INDIAN LEG. COUNCIL DEBATES

Vol. 7

1 June - 16 Nov.

1861

the Bill should be re-published before it was read a third time. He proposed, therefore, after the Bill passed through a Committee of the whole Council, to move that it be re-published for six weeks.

Agreed to.

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

MR. FORBES then moved that the Bill be re-published for a period of six weeks.

Agreed to.

PARSEES.

SIR BARTLE FRERE moved that the Report of the Select Committee on the Petition from the Parsees of Bombay with the draft of a Code of Laws adapted to the Parsee Community, be adopted.

Agreed to.

The Council adjourned.

Saturday, August 17, 1861.

PRESENT:

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

Hon'ble Sir H. B. E. Frere,	C. J. Erskine, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	Hon'ble Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	W. S. Seton-Karr,
H. Forbes, Esq.,	Esq.

BRANCH RAILWAYS, &c.

THE CLERK presented to the Council a Petition from the Landholders and Commercial Association of British India, concerning the Bill "to provide for the construction, by Companies and by private persons, of Branch Railways, Iron Tram-roads, Common Roads, or Canals, as Feeders to public Railways."

MR. SETON-KARR moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

FLOGGING.

THE CLERK presented a Petition from the British Indian Association against the passing of the Bill "to provide for the punishment of flogging in certain cases."

MR. HARINGTON moved that the Petition be read at the table when the Council resolved itself into a Committee on the Bill.

THE VICE-PRESIDENT said, the Bill for the amendment of the Articles of War was set down in the Orders of the Day before the Bill for the punishment of flogging; and as the former was a long Bill, it would probably occupy the Council the whole day. He would suggest, therefore, that, instead of moving that the Petition be read when the Council went into Committee on the latter Bill, the better plan would be to move that it be printed.

MR. HARINGTON said that, in the event of the Bill for the punishment of flogging not coming on today, he would move at the close of the sitting that the Petition be printed.

The Motion to read the Petition was then put and carried.

CRIMINAL PROCEDURE.

THE CLERK also presented a Petition from the British Indian Association, praying for a republication of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

MR. HARINGTON said, the republication of the Bill would cause great delay in its passing. They had certainly made many changes in the Bill as it passed through Committee, but they were chiefly verbal, and he did not know that any of them touched the more important principles in the Code. It was intended that the Code should take effect from the 1st January next, on which date the Indian Penal Code would come into operation, and there were only four months left for the translation of the Code and its publication and circulation.

THE VICE-PRESIDENT thought that it would be better to postpone

expressing any opinion on the subject, as to whether the Code should be republished or not, until the Bill passed through Committee of the whole Council. In the meantime, he begged to move that the Petition be printed.

Agreed to.

RECOVERY OF RENTS (BENGAL).

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)."

MERCHANT SEAMEN.

MR. FORBES presented the Report of the Select Committee on the Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen.)"

LIMITATION OF SUITS.

THE VICE-PRESIDENT moved the first reading of a Bill "to amend Act XIV of 1859 (to provide for the limitation of suits)." He said it was not his intention, in doing so, to occupy the time of the Council with many remarks. The matter had been fully before the Council very recently, when the question arose as to whether the time for the Act coming into operation should be extended or not. The time for the commencement of the Act had been extended up to the 1st of January next. Since then Petitions had been presented to the Council, praying for an extension of the period of limitation concerning retail debts, and he himself had had the honor of being attended by several gentlemen belonging to the Trades Association of Calcutta, by whom he had been assured that the introduction of the law, as it now stood, would not only be a matter of inconvenience, but also a matter of serious loss to them. The Council were aware that, by Act XIV of 1859, if it should come into operation on the 1st of January without any amendment, the period of limitation for retail debts would be three years instead of six years in the Presidency Towns, and instead of twelve years in the Mofussil; and what the gentlemen who had waited on him, and the Petitioners, wanted was simply that the limitation should be extended, and that they should be allowed in this country, as in England, six years for the commencement of actions on account of retail Bills. They pointed out that many of their debtors were scattered over various parts of India, to whom it would be impossible for them to write so as to receive their answers in sufficient time before the 1st of January next, inasmuch as the addresses of many of them were unknown. The only course before them, therefore, would be to issue writs against such of their debtors as were within the limits of or otherwise subject to the jurisdiction of the Supreme Court, but considerable expense would necessarily be incurred in commencing these actions. At the same time they said that it was a matter wholly against their wish to commence actions against their constituents. Again, if they could not sue any of their debtors in the Supreme Court, they would have to follow them into the Mofussil Courts, a measure which would involve considerable inconvenience. On the whole it appeared to him that there was no great advantage in reducing the limitation from six to three years. When the Act was under discussion, he saw no objection to the reduction of the period of limitation to three years, and therefore he voted for the alteration from six years to three years. But when parties came forward and said that the alteration to three years would be productive of great inconvenience and loss to persons carrying on retail business, he thought it would be sufficient to reduce the period of limitation in the Mofussil from twelve years to that now existing in England, namely six years; and considering that the difficulties of communicating with and ascertaining the residence of parties in the Mofussil were much greater in India than in England, he proposed to fix the period generally at six years. It had been said that, by

such an amendment, the Council would be encouraging persons to give long credits. But that, he apprehended, was not the object of a law of limitation. The object was to prevent suits being brought after a very long period had elapsed when the witnesses to the transaction might not be forthcoming, or when the receipts or vouchers might be lost. This Bill had nothing to do with the question, whether tradesmen should give extensive credit or not. That was a question to be decided by the parties themselves. The Bill, as it stood, would not prevent a person from giving two or three or six years' credit, for the six years would not commence in the case of credit until the expiration of the period for which credit was given. It appeared to him therefore, on the whole, that it was quite reasonable to restore the period of limitation with regard to retail debts to six years in the Presidency Towns, and to reduce the period from twelve to six years in the Mofussil.

The Bill was read a first time.

CATTLE TRESPASS.

MR. HARINGTON moved that the Bill "to amend Act III of 1857 (relating to trespasses by cattle)" be read a third time and passed.

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

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. HARINGTON moved the omission of Section 36*a*, and the substitution of the following Sections :—

"1. If upon the trial of any person charged with the offence of Criminal Breach of Trust under Section 405 of the Indian Penal Code, or of Criminal Breach of Trust as a carrier wharfinger or warehouse-keeper under Section 407 of the said Code, it shall be proved that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 378, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under the said Section 378.

2. If upon the trial of any person charged with the offence of Criminal Breach of Trust as a clerk or servant under Section 408 of the Indian Penal Code, it shall be proved that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, or the offence of theft as a clerk or servant of property in possession of his master under Section 381 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 378 or Section 381 as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

3. If upon the trial of any person charged with the offence of theft under the said Section 378 of the Indian Penal Code, or the offence of theft in a building tent or vessel under Section 380 of the said Code, it shall be proved that he took the property in question in any such manner as to amount to the offence of Criminal misappropriation of property under Section 403 of the said Code, or the offence of Criminal Breach of Trust under Section 405 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by a Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 403 or Section 405, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

4. If upon the trial of any person charged with the offence of theft as a clerk or servant of property in the possession of his master, under Section 381 of the Indian Penal Code, it shall be proved that he took the property in question in any such manner as to amount to the offence of Criminal misappropriation of property under Section 403 of the said Code, or the offence of Criminal misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of such Criminal misappropriation under the said Section 404, the offender being at the time of the person's decease employed by him as a clerk or servant, or the offence of Criminal Breach of Trust under Section 405 of the said Code, or the offence of Criminal Breach of Trust as a clerk or servant under Section 408 of the said

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Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the offence under the said Section 403, Section 404, Section 405, or Section 408, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

5. No person charged and tried for an offence under any Section of the Indian Penal Code in the last four Sections of this Act mentioned, and found guilty of another offence under the provisions of any other of the said Sections of the Indian Penal Code, shall be liable to be afterwards prosecuted upon the same facts under the Section under which he was charged, or under the Section under which he was found guilty."

Agreed to.

A verbal amendment was made in the definition of "Court of Session" in Section 1, on the Motion of Mr. Erskine.

The word "Constable" was inserted in Sections 97 and 131, on the Motion of Mr. Harington.

MR. HARINGTON said, before moving that the amendments in Chapter X, which he had read to the Committee on Saturday last, should now be taken into consideration and adopted, he must ask the indulgence of the Committee while he made a few remarks in explanation and in support of those amendments. He might preface what he had to say by repeating what he had stated on a former occasion, namely, that he believed they were all agreed that, after the discussion which had recently taken place on the subject of Chapter X, it was impossible that that Chapter could be allowed to remain as it was now framed. A reconsideration and revision of the Chapter had become a necessity and a duty which could not be avoided. He had hoped that the amendments prepared by him, before they were offered to the Committee of the whole Council for adoption, would have been considered and reported upon by a Select Committee, and that the Select Committee would have had the benefit of the advice and experience of the Honorable and learned Vice-President, and, perhaps, of the Honorable and learned Judge opposite (Sir Charles Jackson). Questions connected with the exercise of jurisdiction by the Mofussil Courts over European British subjects had again arisen very unexpectedly on the proposed introduction of a Section, the sole object of which, as explained by the Honorable Member for Bombay on Saturday last, was to give an appeal in cases falling under Chapter X; and when such questions were discussed, he thought that, for obvious reasons, it was most desirable that one or both of the legal Members of the Council should be present. Objections, the reasonableness of which he readily admitted, were taken to the Motion made by him for the appointment of a Select Committee to consider and report upon the Chapter in question, which led him to withdraw the Motion and to give notice of the amendments which, as already mentioned, were read to the Committee at their last meeting. He would now address himself to those amendments. In preparing these amendments, it had been necessary for him to keep carefully in view the provisions of the Indian Penal Code, which were referred to in Chapter X of the Procedure Code. These parts of the two Codes must, he thought, be taken and considered together. They formed, in fact, parts of a general Criminal law. There was a mutual relation between them, and the one part had a most important bearing upon the other. Up to the present time the heaviest punishment which could be awarded by any Court, from the Sudder Court downwards, for contempt of Court was, when the offence amounted only to contempt, a fine of 200 Rupees commutable, if not paid, to imprisonment in the Civil Jail for a period not exceeding one month. It mattered not against what Court the offence was committed. Whether it was committed against a Judge of the Sudder Court, or a Zillah Judge, or a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, or whether it was committed against a Magistrate, Joint Magistrate, Deputy Magistrate, or Assistant Magistrate, the law was the same. The punishment which he had mentioned could not be

exceeded. They had thus, to quote the words of the learned Advocate General of Bengal in a paper which had recently been circulated and which well repaid perusal, a criterion afforded them of the extent of fine and imprisonment which as a punishment for contempt of Court the Legislature of former days considered reasonable. At the same time it must be borne in mind that although the maximum punishment which under the law now in operation could be awarded for contempt of Court, might appear small, and in the case of the Higher Courts quite inadequate, the same amount of punishment could be awarded by the very lowest class of Courts, Civil and Criminal, whoever presided in them. Nor was this all. Every person, whatever might have been his place of birth, or however he might be descended, who was guilty of contempt of Court, although he might not be amenable to the general jurisdiction of the Court against which the offence was committed, was amenable to the jurisdiction of such Court in respect of this particular offence, and could be punished by such Court to the full extent provided by law. Section I Act XXX of 1841 said,—

"All persons whatsoever, whether generally amenable to the Courts of the East India Company or otherwise, using menacing gestures or expressions, or otherwise obstructing justice in the presence of any Zillah or City Magistrate, Joint Magistrate, or other officer under a Magistrate empowered to try Criminal cases, or any superior or inferior Court, Civil or Criminal, of the East India Company," &c.

There could, he thought, be no doubt that the framers of Act XXX of 1841 fully recognised the soundness of the principles upon which all legislation of the character of that Act had hitherto been based, whether in this country, at home, or in America, and were fully convinced of the necessity of maintaining the long-established and, as he believed, almost universal practice under which all Courts, Civil and Criminal, were empowered, on summary conviction, to punish contempts committed against themselves with fine and imprisonment, but they would appear to have felt that in framing a general law for this country—that was, a law which, by being made applicable alike to all Courts and all classes of persons, should maintain the principles and practice which he had mentioned—they must make the maximum amount of punishment comparatively light. If the Committee would permit him, he would read what was said by the learned Advocate General of Bengal in the paper to which he had already referred in support of the principles which had hitherto governed all legislation on the subject under discussion. Adverting to the power of summary conviction and punishment given to all Courts in the case of contempts committed against themselves, Mr. Ritchie said—

"Such a power is, according to the principles of English law, inherent to every Court of Record, whether the person guilty of the contempt be subject to its general jurisdiction or not; and to constitute a Court of Record, it is only necessary that the Court should be one having power to award imprisonment. These principles do not rest upon any technical rule peculiar to English law, but upon the necessity of arming all Courts of sufficient importance to have power of imprisonment entrusted to them with adequate powers to protect themselves against contempt and obstruction of their proceedings. And there seems to be no valid reason why they should not apply to the Courts of this country where no Regulation or Act prescribes a different course as to the Queen's Court at home."

He trusted he should be able presently to show that the views of the learned Advocate General of Bengal were in accordance with the views of many eminent Lawyers and Jurists in England. But he must first ask the attention of the Council to the Section of the Indian Penal Code which related to the offence of contempt of Court and provided a punishment for that offence. That Section, as the Code now stood, was Section 228, and a reference to it would at once show the Committee how greatly the framers of the Indian Penal Code differed from the framers of Act XXX of 1841, as to what should be regarded as a reasonable extent of fine and imprisonment

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for contempt of Court. Section 228 of the Indian Penal Code fixed, as a maximum punishment, six months' simple imprisonment and a fine of 1,000 Rupees. As the Code was originally drawn, the imprisonment might be of either description, that was, either with or without labor. He apprehended that they were not now required to go into the question as to whether the framers of Act XXX of 1841, or the framers of the Indian Penal Code, were right. They were engaged in drawing up a Code of Procedure to carry out the provisions of the Indian Penal Code, and what they had to look to was, not any former law, but that Code, and to frame their Code in reference to its provisions. He had no hesitation in expressing his full conviction, that although the framers of the Indian Penal Code had, as he had shown, so greatly enlarged the punishment for the offence of contempt of Court, they never contemplated any consequent alteration in the jurisdiction now exercised by any Court over the offence, or imagined that the increase of punishment would interfere in any way with the power at present possessed by all Civil and Criminal Courts of summarily punishing, to the full extent allowed by any law for the time being in force, contempts committed against themselves, such power being declared by the learned Advocate General of Bengal to be inherent in all Courts and to be necessary for their protection. The framers of the Indian Penal Code knew perfectly well both the existing law and practice in respect to the trial and punishment of contempts of Court. They were well aware of the fact that under the existing law and practice the offence was invariably tried and punished by the Court against which it was committed, and that no other tribunal was competent to take cognizance of it; and had they thought that by reason of their having increased the maximum amount of punishment the existing practice should be altered, and that a new jurisdiction should, as it were, be created to try the offence when it seemed to call for a heavier punishment than the law now in operation prescribed, he felt assured that a remark or suggestion to that effect would have found a place in the full and able notes appended to the Code. But those notes contained no such remark or suggestion though the Code of Procedure to carry out the Penal Code, and how, as regarded certain points, that Code should be framed, was alluded to in them more than once. From this and other circumstances, he was led to infer that in so far as the trial of the offence was concerned, the framers of the Indian Penal Code did not consider that the increase in the punishment proposed by them would render any alteration in the existing practice necessary; but that, on the contrary, they intended that that practice should be maintained. The same inference would appear to have been drawn by the Royal Commissioners who prepared the Codes of Criminal and Civil Procedure. This, he thought, was clear from the manner in which they had framed the Chapters in both Codes relating to the offence in question and other offences of a similar character. The same circumstance showed also unmistakeably what their own views were on the general question which he was now discussing. He ventured to think that the remarks just made applied equally to the Honorable and learned Vice-President who introduced into this Council the Bills in which the Codes prepared by the Royal Commissioners were embodied; and here he wished to call pointed attention to the fact that two of the framers of the Penal Code, namely Mr. Macleod and Mr. Millett, were Members of the Commission appointed by Her Majesty to prepare the Codes of Civil and Criminal Procedure, the latter of which was intended to carry out the Penal Code. In a Code of Criminal Procedure prepared by Mr. Cameron and Mr. Daniel Eliott, who were for some time Members of the Law Commission, the following Sections relating to cases falling within Chapter X were to be found. [Mr. Harington here read the Sections which proposed that the Courts against which the offence was committed, should have power to award

the punishment authorized by the Penal Code.] These Sections to which his attention had been called by the Honorable Member for Bombay, though they apparently militated against his own views—and his obligations to the Honorable Member for pointing them out to him were therefore the greater—sufficiently indicated what were the views of Mr. Cameron and Mr. Eliott. The Royal Commissioners, concurring generally with Messrs. Cameron and Eliott, provided in Section 208 of the Civil Procedure Code, and in Section 108 of the Criminal Procedure Code, that when any such offence as was described in Clause 197 of the Indian Penal Code was committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate or of any Officer vested with the powers of a Magistrate acting as such in any stage of a judicial proceeding, it should be competent to such Judge, Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said Clause. In a foot note, it was stated "*the offence is that of insulting or interrupting a Court of Justice.*" Both Sections were followed by Sections limiting the powers of punishment of Principal Sudder Ameens and Moonsiffs on the Civil side, to the powers conferred on those Officers respectively, as Judges of Subordinate Criminal Courts, and of Magistrates and Subordinate Criminal Courts to their ordinary jurisdiction. In the case of the Principal Sudder Ameens, it should be remembered that the powers to which those Officers were thus restricted, extended to six months' imprisonment in the Criminal Jail with labor and fine up to 200 Rupees. The provisions of the English Codes were copied word for word into the Bills introduced into this Council; but though debates took place on the Motion for the second reading of both Bills, no objection was made to those provisions by the then Legal Members of the Council or by any other Member. In the first amendment prepared by him, he had not deviated from the principles which had been acted upon in framing the Codes of Civil and Criminal Procedure prepared in England, and the Bills embodying those Codes as they were introduced into this Council, though he was willing to limit even farther than the Royal Commissioners had done, the powers of punishment to be exercised by the Subordinate Courts, which he proposed should be restricted to what they were at present, and to allow the higher Courts alone—that was, the Courts superior to the Courts of the Principal Sudder Ameens—to award the more severe penalties provided by the Indian Penal Code, but this did not affect the principles involved. These he would leave untouched. He would ask, were those principles sound, and if so, should they not be maintained? The names signed to the Codes of Procedure which were prepared in England by a Royal Commission appointed for the purpose furnished, he thought, a conclusive answer in the affirmative to these questions. There they had the names of Sir John Romilly, Master or Keeper of the Rolls of the High Court of Chancery, of Sir John Jervis, Chief Justice of the Court of Common Pleas, of Sir Edward Ryan, for many years Chief Justice of Calcutta, of Charles Hay Cameron and Robert Lowe, Esquires, Barristers-at-law, and of three eminent Indian Civilians. To these names he might add the name of the Honorable and learned Vice-President. In the face of this array of legal authorities and names, he could not think that any Honorable Member would question the soundness of the principles upon which his first amendment was framed, and he ventured to hope that, on reflection, no Honorable Member would endeavor to disturb the long established practice which that amendment proposed to maintain. Supported by these authorities and names, he certainly thought he might fairly expect a unanimous vote in favor of his first and second amendments. Honorable Members would not fail to observe that the questions referred to in the early part of these remarks did not properly arise upon those amendments. Under them

there could be no imprisonment with labor or in a Criminal Jail. The Subordinate Courts, Civil and Criminal, were restricted to the powers of punishment for contempt of Court, which they now possessed, and which they had exercised in respect to all classes, Europeans and Natives, not only for very many years, but admittedly in such a manner as to afford cause of complaint to no one, and the imprisonment which might be awarded by the higher Courts was to be in the Civil Jail. This was what had been proposed by the Honorable and learned Vice-President in the discussion on Chapter X of the Code already referred to. A notice of amendment on his first amendment had been given; but he hoped that the Honorable Member for Bombay who had given that notice would not press his amendment. Independently of the serious complications which he foresaw must ensue if that amendment were adopted, it was open to an objection which he would thus illustrate. There was every reason to believe that in a very short time the Honorable and learned Vice-President would be Chief Judge of the High Court at Calcutta, and that the Honorable and learned Judge opposite (Sir Charles Jackson) would be a Judge of the same Court. He might be invited to take the post of Chief Judge of the High Court at Agra. He would suppose those learned Judges or either of them to be sitting in Court and to be grossly insulted by a disappointed suitor or to be interrupted by some outrageous conduct on the part of some one present in Court, or that a witness refused to be sworn before giving his evidence, or to produce a document, or to answer a particular question, or to sign his desposition. For any of these offences. the amendment of the Honorable Member for Bombay would permit the Honorable and learned Judges to fine the offender to the extent of 200 Rupees, and, in default of payment, to send him to Jail for a period not exceeding one month. To this extent of punishment the amendment was willing that the Honorable and learned Judges should be permitted to go, but this was the limit of the trust which it was thought could with safety or propriety be reposed in them. If the Honorable and learned Judges, having Sections 175, 178, 179, 180, and 228 of the Penal Code before them, considered that the person who had been guilty of any of the offences just mentioned, deserved a more severe punishment than the amendment allowed them to give; if they thought that the claims of justice would not be satisfied with that punishment, and that the offender should be punished perhaps to the extent of six months' imprisonment and a fine of 1,000 Rupees, or at any rate with some imprisonment or with some larger fine than 200 Rupees, the amendment would not entrust the Honorable and learned Judges with the power of awarding the higher penalty. They must send the offender to some Magistrate or Joint Magistrate who must hold a trial and take evidence. Perhaps it would be necessary for the Honorable and learned Judges themselves to appear as witnesses in the case. In cases of contempt their evidence might be the only evidence forthcoming to establish the fact which constituted the contempt, and it was a rule of law that the best evidence must be produced. The Magistrate or Joint Magistrate having completed the trial, might come to the conclusion that no contempt was proved, and that therefore the accused should be discharged, or that the contempt committed was not of a very aggravated character, and would be sufficiently punished with a small fine, or that the accused person had sufficiently excused his omission to do any of the things required of him, and should therefore be discharged, or that the case was not one calling for a more severe punishment than the Honorable and learned Judges might themselves have given in the exercise of the discretionary power proposed by the amendment to be confided to them. He (Mr. Harington) took leave to doubt, whether this would be a wise or judicious mode of dealing with such cases; he doubted whether such a proceeding, as he had described, was

calculated to support the dignity of the High Court, or to protect its Judges in the exercise of their functions. He did not think that this mode of dealing with such cases would satisfy the public.

MR. ERSKINE here interposed and observed that the Bill which they were considering applied only to Criminal Courts not established by Royal Charter.

MR. HARINGTON said, his remarks applied equally to the Judges of the Sudder Court which occupied the same position in the Mofussil which the Supreme Court did in Calcutta. It appeared to him that in the cases which he had put, the Honorable and learned Judges or the Judges of the Sudder Court could best decide, whether the offence had been committed, what was its character, and what was the proper punishment. He thought that the Honorable and learned Judges or the Sudder Judges would be better Judges on these points than any Magistrate or Joint Magistrate in the country, or than all the Magistrates and Joint Magistrates in the country put together. Entertaining this view, it seemed to him that the matter should be left entirely in the hands of the Judges, and that no other authority should be allowed to interfere. This was what was proposed in the first of his amendments.

In the discussion which had recently taken place on Chapter X, the Honorable and learned Vice-President had classed contempts of Court, or what the Royal Commissioners called the offence of insulting or interrupting a Court, with the offences defined in the other Sections of the Penal Code which were enumerated in his first amendment. He thought that this classification was quite right. Like contempt of Court, these offences were committed in the immediate presence of the Court; their conviction did not rest on extraneous evidence; they were committed directly against the Court which was in a position immediately to deal with the offender, and as the imprisonment was to be simple, that was, without labor, it could properly be undergone in the Civil Jail. He observed that the Honorable Member for Bombay proposed to follow the same classification in his amendments, but in framing those amendments, the Honorable Member seemed to have overlooked the existing law of his Presidency as regarded some of the offences to which he (Mr. Harington) was now referring. He must call the attention of the Honorable Member for Bombay to Sections 49 and 50 Regulation IV of 1827 of the Bombay Code, and ask him on what ground he proposed to deprive the Zillah Judges of his Presidency of the powers conferred upon them by those Sections? Was it that they had abused these powers and could no longer be entrusted with them? Had the Government of Bombay asked for this change? Did it think that the Zillah Judges of the Bombay Presidency should no longer be permitted to possess these powers? Might he be allowed to put the same questions to the Honorable Member of the Government on his left (Sir Bartle Frere)? He would read the Sections to which he was referring. [Mr. Harington here read the Sections which allowed the Zillah Judges to punish the offences mentioned therein with a fine of 500 Rupees commutable, if not paid, to three months' imprisonment.] It would thus be seen that for more than thirty years the Zillah Judges of the Bombay Presidency had been empowered to punish two of the offences under consideration with fines of more than double the amount, and with imprisonment for treble the time mentioned in the first of the amendments prepared by the Honorable Member for Bombay, and to which it was proposed to restrict the Judges of the High or Sudder Court and the Zillah Judges throughout the country. Was not this, he would ask, retrogressive legislation? In settling questions such as those they were now discussing, it appeared to him that, if there was one thing more than another which they ought carefully to avoid, it was retrogression. He made this remark, in connection with these questions, in the interest of the European no less than

of the native community. He had said before, and he repeated, that he would not deprive our European British subjects in India of a single privilege which they now possessed in connection with the administration of Criminal justice. Good policy no less than justice to our European British subjects seemed alike to require the retention of those privileges, until their place could be supplied by what should satisfy all reasonable men. He believed that the natives generally did not begrudge the enjoyment of these privileges by their European fellow countrymen. But looking at the question entirely from a European point of view, he thought it most unwise, inexpedient, and injudicious to attempt to extend a system which had been severely condemned and which it was generally felt by all moderate men, must soon be greatly modified, in the manner proposed in the first of the amendments of which the Honorable Member for Bombay had given notice. If that amendment were carried, he felt assured that it would only precipitate matters and hasten on what all reflecting men, all men who looked forward, must see was looming in the distance, without producing intermediately benefit to any one. In the Petition presented and read to the Council on Saturday last, the Petitioners said—

"Your Petitioners however would humbly submit that the frequent attempts which have been made of late to subject Europeans to the Mofussil Criminal Courts and native Magistrates, and the support which such a proposal invariably receives whenever it is brought forward in your Honorable Council, are calculated seriously to discourage the settlement of Englishmen in the interior, and to awaken in their minds grave distrust and suspicion of the policy of Government."

If the Petitioners would compare the Code of Criminal Procedure as prepared in England and as read a first and second time in this Council with the Code as it left the hands of the Select Committee, they would see that, in so far as this Code was concerned, there was no ground whatever for the charge which they had brought against the Council in the paragraph of their Petition which he had read, and he was in a position to tell the Petitioners that the change which had been made by the Select Committee in the part of the Code to which he was referring, was the result not of any pressure from without, but of the honest convictions of the Members of the Select Committee, which he believed were shared in by a large majority of the officers of Government throughout the country. He begged to apologize to the Committee for having occupied so much of their time. He should have been content to have moved his amendments without any remarks; but the Honorable Member for Bombay had given notice of amendments on his amendments, and it seemed therefore right and proper and respectful to the Committee that he (Mr. Harington) should explain thus fully the grounds of his amendments and the principles on which he had framed them.

He had now the honor to move that the following amendments be adopted:—

"When any such offence as is described in Sections 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in any Court, Civil or Criminal, it shall be competent to such Court to cause the offender to be detained in custody, and at the rising of the Court to take cognizance of the offence, and the offender shall be liable to punishment as authorized by the said Sections. In any such case in which a Court subordinate to the Chief Civil Court of original jurisdiction in the District, or in which any Magistrate exercising powers less than those of a Magistrate, shall consider that the offender should be imprisoned, or that a fine of larger amount than 200 Rupees should be imposed upon him, such Court or Magistrate shall not pass sentence, but shall record the facts constituting the contempt with any statement the offender may make and the finding thereupon, and shall refer the case to the Court or Magistrate to which such Court or Magistrate is subordinate. The Court or Magistrate to which the case is referred shall pass such sentence or order as to such Court or Magistrate shall seem proper and which shall be according to law. When a case is referred under this Section, the offender shall be detained in custody until the decision of the Superior Court is made known, or may be admitted to bail if sufficient bail be tendered for his appearance when required. The imprisonment adjudged under this Section shall be in the Civil Jail.

When a person has been sentenced to punishment, or whose case has been referred, under the last preceding Section, for refusing or omitting to do any thing which he was required to do, it shall be competent to the Court to remit the punishment, or in case of reference to discharge the offender on the submission of the offender to the order or requisition of such Court.

When any such offence as is described in Chapter X of the Indian Penal Code, except Sections 175, 178, 179, and 180, is committed in comtempt of the lawful authority of any Court, Civil or Criminal, by a European British subject, such offence shall be cognizable only by a Magistrate who is a Justice of the Peace, and such Magistrate shall have the same powers of punishment for such offence which are vested by the Statute 53, George III. c. 155, s. 105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender on conviction in the same manner as is provided in that behalf in the said Statute. If such Magistrate shall consider the offence to require a more severe punishment than he is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature. If the Judge or Magistrate of the Court against which the offence is committed is not a Justice of the Peace, he shall send the offender to a Justice of the Peace to be dealt with under this Section."

The question was then proposed by the Chairman, that the first two of the above Sections be substituted for the first part of Chapter X.

MR. ERSKINE said that, he thought the Council must feel much indebted to the Honorable Member who had just spoken, for the clearness and the great fulness with which he had brought this whole subject once more under consideration. For his own part, and notwithstanding the unfavorable opinion expressed by the Honorable Member of an amendment which he (Mr. Erskine) had circulated, he must offer his acknowledgments to that Honorable gentleman, not merely for the interesting information which he had brought forward, but because it seemed to him that most of the conclusions to which he had been led, and which he had embodied in his Motion, were sound and satisfactory. Indeed, there was in the amendment proposed by the Honorable Member so much that had his (Mr. Erskine's) entire concurrence, that it was with much reluctance he found himself compelled to admit that, in respect to one important point, he could not go along with him. He quite concurred with the Honorable Member when he proposed that a marked distinction should be drawn between contempts committed in the immediate presence of a Court, and those committed against its authority constructively elsewhere, through its subordinate agents and processes; also when he proposed that the latter class of cases should be delegated entirely to the ordinary criminal tribunals and modes of procedure; also when he proposed that the different Courts, in dealing with the former class of cases, should have power, and should be under an obligation, to detain the alleged offender until the rising of the Court, in order that the enquiry might be conducted with due formality and deliberation; and when he proposed that a duty should be laid upon every Court to record distinctly the acts constituting the contempt, the explanations offered by the accused person, and the finding of the Court, in the form of a written proceeding; and when he proposed that the Court should have power, on the offender making submission to the Court, to order his discharge at once; and, finally, when he proposed that, in cases of contempt committed in open Court, every Court should hereafter, as heretofore, have power to punish the offender by fine not exceeding 200 Rupees. The only point, therefore, on which at present there was a difference of opinion between the Honorable Member for the North-Western Provinces and himself, was as to the manner in which a contempt committed in Court should be treated when the presiding officer might be of opinion that it would not be adequately punished by a fine of 200 Rupees. Or perhaps it would be more correct to say that, practically, the difference between them amounted only to that which he had just stated; although, when they came to consider the principles in accordance with which rules of procedure for punishing such contempts generally ought to be framed, it was apparent that their views were irreconcilably opposed. The opinion for which the Honorable

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Member contended was that contempts committed in Court should be punished by the Court against which they were committed, whenever that could be so arranged. The opinion which he (Mr. Erskine) felt himself obliged to maintain was that no such contempt should ever be punished by the Court against which the offence was committed, if that could be avoided without public inconvenience and evil consequences. He thought that no class of Courts should have any penal powers of this kind which were not proved to be indispensable for the protection of their proper authority. In support of the view that it is desirable to accord larger powers to Courts of Justice in cases of this kind, the Honorable Member for the North-Western Provinces had referred to various authorities, whose views, no doubt, were entitled to every consideration. No one there present, for instance, would be likely to regard without due respect the precedents of English Courts and the authority of English law which the Honorable Member had invoked. He might also have alluded to the useful and valuable New York Code, which on this point leant in a great measure in the same direction. In like manner it would be very ungrateful in Honorable Members of that Council not to feel a high regard for any proposals emanating from the able and learned Commissioners whose names had been mentioned by the Honorable Member, and who had framed in London the Criminal Procedure Code which was the ground-work of this Bill. Still he (Mr. Erskine) thought it was not an unbecoming or an unfair remark to make that all these authorities must have been largely affected—they could hardly say how largely—by the influence of the English system; while that portion of the English law which related to contempts, was confessedly—to use a guarded expression—not one of the strong points in the system. Indeed, whatever might be thought of the English practice in these days, there could be no doubt that the state of the English law as to contempts had often been severely criticised by very competent judges. It was a common observation, moreover, and he hoped he might refer to it without offence, that even great lawyers were very apt, from the force of habit and of circumstances, to acquiesce in many points of practice with which they had been familiar from their youth, without curiously enquiring into the first principles on which those practices rested, unless some very special occasion should arise for such enquiries. As, therefore, the question now before the Council really was an important, and at the same time a simple question of principle, he (Mr. Erskine) trusted that Honorable Members would agree with him that the appeal must be, in the first instance, to the impartial reason of each individual legislator, to his common sense, and sense of justice; and only in the second instance, to traditions and precedents of law, and to legal authorities however worthy of respect. The Honorable Mover of this amendment had next endeavoured to show that the views which he advocated were in accordance with those of the framers of the Penal Code. Now he (Mr. Erskine) had striven to obtain direct evidence of the exact intentions of the framers of that Code in this respect, but he had not been successful. He was not therefore prepared to offer a confident opinion as to what their opinions really might have been. He would not venture to assert that they had been opposed to those of the Honorable Member. But he hoped he might express his opinion that the Honorable Member had not succeeded in demonstrating that they must have been in accordance with his own. There were even some considerations which led him (Mr. Erskine) to doubt whether it could have been so. For instance, the Honorable Member had referred to the provisions of Act XXX of 1841 as strongly corroborative of his argument; but to him (Mr. Erskine) they seemed rather to tell the other way. The original Penal Code had been laid before the Supreme Government only in 1837, and by that Code sundry kinds of contempts were made punishable with much severity as criminal offences. Nevertheless,

when a law was passed only four years afterwards to give to all Courts summary powers for the punishment of contempts committed before them, the powers entrusted to those Courts generally did not extend beyond a fine of 200 Rupees. This seemed to indicate a two-fold conviction on the part of the Legislature; both, that such offences must sometimes be very severely punished; and that the power to inflict such severe punishments need not be entrusted to all Courts generally, but might in those, as in other cases, be left to the ordinary Criminal Tribunals. Again, even in the recommendations of Mr. Cameron and Mr. Eliott, of which mention had been made, there was somewhat that did not accord with the proposals of the Honorable Member. For while they proposed to entrust to the lower grades of Civil Courts only a limited power to punish for ordinary contempts, they made no special provision in connection with more serious cases for a reference by such Courts, when their own powers were exhausted, to the Superior Civil Courts, as the Honorable Member proposed to do; but they provided on the contrary that the reference in such cases should be to the ordinary Criminal Tribunals. Then, if any one referred to the Chapter on contempts in the Penal Code itself, as originally drawn, he would observe that its provisions were anything but inconsistent with the scheme of procedure which he (Mr. Erskine) would prefer. The Honorable Member for the North-Western Provinces had himself alluded to the increased severity of the punishments for contempts in the Penal Code; and he (Mr. Erskine) trusted that, in dealing with this question, no Honorable Member would forget how great a change that Code had introduced. Every contempt of Court, whether committed against a superior or a subordinate Court, and whether committed in presence of the Court or not, was made punishable by that Code—in the shape in which it was first presented to Government—as a regular criminal offence, with what the French Codes styled an infamous punishment, namely, imprisonment with hard labor. He did not affirm that this of itself was a conclusive proof that the framers of the Code had not intended that all Courts should take cognizance of such contempts. But, perhaps, it gave more support to that opinion than to any other. And, at all events, the determination to declare that all contempts were to be regarded as regular criminal offences, and were to be punishable as such, was quite in accordance with the views of the most distinguished advocate of the opinions for which he (Mr. Erskine) was contending; and would make it easier to give full practical effect to those views than it ever had been before. Neither should it be forgotten, that the distinguished person to whom he had just referred, Mr. Livingston, was one for whose judgment the framers of the Penal Code had expressed the greatest respect, and to whose labors, as they acknowledged, they were under no ordinary obligations. In the Report with which they originally submitted their Code to the Supreme Government, after referring to the valuable aid they had received from the French Codes, they observed—

> "We have derived assistance still more valuable from the Code of Louisiana prepared by the late Mr. Livingston. We are the more desirous to acknowledge our obligations to that eminent jurist because we have found ourselves under the necessity of combating his opinions on some important questions."

Now, the Honorable Member, he was sure, would admit that the present question was an important question. It was one in respect to which the Law Commissioners in their proposed penal legislation were departing from the practice which had formerly prevailed in India. It was one in respect to which Mr. Livingston had introduced a somewhat novel procedure, which he had defended with great ability and even vehemence. And yet the Law Commissioners, in their note on this Chapter, had not expressed dissent from Mr. Livingston's views, although on other occasions their dissents had been clearly expressed and justified. It might not be legitimate

—indeed it would not be legitimate—from this alone, to infer that they had adopted his views. But, at least, it could not be doubted that they must have given their attention to them, and that while they had expressed no disapproval of them, their Code was so drawn as readily to adapt itself to the requirements of his scheme. What, then, were the views of Mr. Livingston? In the Code of Crimes and Punishments prepared by him was a Chapter which referred to Offences against the Judiciary power, committed in a Court of Justice. That Chapter contained only four Sections. The 1st Section provided for obstructions by noise, and refusals to obey orders for the maintenance of decorum in Court. Misconduct of that kind was to be met in the first instance by removal; but, if persisted in, was declared to be a criminal offence, and was to be treated as a misdemeanor. The next Section related to intentional insults to the Court; and the provision in that Section was—

"The fact of the intent with which the words were used, and also whether they were indecorous, contemptuous, and insulting, shall be decided by the Jury."

Then followed a Section relating to obstructions by violence and their punishment; and the Chapter concluded with the following short Section:—

"Courts of Justice have no power to inflict any punishment for offences committed against their authority other than those specially provided for by this Code and the Code of Procedure. All proceedings for offences heretofore denominated contempts are abolished. All offences created by this Chapter shall be tried, on indictment or information, in the usual form."

Those were the provisions of Mr. Livingston's Penal Code; and in the introduction to that Code, he defended those provisions at some length, and with great ability. His argument was too long to be read to the Council in detail; but he hoped they would allow him to read the concluding paragraphs of it, in which the substance of the whole was summed up with much force and clearness. After passing severe strictures on some expositions of the English Law relative to contempts of a certain kind; and referring to the admission of so Conservative a writer as Blackstone, that—

"it is not agreeable to the genius of the Common Law in any other instance,"

Mr. Livingston went on to remark—

"An infringement of the legal rights of a Court of Justice is an offence, and that Government is radically defective which places the power to punish it in the hands of the offended party. Here, then, we find the limit of that necessity which is so much insisted on, and so little understood. There is a necessity that Courts should have the power of removing interruptions to their proceedings, because, unless they can perform their functions, they cannot exist; but there is none that they should have the power to punish those interruptions. The laws must do that, by the instrumentality of the Courts, but in the form prescribed by law."

And then a summary of the whole argument was given in these striking and forcible words:—

"If the argument has been as clearly expressed as its force is felt, it must be convincing to show, that all those offences, distinguished by the name of contempts, ought to be banished from our Penal Law, which they disfigure by the grossest departure from principle; that Courts ought to be empowered to remove all obstructions to their proceedings; that all such acts, as well as those tending to interrupt the course of judicial proceedings, to taint its purity, or even to bring it into disrepute, should be punished only by the due course of law; and that proper punishments, inflicted by the regular operation of law, will deter from these acts much more effectually than the irregular agency of the offended party, who sometimes, from delicacy, will abstain from enforcing the penalty of the law—sometimes, from the indulgence of passions, will exceed it.

It is on these principles that this part of the Code has been framed. It vests ample powers of repression in the Court. They may remove every interruption to their proceedings; they may enforce prompt obedience to their orders; they may, if simple removal is not found sufficient, restrain by imprisonment; and after this a regular trial and punishment follows for the offence. Here is no angry altercation. All is done with the composure necessary to the dignity of justice. The Judge is not the accuser; the accuser is not the Judge. All that class of offences, too, which

consist in insulting expressions, are provided for. But here again, an impartial Jury decide, as well on the nature of the words, as on the intent with which they were used. The Judge cannot improperly indulge his feelings, or restrain them, to the injury of public justice; and the offender against laws for preserving the order and dignity of the Judiciary is liable to the same penalties, entitled to the same rights, and judged by the same laws, that apply to other offenders."

He (Mr. Erskine) was sure that he could not add anything to that clear and convincing argument. These surely were words of truth and soberness; and, the more he had reflected upon them, the more had he become convinced of the wisdom and justice of the principle they maintained. But it might be said that, if these views were carried to their fullest extent, they would deprive the Court of power to punish, even by fine, contempts committed against themselves in their own presence. And no doubt that would be the effect of an attempt to push the principle to its utmost limits at all hazards. But even the soundest principles could not in practice be pushed to extremes without regard to seasons and circumstances. All that could be affirmed was that the deviations from them should be as slight as possible. In a more advanced state of society, and with a better organization of Courts, it might, perhaps, with advantage be ruled unconditionally that no Court should inflict any punishment at all for an offence against itself. But any attempt to deprive the Courts in this country at this time of the power of disposing at once of petty cases of contempt, would result practically in the creation of an intolerable nuisance. It would be an insufferable hardship not only to witnesses and others, but even to the offenders themselves, to enact that every such case must be sent to a different and generally to a distant Court before the most trivial fine could be inflicted. The result in practice would be that petty contempts would go unpunished altogether. Some discretion therefore must be allowed to the Court, but it was an object not unnecessarily to enlarge that discretion. The object was to ascertain how far the sound general principle might be applied in its integrity, and how far it must be allowed to give way to existing exigencies and the public convenience. The question in fact resolved itself into a question of degree. How much must be conceded to circumstances? and how far might they be controlled? It was not easy to settle this question with anything like accuracy; and he (Mr. Erskine) had thought it best therefore to allow it, as it were, to settle itself. A moderate power of punishing by fines had been confided to every Court in this country for twenty years past; and as it did not appear to have been alleged on the one hand that this power was generally insufficient, or on the other hand that it had been seriously abused, he saw no reason for proposing any alteration in respect to it. He was not prepared with any special arguments in favor of the exact amount of fine which the Courts would thus be authorised to impose; nor would he argue that a few rupees more or less would make any considerable difference. But, in the absence of any decided objection to the usage which had so long obtained, he proposed to allow it to remain unaltered. And in judging of this proposal to continue to all Courts a power of inflicting fines, without conceding to them any other punitive powers, the Council would of course bear in mind that of all powers that of fining was least likely to be dangerously abused. This was a most important consideration; because the power was to be entrusted not only to the superior Courts of Justice, but to all the subordinate Courts scattered everywhere over the country. In that respect the distinction between the infliction of a fine and any other punishment was very marked. It was impossible to carry out even the most lenient sentence of imprisonment without subjecting the offender, if not to degradation, at all events to very great indignity; for which, even if it were found on appeal that the sentence was unjustifiable, no adequate reparation could be made. On the other hand,

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when a simple fine only was inflicted, in nine cases out of ten no indignity was suffered, while there was always the means of obtaining complete reparation, and of attending in person to plead for it ; so that in fact there was little or no likelihood of serious abuses occurring in such cases. Moreover, the practice of punishing contempts in a summary way by fine was familiar to those who attended the Courts all over India. These were some of the considerations to meet which he had framed his amendment ; and he would only say again—as regarded the extent of the power of fining which he proposed to grant—that he was not particularly anxious that any one amount should be specified rather than another, provided the limit were fixed as low as seemed to be feasible. The Honorable Member for the North-Western Provinces seemed to think that there was some inconsistency or impropriety in his (Mr. Erskine's) proposing that no Court should have power to inflict a heavier fine than 200 Rupees for a contempt against itself, when some of the Civil Courts in the Bombay Presidency had long been empowered in such cases to inflict fines of 500 Rupees. But the Honorable Member, when he argued in that way, must have forgotten that the very principle for which he (Mr. Erskine) had been contending, was this; that no Court—when that could safely be avoided—should be allowed to punish at all for offences against itself ; or should in any circumstances have larger powers of punishment than were absolutely necessary. There could hardly be any inconsistency in his wish to carry out those views in his own Presidency as well as in other places. If that could not be fully effected without restricting some peculiar powers of certain Courts in Bombay, he would still remind the Council that the very object of the present Code was to introduce uniformity of powers and of practice in the different Presidencies, and that that object could only be effected by mutual compromises. It had not apparently been found elsewhere that the absence of power to fine summarily to a higher extent than 200 Rupees operated injuriously on the Zillah Courts, and he saw no reason therefore to apprehend that it would do so in Bombay. He might just add that the two Sections of the Bombay Code to which the Honorable Member for the North-Western Provinces had referred would be repealed, by Act X of 1861, from the 1st of January next. The Honorable Member had gone on to argue that the Judge of the Court against which a contempt was committed would often be the best or only witness in the case, and that much public inconvenience would be caused if Judges who believed that their authority had been contemned were forced to appear to give evidence on the subject in a Criminal Court. Now there was an old saying, *error latet in generalibus;* and instead, therefore, of meeting this objection by any general arguments, he would ask the Council to consider separately each of the Sections to which it applied. Of the five Sections in connection with which only the Honorable Member proposed that the Courts should have general powers of punishment, three Sections, 178, 179, and 180, related to refusals to obey some order of the Court—as, to take an oath, to answer a question, or to sign a statement. Now what would be the procedure in the event of an offence being committed under any of these three Sections? It would not, of course, be the first object of the Judge to clench the case against the recusant. His main object would be to induce him to conform to the order of the Court. He would in the first instance exhort him to do this. Should the person still refuse, the Judge would, no doubt, explain to him the consequences to which he would expose himself by a persistent contumacious refusal to submit himself to the orders of the Court, and would at the same time require such number of creditable persons as he might deem necessary to attend and witness the conduct of the offending party. And surely if any one, under those circumstances, still pertinaciously contemned the authority of a Court of Justice in public and in the pre-

sence of witnesses, it could hardly be possible that any difficulty should arise as to the evidence. In like manner, with regard to Section 175, which related to an intentional refusal to deliver a document in Court, he (Mr. Erskine) would not say that offences of that kind would never be committed in open Court, but he thought that if a person, having a document in his possession in Court, then and there refused to deliver it, there would be no more difficulty in respect to the proof than in cases under the three Sections above referred to; whereas if the offence, as was more probable, consisted in omitting unjustifiably to bring a document for delivery in Court, the evidence as to the intention of the omission would rarely be that of the Judge or of any one who could speak only to what had occurred in Court. Then there remained only cases under Section 228, that is to say, insults to the Judge himself; and in that connection he (Mr. Erskine) could only refer once more to the passages he had already read, and to the principles he was advocating, to show how desirable in his opinion it generally was, in cases of this nature, that the officer who believed himself to have been insulted should not be personally instrumental in procuring the conviction of the offender. Indeed less evil would result, he thought, even from occasional failures of justice, than from a practice which would allow any Judge to pronounce, not only whether an insult to him had been intended, but what was the measure of it, and what ought to be the punishment. Many of these remarks, he thought, were applicable likewise to what the Honorable Member had said about the indignity to which a Superior Judge would be put if he were obliged to refer a case of contempt, committed in his own presence, to another and inferior Court for adjudication; especially as the inferior Court might take a different view of the circumstances and discharge the alleged offender. But he (Mr. Erskine) could hardly conceive that there would be any thing derogatory to the dignity of the highest and most respected Judge in the country in transmitting to the ordinary Criminal Tribunals for punishment a person who had committed a criminal offence against himself. Surely, on the contrary, that would be a more dignified proceeding than for the Judge at once, of his own act, to convict such a person of a serious offence and sentence him to a heavy punishment. As to the supposition that an offender, if referred to a different Court, might sometimes be acquitted in opposition to the opinion of the Judge who remitted him for trial, he (Mr. Erskine) would observe that cases of contempt were not to be cognizable by any Magistrate inferior to a subordinate Magistrate of the first class: and that officers exercising those powers were men of character and experience. He could not suppose that such officers—in cases too with which they had no personal concern—would be at all apt to allow their judgments to be influenced by any thing but their sincere conviction of what was just and right. If therefore in any such case the judgment of the Magistrate should vary from that of the Judge who complained that he had been insulted, there would be some reason to doubt whether the latter officer might not have judged inconsiderately. For, certainly, if it could be supposed that the mind of a subordinate Magistrate in dealing with a case of contempt against a superior Court might lean unduly to one side rather than the other, it would be to the side of the high Magistrate alleged to have been publicly contemned. If one motive were likely to be stronger with him than another, it would be the desire to vindicate the dignity and authority of the Judicial system with which he was himself connected, and the honor of which he would be solicitous to uphold. And as to the remark that his (Mr. Erskine's) proposals indicated distrust of the Judges generally—he must allude to it because the Honorable Member had made a similar remark on a former occasion—he (Mr. Erskine) could only say that assuredly he felt no special distrust of Judges in this country as such; but that if by

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distrust the Honorable Member merely meant a belief that Judges, like other men, were liable to the frailties and infirmities incident to humanity, he (Mr. Erskine) must admit that he so regarded them; and that he did not therefore see reason to dispense, in the class of cases now referred to, with the checks and safeguards against human weakness which were found necessary in all criminal procedure, and were the cause of it. It was Dr. Arnold, he thought, who used to say that unlimited powers could be trusted with safety only to unlimited perfection. And Mr. Livingston himself seemed to have answered this objection of the Honorable Member by anticipation. He wrote in one place—

"It is a trite and therefore probably a true observation that men forgive injuries much sooner than insults. Judges—although by vesting them with this power we treat them as angels—are really men."

And again:

"From the nature of this crime its existence must depend on the temper of the Judge who happens to preside. Words which a man of a cool and considerate disposition would pass over without notice, might trouble the serenity of another more susceptible in his feeling or irritable by his nature. There is no measure for the offence, but the ever variable one of the human mind."

These, then, were the conclusions which he (Mr. Erskine) drew from the considerations to which he had just alluded. It appeared to him that the true principle on which cases of contempt should be dealt with was opposed to that advocated by the Honorable Member, and was this—that no Court as a general rule should take cognizance of such offences when committed against itself. In practice, however, it was indispensable, at least in these times and in this country, that certain limited powers of summary punishment should be confided to all Courts. But those powers should be as limited as possible; and should not be extended without the strongest reasons. There was nothing in the experience of past years to warrant the belief that the summary powers hitherto entrusted to the different Courts for their own protection had been insufficient. Occasionally, no doubt, cases had occurred and would occur in which a mere fine would be no adequate punishment. Those were the exceptional cases to meet which severer penalties had been enacted by the Penal Code. But it was not the occurrence here and there, or now and then, of a few isolated and exceptional cases of unusual gravity which would warrant the grant of large penal powers to other than the ordinary Criminal Courts. In order to justify that course, it must be shown that large summary powers would often and urgently be needed; and that they were not likely to be abused. He did not think that any such urgent necessity had been proved; and he was therefore averse to any extension of those powers. These were the considerations that had induced him to prepare the amendments which he had caused to be printed and circulated to Honorable Members, and which he had now the honor to move.

The question was then proposed by the Chairman that the following Sections proposed by Mr. Erskine be substituted for the first two Sections proposed by Mr. Harington:—

"When any such offence as is described in Sections 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the immediate view and presence of any Court, Civil or Criminal, it shall be competent to such Court to cause the offender, whether he be a European British subject or not, to be detained in custody; and at the rising of the Court on the same day to take cognizance of the offence; and to adjudge the offender to punishment by fine not exceeding 200 Rupees, or, if such fine be not sooner paid, by imprisonment in the Civil Jail for a period not exceeding one month. In every such case the Court shall record the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. If the Court, in any case, shall consider that a person accused of any offence above referred to should be imprisoned, or that a fine exceeding 200 Rupees should be imposed upon him, such Court, after recording the facts constituting the contempt, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject, to a Justice of

the Peace, and shall cause bail to be taken for the appearance of such accused person before such Magistrate or Justice of the Peace, or if sufficient bail be not tendered shall cause the accused person to be forwarded under custody to such Magistrate or Justice of the Peace. If the case be forwarded to a Magistrate, such Magistrate shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate, and it shall be competent to such Magistrate to adjudge such offender to punishment, as provided in the Section of the Indian Penal Code under which he is charged. If the case be forwarded to a Justice of the Peace, such Justice of the Peace shall enquire into the circumstances, and if necessary commit the accused person for trial before a Supreme Court of Judicature. In no case tried under this Section shall any Magistrate adjudge imprisonment, or a fine exceeding 200 Rupees, for any contempt committed in his own presence against his own Court.

When any person has been sentenced to punishment, or forwarded to a Magistrate or Justice of the Peace for trial, under the last preceding Section, for refusing or omitting to do anything which he was lawfully required to do, it shall be competent to the Court to discharge the offender, or to remit the punishment on the submission of the offender to the order or requisition of such Court."

MR. SETON-KARR said that, on the last occasion when this subject was before the Council, the discussion came on so late in the day, and the field was so fully occupied by other Members who were possessed of so much more ample information on the subject, that he had left it entirely to them. Now, having looked carefully into the question, and having referred to the Penal Code, he should wish to add a few words explanatory of the reasons for the vote which he should give. It had been proved by experience that cases in which a greater fine was requisite than 200 Rupees, were rare, and what had been the experience of the past naturally justified him in anticipating the future. The only such cases which he could recall at present as having made a great stir, were, first, a case in the recollection of the Honorable and learned Judge on his right, which occurred some years since in the Courts of Purneah, and next a case which had come to his own knowledge, where a European gentleman had complained of a Moonsiff and the Moonsiff in his turn complained of the European. He apprehended that suitors, especially Europeans, would not habitually use defiant or menacing gestures or language in Court, but would exhibit a reasonable submission to the orders and requisitions of the presiding authorities; that, when offences of the nature contemplated did occur, they would be sufficiently met by moderate fines; and that such fines, whenever imposed, would be promptly paid. But still there might even now and then be cases of gross and intentional insult, for which a heavier amount of punishment would be necessary; and it was to meet these that the framers of the Civil Code had found it expedient to allow of larger fines and longer periods of imprisonment. This, in fact, was a point which had scarcely seemed to him to have been met by the Honorable Member for Bombay, and it was not possible to understand the intention of the framers of the Code, unless on the supposition that they thought the old law insufficient. He admitted that the old law had, on the whole, worked well for twenty years, and the opinion of the Advocate General was that the limit prescribed by this law should be the limit in those Provinces to which the law did not extend. But another question here arose, and that was, whether, as the Penal Code had sanctioned these increased powers, it would be fair to the Sudder Courts or to Zillah Courts to require their presiding Officers to send cases which seemed to call for a heavier punishment than a fine of 200 Rupees, to Subordinate Magistrates for trial. Such Magistrates might be hasty or inexperienced, or might have been recently at issue with the Judge or Appellate Court, and they might throw doubts on the very best evidence. In short, it would hardly be consistent with the position and dignity of the chief Civil or Magisterial Courts to send such cases to Lower Courts for trial. As to the justice of the thing, there were appeals from the orders of the Civil Courts and of the Magistrates in such cases, so that there were safeguards against abuse. Looking, then, to the views which had been so ably and lucidly

expounded by the Honorable Members no his left and right respectively, and to the necessity for arming the Higher Courts of the country with power promptly to assert and vindicate their own dignity, he should on the whole support the amendment of the Honorable Member for the North-Western Provinces in preference to that of the Honorable Member for Bombay.

SIR CHARLES JACKSON said, he would support the amendment of the Honorable Member for Bombay, but in so doing he would not follow him in either finding fault with the English law or in his unlimited admiration for Livingston. He would support the amendment, not for the reasons given by that Honorable Member, which went the whole length of adopting the views of Benthain, but because it appeared to him to strike out a middle course between those extreme views and the proposition of the Honorable Member for the North-Western Provinces. Now, what was the English practice ? If a contempt were committed in open Court, the Judge might fine the offender, or, as was usually the case, he would commit him to prison until he apologized. There was no severity or hardship in that. He thought that the English law was a very just and proper one. Surely, it was quite necessary for the decency of public proceedings in Court that the Judge should have the power of putting an immediate stop to any contempts committed in his presence. For instance, if a man were to make an insulting gesture before the Court, the Judge ought to have the power of punishing him for it on the spot. In fact, the knowledge that the Judge had the power of immediately putting a stop to any irregularity had, no doubt, a most beneficial effect in preserving silence and order in Courts of Justice. He, therefore, thought that the moderate power exercised by English Courts of Justice to punish for their own contempts was a very proper power. On the other hand, he must look at the question with reference to the new Penal Code which introduced a number of heavy punishments for contempts of Court. Now, however calm and temperate a Judge might be, he was still but a man and liable to be biassed in his own case. He, therefore, thought that some restriction should be put on the power of a Judge to punish for contempts committed against himself. He admitted that the strict principle militated against giving any such power, and the reason was that a Judge should not be the judge in his own case. But, as had been ably shown by the Honorable Member for Bombay, principle must sometimes yield to expediency, and his amendment therefore provided a moderate punishment to be inflicted by the Court itself. But the question was, should the Council give the large powers proposed by the Honorable Member for the North-Western Provinces to the insulted Judge ? Section 182, and some of the other Sections of the Penal Code, gave six months' imprisonment with hard labor and 1000 Rupees' fine. He (Sir Charles Jackson) thought that every man liable to so severe a punishment had a right to claim to be put on his trial for any one of those offences. He should on these grounds support the amendment of the Honorable Member for Bombay.

THE CHAIRMAN said, the question between the two amendments proposed resolved itself into this, whether a Court should have power to punish as for a crime a contempt committed in the face of the Court, that is, a contempt committed against itself. Then the next question was, were the punishments which the Honorable Member for Bombay proposed to allow the Court to inflict in its own defence sufficient, or was it necessary that the Court should have the power of inflicting the punishments which were imposed by some of the Clauses of the Penal Code ? The Honorable Member for Bengal had stated that he did not understand why the punishments for contempts of Court had been increased. The reason was this. There were many cases in which a person ought to be punished with a higher punishment than a fine of 200 Rupees, or imprisonment for one month in default of payment. A

witness might refuse altogether to give evidence. That would be a case far beyond a contempt of Court. It would defeat public justice if a witness could refuse to answer any question for 200 Rupees. As such, the offence ought to be punishable more severely than a contempt of Court. So far as concerned the Judge himself, it was a contempt for which a small punishment would be sufficient; but so far as it was a violation of public justice, it ought to be treated as a crime and dealt with by the ordinary Courts of Justice. He had read this morning of a case which lately occurred in England of a young man who had charged his father with an attempt to murder him, and who, when brought before a Magistrate, refused to give any evidence at all. In a case of that kind, public justice might be entirely frustrated, and a person who persisted in his refusal to give evidence, ought to be punished to the full extent provided by the Penal Code. His being sent to Jail until he obeyed the order of the Court was simply a punishment for contempt of Court, but his continued refusal ought to be treated as an offence against public justice; and whether the offence had been committed against the lowest or highest Court, he ought to be indicted and punished under the Penal Code. When Chapter X was last settled, he did not understand that it was intended to give Civil Courts the power of acting criminally; but when the Honorable Member for Bombay brought forward his amendment referring the appeal to the Civil Court, it had occurred to him (the Chairman) that the Courts so trying, might be considered Civil Courts, and he had therefore proposed his amendment to remove any doubt. He never understood at that time that Act XXXI of 1841 was repealed or intended to be repealed, but thought that it would continue in force; but on hearing that it was to be repealed, he had said, as Honorable Members would remember, that, if the Honorable Member for the North-Western Provinces or any other Honorable Member would propose any specific punishment for contempt, he (the Chairman) was quite ready and willing to consider the question. And he now repeated that, if the Act of 1841 was to be repealed, he was quite willing to give all Courts, whether Civil or Criminal, the power of punishing for contempts committed in the face of the Court to the extent provided by that Act. But if the offence was to be punished with the higher punishments prescribed by the Penal Code, the offender ought to be tried as in ordinary Criminal trials, namely, before a Judge and Jury.

MR. HARINGTON said that there would be no trial by Jury in the cases with which they were now dealing. Such cases would go before a Magistrate.

THE CHAIRMAN resumed. When he spoke of a Jury, he was alluding to the Supreme Court where all offences were tried by Jury. He was not speaking of the Procedure in the Mofussil Courts, where some offences were tried without a Jury. Whether that was right or not, was not what we were now considering. That point had already been determined in another part of the Code; and if the Procedure in question was wrong, it was wrong as regards all offences and not as regards these particular offences. What he now meant to say, however, was that the extent of punishment which had hitherto been in force, and which was proposed to be continued by the amendment of the Honorable Member for Bombay, was amply sufficient for summary punishment of contempts committed in the face of a Court; but that in all grosser cases under the Penal Code, and for all cases that were not adapted to summary procedure, the offender ought to be tried by the ordinary Criminal Courts of the country, and punished accordingly. That was the distinction which he drew, and it was quite in accordance with the course pointed out by the Honorable Member for Bombay, and with the opinion which he had read of Mr. Livingston. He (the

Chairman) thought that there might be great difficulty in stating what a contempt was. In the Superior Courts he believed it was competent for a Judge awarding punishment for contempt of Court to issue a general warrant of commitment without specifying the nature of the act which constituted the contempt. Would any one allow a Judge to commit a man to a Criminal Jail for six months with hard labor, without specifying what the contempt was? According to the ordinary Criminal Procedure, a proper charge was required to be made out against the offender, and punishment was awarded accordingly. But in ordinary cases of refusal to give evidence, or of using opprobrious language, it appeared to him (the Chairman) that a fine of 200 Rupees, and simple imprisonment in the Civil Jail for one month in default of payment, were sufficient.

He thought it unnecessary to enter into any discussion as to whether European British subjects ought or ought not to be subjected to the Mofussil Criminal Courts, and tried for contempts under the Penal Code, for it had already been decided that European British subjects were not to be tried by those Courts. Therefore, if a European British subject was to be punished for any Criminal offence, he must be tried by the Court that could deal with him as regards Criminal offences. But in case of an actual and not of a constructive contempt of Court, it was proposed by the Honorable Member for Bombay that the Court might impose a fine of 200 Rupees, or in default of payment, send him to a Civil Jail for a period not exceeding one month, unless the fine were sooner paid. That he understood was the effect of the amendment proposed by the Honorable Member for Bombay. It was not very often that Courts of Justice had to punish for contempts. But if it were known that a Court had no power to punish, insulting language might be resorted to, and the administration of justice might be brought into contempt. He thought that every Court should have the power of protecting itself from insult, and of putting a stop at once to any interruptions that might be offered to its proceedings. He quite agreed with the Honorable Member for Bombay that the punishment for contempt of Court, speaking of it simply as contempt in the face of the Court, should be punished in the same way as it had always been heretofore, and he should therefore support the amendment of that Honorable Member so far as regarded the first two Sections proposed by him.

MR. HARINGTON said, there appeared to be some misunderstanding in respect to the history of the legislation proposed in the part of the Code of Criminal Procedure which they were now discussing or as to the course followed in regard thereto. He understood the Honorable and learned Chairman to say that he thought no Legislature would consent to give any Civil Court the power of awarding punishment for a contempt committed against itself to the extent provided by the Indian Penal Code.

THE CHAIRMAN.—Not summarily.

MR. HARINGTON said, the question was not whether the punishment should be awarded on what was called a summary conviction or after a regular trial, but whether the Civil Courts should be allowed, under any circumstances, to award imprisonment as well as fine for contempt of Court within the limits prescribed by the Penal Code. The word *summary* was not to be found in the new Code of Criminal Procedure; but he was quite willing to agree to any form of trial which might be necessary or proper for the protection of the accused party. Now, what was the proposition of the Royal Commissioners. Section 208 of the Code of Procedure prepared by them said—"When any such offence as is described in Clause 197 of the Penal Code" (that was, as explained in a foot-note, the offence of insulting or interrupting a Court of Justice) "is committted in contempt of the lawful authority of a Judge or Court of Justice, it shall be competent to such Judge or Court"—not to some

other authority, but to such Judge or Court—"to punish the same as for a contempt of Court and to adjudge the offender to punishment as authorized by the said Clause," namely, simple imprisonment not exceeding six months, or a fine not exceeding one thousand Rupees, or both. It was clear, therefore, that the Royal Commissioners saw nothing opposed to sound principles in giving to Civil Courts power to punish, to the full extent allowed by law, contempts committed against themselves, and that they thought it right that the Civil Courts should have this power though, in the case of the subordinate Civil Courts in this country, they considered it expedient to place some restriction upon their powers of punishment, leaving the higher Courts only to award the maximum punishment provided by the Code. This was quite proper, and was exactly what he had proposed; and when he found that his proposition had the support of such men as Sir John Romilly, Sir John Jervis, Mr. Cameron, Mr. Robert Lowe, Mr. Macleod, Mr. Daniel Eliott, and the other gentlemen named in the Royal Commission, he did not think there could be any thing wrong in it. He certainly was not singular in his views.

The Codes of Civil and Criminal Procedure prepared in England, including the Chapters relating to contempts of Court, as framed by the Royal Commissioners, were embodied, word for word, in the Bills introduced into this Council by the Honorable and learned Vice-President, and as he had already noticed no objection was taken by any Honorable Member to the Chapters in question on the motion for the second reading of the Bills. He would not lay any further stress upon what had taken place up to this stage of the two Bills, because the Honorable and learned Vice-President reserved to himself the right, which he conceded to every other Honorable Member then present, of proposing any alteration in the two Bills which at any future stage, whether in Select Committee or in the Committee of the whole Council, might appear proper. But it was said that the Code of Civil Procedure, passed by this Council, did not include the Chapter of the English Code relating to contempts of Court to which he had been referring, but left the law as it was contained in Act XXX of 1841. He was able to explain the cause of the omission. The Bills containing the two Codes, as prepared in England, were referred to Select Committees composed of the same Members, and it was intended that the two Bills should be reported together; but when the revision of the Bill containing the Civil Procedure Code was completed, it was found that the Penal Code which was to fix the future punishments for contempts of the Civil as well as of the Criminal Courts, resistance and evasion of their process, and the like, was still far from being settled, and it was thought better therefore to omit from the Civil Procedure Code the Chapter relating to contempts and to leave the offences referred to in that Chapter to be provided for in the Code of Criminal Procedure, and—until that Code came into operation—to be dealt with under the existing laws in the three Presidencies. This was the sole cause of the omission of the Chapter in question from the Civil Procedure Code. The Chapter had been included substantially, as framed by the Royal Commissioners, in the Criminal Procedure Code as settled in the Committee of the whole Council the year before last. In the recent revision of the Code by a Select Committee, of which the Honorable Member for Bombay was a Member, it was not considered necessary to make any alteration in the powers proposed to be given to the Civil Courts of punishing for contempts of Court committed against themselves to the full extent provided by the Penal Code, nor, if he recollected rightly, did the Honorable Member for Bombay make any objection at the time of such revision to the Civil Courts being vested with these powers. No doubt the Select Committee had overlooked the effect which one of the earlier Sections of the Criminal Procedure Code,

relating to the cognizance of offences when committed by European British subjects, would have upon the Chapter relating to contempts of Court. The recent discussion upon Chapter X had brought this to light, and it was then at once seen that it would be necessary to revise the Chapter. The Honorable Member for Bombay seemed to think that he (Mr. Harington) had not sufficient grounds for what he had stated on the subject of the intentions of the framers of the Indian Penal Code in respect to the tribunals by which contempts of Court should be punished. What he said was to express his full conviction that, in enhancing the punishment for contempt of Court, the framers of the Indian Penal Code never contemplated any alteration in the Procedure Code for the trial and punishment of the offence or any interference with what they must have known was the existing practice, and when he stated as a fact that two of the gentlemen who had taken an active part in the preparation of the Penal Code, namely, Mr. Macleod and Mr. Millet, were also Members of the Royal Commission which framed the Code of Civil Procedure, one of the Sections of which declared that the Court against which a contempt was committed might punish the offence by sentencing the offender to the punishment authorized by the Penal Code, he thought he had said enough to remove all doubt upon the point from the mind of the Honorable Member for Bombay, and to show what were the intentions of the framers of the Indian Penal Code. [Mr. Erskine shook his head by way of dissent.] Then the Honorable Member for Bombay had taken them to America and had quoted to them the opinions of Mr. Livingston in support of his views. He would follow the Honorable Member to America and read to them what was the provision of law upon the point under discussion in the Code of New York, which was admittedly one of the best Civil Codes ever framed, and seeing that Mr. Livingston's opinion was given in the year of 1820, and that the Code of New York was published in the year 1850, he could come to no other conclusion than that, as in this country, a great change had taken place as to what should be regarded as a reasonable extent of fine and imprisonment for contempts of Court, so a great change had similarly taken place in the minds of American Jurists and Lawyers as to the tribunal by which the offence should be tried and punished. The Code of New York said—"Every Court of Justice, except a Court of Conciliation, and every Judicial Officer, has power to punish contempts by fine or imprisonment or both." A little further on the Code said —"The Court or Officer" (that was, the Court or Officer against which the offence was committed) "must determine whether the person proceeded against is guilty of the contempt charged, and if he be found guilty, a fine must be imposed upon him not exceeding 250 dollars, or he must be imprisoned not exceeding six months, or both" So here they had the same penalty as that provided in the Indian Penal Code and the same procedure as that proposed by the Royal Commissioners. It was quite possible that the framers of the Indian Penal Code had copied their Section from the New York Code.

MR. ERSKINE pointed out that the Indian Penal Code was framed before the New York Code.

MR. HARINGTON admitted that the Honorable Member for Bombay was right, and observed that it was possible the framers of the New York Code had copied their Section from the Indian Penal Code; but that, however this might be, the framers of both Codes were agreed as to the extent of fine and imprisonment which might be awarded for contempts, and however much he might respect Mr. Livingston's opinion, he (Mr. Harington) did not think that Mr. Livingston's individual opinion should be allowed to outweigh the opinions of the framers of the Indian Penal Code, and of the New York Code, and of the Royal Commissioners who had drawn up the Codes of Civil and Criminal Procedure for this country. The Honorable Mem-

ber for Bombay objected to his having stated that the amendment of the Honorable Member implied distrust in the Civil Courts. The Honorable Member said it was not because he distrusted the Civil Courts that he would not give them the large powers proposed in his (Mr. Harington's) amendment, but because he considered that no Courts should have such powers for punishing offences committed against themselves. On this point, all that he (Mr. Harington) could say was that the amendment of the Honorable Member for Bombay proposed to give the Civil Courts power to punish for contempts committed against themselves up to a certain extent but not to the extent provided by the Indian Penal Code. Was it then a question of principle or a question of trust? If it was a question of principle, they violated the principle when they allowed the Court against which the offence was committed to punish to the extent proposed. The Honorable Member for Bombay seemed to admit this, and he understood him to say that, if it were possible, he would be glad to delegate the punishment in each case to some other tribunal; but that this could not be done without great public inconvenience. Well, then, having violated the principle which it was thought should govern the procedure in such cases, he (Mr. Harington) considered that they were bound to fix a scale of fines. It could not be right that a Moonsiff should have power to impose as heavy a fine as the Sudder Court. It could not be right that the Sudder Court should not have power to impose a heavier fine than a Moonsiff He thought that this was a very serious objection to the first amendment proposed by the Honorable Member for Bombay. Then, again, had they taken into consideration the conflicts of judgment to which that amendment would certainly give rise? This had been noticed by the Honorable Member for Bengal. The Civil Court might find a man guilty of contempt, but the Magistrate or Joint-Magistrate might disagree. The Civil Court might think a witness ought to have answered a particular question or to have produced a particular document. The Magistrate or Joint-Magistrate, to whom the case was referred, might think otherwise. In most cases it would be merely a matter of opinion. If both Courts agreed, what, he would ask, was gained by a second trial before a different tribunal? If they differed, why was the opinion of the Magistrate to prevail? He had not considered the question in its bearing upon the European community alone, but in its general bearing upon all classes alike. Looking at the question, however, in its European aspect, were they wise at this time to declare that, if a European British subject was guilty of contempt in the Court of the Judge of Meerut or it might be of Lahore or of Peshawur, and the Judge of the Court in which the offence was committed thought that a fine of 200 Rupees would not be an adequate punishment, and that the offender should be imprisoned, the Judge should not have power to award imprisonment to the extent provided in the Penal Code, but must send the accused person all the way to Calcutta with the witnesses (he himself perhaps being one) in order that he might be tried before the Supreme Court. He did not think that the European community could desire this. He believed that in most cases, if a European British subject were found guilty of a contempt in a Zillah Court up the country, he would prefer that the Court should dispose of the case rather than that he should have to come all the way to Calcutta, in the middle, perhaps, of the hot winds, to be tried before the Supreme Court.

He was dealing now with offences which were punishable with simple imprisonment only. He repeated what he had already said to-day that he would not deprive our European British subjects of a single privilege which they at present enjoyed in connection with the administration of criminal justice until a proper equivalent was provided; but he thought it most unwise at this time to strain or to attempt to extend those privileges, which would be the effect of the first amend-

ment of the Honorable Member for Bombay if that amendment were adopted. In the amendment which he (Mr. Harington) had proposed, he had provided that no one, European or Native, should be imprisoned for contempt except by order of the Zillah Judge or Magistrate, and that any imprisonment awarded by either of those officers should be undergone in the Civil Jail. Having made this provision, he thought that he had done all that was necessary for the security and protection of the European community, and that they could not reasonably require more. He believed he had now noticed all the points calling for reply from him in the remarks of the Honorable Members who had addressed the Committee, and he would not further occupy the time of the Committee.

SIR BARTLE FRERE said, he thoroughly agreed with every word that had fallen from his Honorable friend the Member for Bombay who had fully and clearly stated the views which he (Sir Bartle Frere) entertained, which he had always entertained, and which he had stated when the subject was first discussed in Council three sittings ago. He would therefore content himself with saying that he ceased to regret the discussion and misunderstanding which had taken place on this subject, and the mode in which his own views and those of other Honorable Members had been misrepresented, seeing that the result had been a great improvement on the law as it had hitherto stood, for he considered that the amendment now proposed by his Honorable friend (Mr. Erskine) was a very great and essential improvement, not only on the Code as it stood before, but on the existing English Law. He would not follow his Honorable friend in all the arguments which he had adduced. He would simply address himself to one or two of the objections urged by the Honorable Member for the North-Western Provinces and the Honorable Member for Bengal; and he trusted that his remarks might have the effect of bringing the Council to a unanimous vote on this question. The first point to which he would refer was whether, as had been supposed by those Honorable Members, it would be derogatory to the dignity of the Superior Courts to have gross cases of contempt committed before them referred to the Magistrates. He would put it to those Honorable gentlemen whether the contrary was not the fact, and whether it was not rather in consonance with Oriental or Mediæval views of procedure, than with those befitting a British Court of Justice, to allow the Judge summarily to award such punishments as those provided by the Penal Code. Take the case of an insult offered to a high judicial functionary in England, the Lord Chancellor, for instance. Did the Honorable Members imagine that that high authority would in any way increase his dignity by reverting to some old by-gone law summarily to punish his insulter on the spot by inflicting some of the severe punishments authorized by ancient Statutes? Would they not think such a proceeding to be an act befitting rather an Oriental Despot than an English Judge? He (Sir Bartle Frere) felt confident that it would be impossible for any Judge, however exalted he might be, without loss of dignity summarily to deal with such cases. He also wished to say a few words, in which he was sure his Honorable friend the Member for Bombay would agree with him, in regard to a remark which fell from the Honorable and learned Judge opposite (Sir Charles Jackson). The Honorable and learned Judge seemed to imply that the Honorable Member for Bombay had taken objection to the practice of the English law. Now he (Sir Bartle Frere) was confident that his Honorable friend had not objected to the practice of the English law, for his amendment was framed in strict accordance with the present practice of the highest English Courts. But that was quite a different thing from the strict letter of the law as it stood in the Statute Book. In this, as in many other matters, the practice of a long series of years, during which the law had been administered by Judges of the highest character, had mitigated and greatly altered the strict

letter of the law. He would not follow the Honorable Member for the North-Western Provinces through his comparison of the New York Code with that of Mr. Livingston, because he (Sir Bartle Frere) thought the Honorable Member would find, if he referred to the works of Judge Story, that that eminent lawyer, who was a disciple of Mr. Livingston, looked upon him as an authority far in advance of any living jurist of the Northern States and regretted that those who had the framing of the New York and other Codes were far behind Mr. Livingston as law-reformers. Then with regard to what the Honorable Member said as to the insufficiency of the punishment, he (Sir Bartle Frere) thought that we should not always be referred to the case of the typical European brought down from Peshawur to be tried at Calcutta. He would seriously put it to the Honorable Member whether he did not think that a fine of 200 Rupees, or a month's imprisonment, was not sufficient punishment to leave in the power of any Judge of the offended Court to inflict on the spot, with power to send the offender for trial before the Supreme Court if further punishment were necessary. He quite agreed with the Honorable Member for Bombay that his amendment made ample provision for the dignity and security of the highest Courts, and should therefore vote in support of it.

SIR ROBERT NAPIER said that, in supporting the amendment of the Honorable Member for Bombay, he should say only a few words. The subject had been most clearly explained by the able arguments which had been adduced on both sides of the question; but it appeared to him that it really did not require so much argument to reduce the subject to two simple mathematical questions.

Firstly.—Should the insulted Judge be the accuser and punisher in his own cause? Theoretically he should not be so, but practically he must have a certain limited power of punishment. Unless he had such a power, the Mofussil Courts would become like some American ones, where a cast suitor would take off his coat and propose to settle the amount of damages with the Judge outside.

Secondly.—Was the power proposed for the Judge sufficient? In his opinion a fine of 200 Rupees, or imprisonment for one month, was ample, and he should cordially support the amendment of the Honorable Member for Bombay.

MR. HARINGTON said he regretted that the Honorable Member of the Government (Sir Bartle Frere) had not spoken before he (Mr. Harington) had replied to the objections taken by other Honorable Members to his amendment, because he found himself compelled again to trespass upon the time of the Committee. The Honorable Member of the Government had declared the views expressed by himself and the Honorable Member for Bengal to be oriental in their character and to be despotic.

SIR BARTLE FRERE said that, if the Honorable Member for the North-Western Provinces took exception to the term "Orientalism," he (Sir Bartle Frere) was quite willing to withdraw it, and to substitute "mediœvalism" for it. He did not mean to use the word in any offensive sense, but simply to express a summary and despotic mode of procedure as opposed to the grave, deliberate, and dignified process which would befit a civilized Judge of our own time and nation.

MR. HARINGTON resumed. The Honorable Member of Government had used the word "Oriental," and he thought he had also used the word "Despotic." All that he (Mr. Harington) wished to say was that the provisions of the Code of Procedure which he was now advocating were imported from England and America.

THE CHAIRMAN said, he wished to say one word in regard to what had fallen from the Honorable Member for the North-Western Provinces, as to whether it was wise to make a change. It was the Honorable Member who wished to make a change, and was proposing a change without

showing that the law which at present existed had been found insufficient. He (the Chairman) must say that, during the whole time he had practised at the bar in England, he had never heard of a case of a man being fined 1,000 Rupees, and sentenced to six months' imprisonment for refusing to appear upon a subpœna. The parties were generally left to their Civil remedy. In the course of his practice and experience he could not recollect a single instance of the kind, and he did not think that the Honorable Member could cite any precedent of a European having been sent down from Peshawur for trial in such a case.

MR. HARINGTON said, it was hardly fair to charge him with a desire to change the law. It was the Penal Code, passed last year, which had already changed the substantive Criminal law, and the alterations considered necessary in the Code of Criminal Procedure were proposed, not by him (Mr. Harington), but by the Royal Commissioners. He certainly never recollected a case of contempt in which he would have awarded a fine of 1,000 Rupees, but it did not follow that no case calling for a more severe punishment than could now be awarded would ever occur. The framers of the Indian Penal Code must be presumed to have contemplated the possibility of such a case occurring, otherwise they would scarcely have introduced into the Code prepared by them the Section which allowed a sentence of six months' imprisonment and a fine of 1,000 Rupees. Under the existing law, the punishment for contempt was awarded by the Court against which the offence was committed, and no case of the nature of that supposed by the Honorable and learned Vice-President could arise. It was under the amendment proposed by the Honorable Member for Bombay that such cases might and would arise.

THE CHAIRMAN said, although the Penal Code did make contempt of Court an offence punishable criminally, it did not alter the powers of the Civil Courts by allowing them to take cognizance of it.

After some further conversation, the following division was taken on Mr. Erskine's amendment :—

Ayes 5.	*Noes* 3.
Sir C. Jackson.	Mr. Seton-Karr,
Mr. Erskine.	Mr. Forbes.
Sir Robert Napier.	Mr. Harington.
Sir Bartle Frere.	
The Chairman.	

So the Motion was carried, and the Sections were passed after some verbal amendments,

MR. HARINGTON'S third proposed Section with amendments was then passed to follow the above Sections as the 3rd and last Section of Chapter X.

Verbal amendments were made in Section 138 on the Motion of Mr. Harington.

Section 205 of the Penal Code was introduced in the specification of Sections of that Code contained in Section 139 of this Bill, on the Motion of Mr. Erskine.

Section 141 was passed after a verbal amendment and the addition of the following words (on the Motion of the Chairman,)

"and the Court shall have power to send the accused person in custody or to take sufficient bail for his appearance before such Magistrate and may bind over any person to appear and give evidence on such investigation."

Verbal amendments were made in Section 208.

MR. HARINGTON moved the introduction of the following new Sections after Section 344 :—

"No finding by a Court of the offence of criminal misappropriation of property under Section 403 of the Indian Penal Code, or of criminal misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of criminal breach of trust under Section 405 of the said Code, or of criminal breach of trust by a carrier wharfinger or warehouse-keeper under Section 407 of the said Code, or of criminal breach of trust as a clerk or servant under Section 408 of the said Code, shall be liable to be reversed or altered by any Court, whether on appeal or revision, on the ground that the offence proved by the evidence was the offence of theft under Section 378 of the said Code, or the offence of theft in a building tent or vessel under Section 380 of the said Code, or the offence of theft as a clerk or servant of property in the

possession of his master under Section 381 of the said Code.

No finding by a Court of the offence of theft under the said Section 378, or of theft in a building tent or vessel under the said Section 380, or of theft as a clerk or servant of property in the possession of his master under the said Section 381, shall be liable to be reversed or altered by any Court, whether on appeal or revision, on the ground that the offence proved by the evidence was the offence of criminal misappropriation of property under the said Section 403, or the offence of criminal misappropriation of property possessed by a deceased person at the time of his death under the said Section 404, or the offence of such criminal misappropriation under the said Section, the offender being at the time of the person's decease employed by him as a clerk or servant, or the offence of criminal breach of trust under the said Section 405, or the offence of criminal breach of trust as a carrier wharfinger or warehouse-keeper under the said Section 407, or the offence of criminal breach of trust as a clerk or servant under the said Section 408.

Provided that nothing in the last two Sections shall preclude the Appellate Court in any case mentioned therein from reducing the punishment awarded by a lower Court in such case within the limits prescribed for the offence which such Appellate Court shall consider to have been proved by the evidence against the accused person."

Agreed to.

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

"No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error or defect either in the charge or in the proceedings, on trial, unless the person accused shall have been sentenced to a larger amount of punishment than could be awarded for the offence of which in the judgment of the Appellate Court the accused person ought upon the evidence to have been found guilty, or unless in the judgment of the Appellate Court the person accused shall have been prejudiced by such error or defect; and in case the person accused shall have been sentenced to a larger amount of punishment than could have been awarded for the offence which, in the judgment of the Appellate Court is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code or any law for the time being in force for such offence."

Agreed to.

Several amendments were made in the Schedule.

MR. HARINGTON moved that the following new Section be prefixed to the Bill:—

"This Act shall be called the Code of Criminal Procedure."

Agreed to.

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

CIVIL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. HARINGTON moved that the following new Section be inserted after Section 16:—

"No appeal shall lie from any order or decision passed in any suit instituted under Section XV Act XIV of 1859 (to provide for the limitation of suits), nor shall any review of any such order or decision be allowed."

Agreed to.

SIR CHARLES JACKSON moved that the following new Section be introduced before Section 28:—

"Wherever the word 'pleader' is used in this Act it shall include the words 'counsel' and 'advocate.'"

Agreed to.

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

FLOGGING.

MR. HARINGTON moved that the Petition from the British Indian Association, presented to the Council in the early part of the day, relative to the Bill "to provide for the punishment of flogging in certain cases," be printed.

Agreed to.

CIVIL COURTS.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces, be laid upon the table and referred to the Select Committee on the Bill "to constitute Courts of Civil Judicature."

Agreed to.

CATTLE TRESPASS.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "to amend Act III of 1857 (relating to trespasses by cattle)" to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, August 24, 1861.

PRESENT:

The Hon'ble Sir Henry Bartle Edward Frere, *Senior Member of the Council of the Governor-General*, presiding.

Hon'ble Major-General Sir R. Napier,
H. B. Harington, Esq.,
H. Forbes, Esq.,
C. J. Erskine, Esq.,
Hon'ble Sir C. R. M. Jackson,
and
W. S. Seton-Karr, Esq.

CATTLE TRESPASS.

THE PRESIDENT read a message informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act III of 1857 (relating to trespasses by cattle)."

REGISTRATION OF NIJ-JOTE AND KHAMAR LANDS, &c.

THE CLERK reported to the Council that he had received a communication from the Government of Bengal to the address of Mr. Seton-Karr regarding the proposed scheme for the registration of Nij-jote and other Ryotty tenures.

MR. SETON-KARR moved that the communication be printed.

Agreed to.

FINES FOR RIOTS.

THE CLERK also reported that he had received two communications from the Government of Bengal regarding the enactment of a law for fining communities for offences the perpetrators of which could not be discovered.

MR. SETON-KARR moved that the communication be printed.

Agreed to.

COURTS OF REQUESTS (STRAITS' SETTLEMENT).

MR. FORBES presented the Report of the Select Committee on the Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MALACCA LANDS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to regulate the occupation of land in the Settlement of Malacca."

PORT BLAIR.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to regulate the administration of affairs in Port Blair."

PUBLIC CONVEYANCES.

MR. HARINGTON presented the Report of the Select Committee on the Bill "for regulating public conveyances in the towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

REPEAL OF REGULATIONS AND ACTS (CRIMINAL LAW AND PROCEDURE.)

MR. HARINGTON moved the first reading of a Bill "to repeal certain Regulations and Acts relating to Criminal Law and Procedure." He said that the object of this Bill was to repeal and to remove from the Statute Book all the Regulations and Acts of the three Presidencies which would be virtually superseded and rescinded from