplated introducing a Bill, he must be allowed to express a hope that no time would be lost in bringing it in.

It was scarcely necessary for him to add that this was not a final measure. He had never pretended that it was. It was a beginning only; but, as remarked by the Honorable and learned Judge on his left (Sir Arthur Buller), it was, he believed, a beginning in the right direction, and to show the extent to which it went, it was sufficient for him to say that it was calculated that in the North-Western Provinces at least sixty per cent of the entire civil business arising within those Provinces would be cognizable under the provisions of the present Bill should it pass into law; so that, although the Bill certainly professed to deal with little suits only, he thought that the Honorable Member of Council opposite (Mr. Ricketts) would admit that it was not a "little Bill". This brought him to the observations which had fallen from the Honorable Member of Council in respect to the large amount of business which now devolved upon the Sudder Courts, and here also the Bill brought in by him would operate most beneficially, since it proposed to cut off the right of special appeal to the Sudder Court in all cases of debt and the like, cognizable under the Bill, in which the amount or value of the property in dispute did not exceed the sum of five hundred Rupees. In every such case,

Mr. Harington

under the present system, however trifling in amount, the parties might prefer a special appeal to the Sudder Court, and the relief therefore which the Bill would afford to that Court would be very large.

The Honorable and learned Member of Council on his left (Mr. Peacock) had fully answered the objections made by the Honorable Member for Bombay to the Code of Civil Procedure which had recently been settled by a Committee of the whole Council, and, as regarded that Code, he would merely repeat what he had formerly said that, although, no doubt, some of its provisions were not suited to cases of the simple character to which the present Bill was intended to apply, he still thought that the Code contained sufficiently simple and summary rules for the trial and determination of the simplest classes of suits.

The Honorable Member for Bombay considered that the Bill left it uncertain who were to be appointed to preside in the Courts which it was proposed to constitute, and whether the Judges were to be Europeans or Natives, and he also seemed to think that there would be some difficulty in finding fitting men for the appointment. He (Mr. Harington) did not anticipate that the difficulty noticed by the Honorable Member for Bombay could arise; he had no doubt that, if adequate salaries were given, there would be no want of qualified candidates from amongst whom suitable selections might be made. He hoped to see some of the appointments filled by English Barristers, and with more liberal salaries, he thought that after a little time it would be found that better educated and altogether a superior class of natives would be induced to join the Judicial branch of the public service. But if it was really the case that competent Judges were not obtainable for the Courts which he wished to see established, notwithstanding that the Government might be willing to pay them liberally, all that he could say was that it was useless their attempting to reform the subordinate Civil Courts. He had certainly no intention of excluding natives from sitting as Judges in the Courts on which the task

of carrying out the provisions of the Bill would devolve. This, he thought, was clear from the second Section, which gave the Government power to invest any of the existing Courts with Small Cause jurisdiction, and he need not tell the Honorable Member for Bombay that a very large proportion of the Judges presiding in those Courts were Natives. With regard to the reconstitution generally of the Courts in this country not established by Royal Charter, with a view to their improvement, he might observe that the great difficulty with which they had to contend arose out of the present state of the public finances, which it was feared would prove a serious obstacle in the way of the adoption of any scheme which they might consider themselves justified in recommending. The Honorable the Lieutenant-Governor of Bengal had proposed a plan of Courts which had been generally approved by the Select Committee on the Civil Procedure Bill; but it was calculated that to carry it out effectually it would cost ten lakhs of Rupees at least over and above the existing judicial charges of the Presidency of Bengal alone, and it seemed almost hopeless to expect that the Government would assent at the present time to this additional expenditure in a single branch of the public service.

He believed that he had now noticed all that particularly called for remark in what had fallen from the Honorable Member for Bombay, and it only remained for him to press his motion for the second reading of the Bill.

RYOTWAR ARREARS (MADRAS PRESIDENCY).

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "for the better recovery of arrears of Revenue under Ryotwar Settlements in the Madras Presidency;" 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 1 provided for the repeal of Act XXIII of 1856.

MR. CURRIE said that Act XXIII contained a provision for indemnity for previous acts. In repealing that Act, it would be well to save the indemnity. He therefore moved the addition of the following words :—

"except so far as relates to indemnity for any thing done before the passing of that Act."

The motion was carried, and the Section then passed.

Section II provided as follows :—

"Whenever the Revenue or rent of any such lands is withheld beyond the day on which it falls due according to the Kistbandy or other engagement, or where no particular day is fixed, then beyond the time when such Revenue or rent becomes payable agreeably to local usage, the Collector shall have authority to proceed for the recovery of such arrears by the distress and the sale of the moveable property or the sale of the immoveable property of the defaulter whereover found."

MR. RICKETTS said, he wished to add a Proviso to this Section to the following purport—

"Provided that standing crops, bullocks necessary to the cultivation of a tenant's holding, ploughs, and implements of husbandry, and the tools of artisans shall not be subject to distraint or sale."

The existing laws excepted all the articles above enumerated, except standing crops, from liability to distraint or sale. By Section IV Regulation XXVIII. 1802 it was enacted that—

"The ploughs and implements of husbandry, the cattle actually trained to the plough, and the seed-grain of under-farmers, tenants, or ryots, shall not be distrained for arrears of rent or revenue, so long as other property may be forthcoming equal to the discharge of such arrears; distrainers deviating from this rule shall be punished by an award, to the party aggrieved, of damages adequate to the injury sustained, with costs of suit."

The same provision was contained in Section IV Regulation XVII. 1798, as modified by Section XIV Regulation V. 1812 of the Bengal Code; and in Regulation XVII 1827 of the Bombay Code. Unless therefore good reason was shown, it would be well to make a similar exception in this Bill. It could not be good for Government to be concerned in cutting, carrying, reaping, and storing crops. Enquiry would show the expenses attending such proceedings to be a great objection. In a Bill relating to the recovery of Government Revenue, he could not think it becoming to give powers to sell the implements of husbandry and tools of

artisans when they were withheld from others.

MR. FORBES said, he was sorry he could not agree to the proposed amendment. The old laws provided for the sale of the crop after it had been reaped and gathered, and he could not see any reason for saying that the Collector should not sell a standing crop if he could reap and thresh it and then sell the out-turn. It must be remembered also that the present Bill enabled the Collector to sell the land of a defaulter, and if necessary to imprison him, and it was not clear of what advantage it would be to a man to be left in possession of his bullock and ploughs when he had no land to cultivate. Although the Bill empowered a Collector to sell the bullocks of a defaulter, there was nothing in it which would oblige him to do so if, all things considered, he determined that it would be inexpedient to do so. He (Mr. Forbes) hoped that this consideration would induce the Honorable Member not to press his amendment.

MR. CURRIE said that, by Section VI, standing crops could only be distrained and sold when fit for reaping and gathering. The crop was the main security for the Revenue; and he thought it would never do to except standing crops from distraint altogether, for that would be to give the defaulter the opportunity of making away with them.

The motion was put and negatived, and the Section then passed.

Sections III and IV were passed as they stood.

Section V provided for the withdrawal of distress on tender of arrear and expenses "in the presence of two credible witnesses."

MR. RICKETTS moved that the words above quoted be omitted.

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

Sections VI to XIV were passed as they stood.

Section XV was passed after verbal amendments.

Section XVI was passed as it stood.

Section XVII was passed after a slight amendment.

Sections XVIII to XXIII were passed as they stood.

Section XXIV provided for the arrest of the defaulter where arrears could not be liquidated by distress.

MR. RICKETTS said, he had a few words to add to this Section. In discussing the Code of Civil Procedure, the Council had lately decided that persons should not be imprisoned for long terms for small sums. Adopting this principle he would move the addition here of the following words :—

"But no person shall be imprisoned on account of an arrear of revenue for a longer period than two years, or for a longer period than six months if the arrear does not exceed five hundred Rupees, or for a longer period than three months if the arrear does not exceed fifty Rupees.

MR. FORBES explained that this Section provided only for cases where the debtor had been guilty of wilful concealment, or of some fraudulent transaction. Practically speaking, it was a power which would hardly ever be exercised. There was this difference between the part of the Civil Procedure Code to which the Honorable Member had referred, and the present Section. The Section of the Code of Civil Procedure provided for the case of a man who could pay his debt but could not, while this Section was to refer to those who could pay and would not.

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

Section XXV was passed after a slight amendment.

Sections XXVI and XXVII were severally passed as they stood.

Section XXVIII was passed after a slight amendment.

Sections XXIX to XXXI, and the Preamble and Title, were severally passed as they stood.

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

SALES OF LAND FOR ARREARS OF REVENUE (BENGAL).

MR. GRANT moved that Mr. Ricketts be added to the Select Committee on the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency."

Agreed to.

SMALL CAUSE COURTS (MOFUSSIL).

MR. HAKINGTON moved that 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" be referred to a Select Committee, consisting of Mr. Peacock, Mr. LeGeyt, Mr. Currie, Mr. Forbes, and the Mover.

Agreed to.

NOTICES OF MOTION.

MR. CURRIE gave notice that he would, on Saturday next, move the second reading of the Bill "to amend the law for the trial of Officers of the Bengal Pilot Service accused of breach of duty."

Also the third reading of the Bill "for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal."

And for a Committee of the whole Council on the Bill "for the amendment of the law relating to Merchant Seamen."

IMPRESSMENT OF CARRIAGE AND SUPPLIES FOR TROOPS (BENGAL).

MR. LEGEYT moved that a communication, received by him from the Bombay Government, be laid upon the table and referred to the Select Committee on the Bill "to amend the law regarding the provision of Carriage and Supplies for Troops and Travellers, and to punish unlawful impressment."

OATHS AND AFFIRMATIONS.

MR. CURRIE moved that the draft of the letter to the Government of India and the local Governments on the subject of Judicial oaths and affirmations (which was circulated by the Clerk for approval) be adopted.

SIR JAMES OUTRAM moved that the following words be inserted after

the word "persons" in the 1st paragraph of the letter:—

"European or Native, selected for their knowledge and experience, without reference to class or position, and whether Government employees or not."

Agreed to.

SIR JAMES OUTRAM moved that the following question be inserted in the letter, namely:—

"Is it desirable that false testimony by witnesses after simple affirmation or warning should be liable to the same penalties as now assigned to perjury under oath?"

After some conversation, the motion was by leave withdrawn.

MR. LEGEYT moved that the following question be inserted in the letter, namely:—

"Is it desirable that every Court before which a witness is judicially examined should have the power of inflicting summary punishment for wilful false testimony?"

"Is it desirable, in the event of summary punishment being sanctioned for false testimony, that the present penalties for perjury should be restricted to fine for lesser, and to a moderate imprisonment and fine for more serious cases?"

"Is it desirable that there should be a right of appeal against such convictions, or would it be preferable to provide that all sentences should be subject to the confirmation of the next Superior Court?"

MR. CURRIE said, these questions were not directly connected with the questions upon which the Council had determined to ask for information, and they had not been brought under the consideration of the Council. He felt some difficulty, without further consideration, in expressing any opinion on them, but his immediate impression was that it would be very inadvisable to give to every Court the power of punishing summarily any witness who, it might think, was giving false testimony. The subject, however, was altogether distinct from that before the Council, and he thought that it should not be mixed up with it.

THE VICE-PRESIDENT agreed, and said that the questions had reference more properly to the Code of Criminal Procedure.

The motion was by leave withdrawn, and the letter, as amended on Sir James Outram's motion, adopted.

The Council adjourned.

Saturday, December 4th, 1858.

PRESENT.

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

Hon. J. P. Grant.
Hon. Lieut.-Genl. Sir
J. Outram.
Hon. H. Ricketts.
Hon. B. Peacock.
P. W. LeGeyt, Esq.

E. Currie, Esq.
Hon. Sir A. W. Buller.
H. B. Harington,
Esq.
and
H. Forbes, Esq.

PILOT COURTS (BENGAL)

MR. CURRIE moved the second reading of the Bill "to amend the law for the trial of Officers of the Bengal Pilot Service for breach of duty."

THE VICE-PRESIDENT said, he must for himself say that, although he had no desire to interfere with the second reading, he did not think the Bill provided the best tribunal for the trial of Pilots. The original constitution of the Court was based on the principle of composition of forces. Certain Merchants were to be Members of the Court, because, as Merchants, they were interested in shipping and in the safe navigation of the river and port. Certain Pilots were to be Members of the Court, because, as Pilots, they were interested in seeing that no member of the service suffered injustice. Certain Ship Captains, both because they were interested in seeing that no ships, through negligence, were run ashore, and also because they might be supposed to bring to the enquiry that professional knowledge which was so necessary. The Honorable Member for Bengal now proposed to leave out the Pilots, to which he (the Vice-President) had no great objection, if they were found to have too great a bias; and he proposed to retain two Merchants and one Captain. He thought there was no great use in retaining so much of the mercantile element. As far as his experience of