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CONSOLIDATION CUSTOMS BILL.

MR. ERSKINE moved that the Bill "for the consolidation and amendment of the laws relating to the collection of Customs Duties" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Seton-Karr, and the Mover.

Agreed to.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. ERSKINE moved that Sir Robert Napier be requested to take the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the Town of Bombay)" to the Governor-General for his assent.

Agreed to.

CATTLE TRESPASS.

MR. ERSKINE moved that a communication received by him from the Government of Bombay, regarding the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)", be laid upon the table and printed.

Agreed to.

The Council adjourned.

Saturday, July 27, 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-General Sir R. Napier,	Hon'ble Sir C. R. M. Jackson,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	W. S. Seton-Karr, Esq.

MUNICIPAL ASSESSMENT (BOMBAY).

THE VICE-PRESIDENT read a Message from the Governor-General, communicating his assent to the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a fund for Municipal purposes in the Town of Bombay)."

INCOME TAX.

SIR BARTLE FRERE presented the Report of the Select Committee on the Bill "for limiting in certain cases for the year commencing from the 31st day of July 1861, the amount of assessment to the Duties chargeable under Act XXXII of 1860 (for imposing Duties on profits arising from Property, Professions, Trades, and Offices), and Act XXXIX of 1860 (to amend Act XXXII of 1860);" and moved that the Council resolve itself into a Committee upon the Bill.

Agreed to.

Sections I to VI were passed as they stood.

Section VII was passed after amendments.

Sections VIII to X were passed as they stood.

Section XI provided as follows:—

"The Governor-General of India in Council may extend the provisions of this Act to all or any of the years subsequent to the year ending on the 31st July 1862, during which the said Act XXXII of 1860 shall remain in force."

THE CHAIRMAN said he understood, when this Bill was brought in, that it was only intended to apply to the assessments for the ensuing year. As the Bill now stood, however, it proposed to authorise the Governor-General in Council to extend its provisions to all or any of the subsequent years during which the Income Tax Act should remain in force. It appeared to him that it was quite altering the principle of the Income Tax Act, to extend the same assessment from one year to five years. A merchant, whose business was small this year and might be very much increased the next year, would not apply for a fresh assessment, and, if he were within a District to which this Act might be applied, would not be liable to a fresh assessment during any portion of the duration of the Income Tax Act. On the other hand, a merchant, whose business was large this year and might decrease next year, would be entitled to demand a fresh assessment. He should therefore vote against this

Clause. The Clause was one which certainly ought not to be inserted unless the Bill were republished.

SIR BARTLE FRERE said, he thought the Section which permitted fresh assessments to be made on the tax-payer's application, was sufficient to secure the tax-payer against over-taxation under this Act. The only practical objection to the Section now before the Committee was that, if Government should without good cause extend this Act to any District, possibly the revenue might suffer by the non-taxation of persons whose business had improved since their returns were made. It was hardly likely, wherever such might be the case, that the Government would wish to forego the increase of revenue by extending the operation of this Act to those places without due cause. This Act would enable the Government to exempt several Districts from making fresh returns where there might be very little variation from the former year; whereas under the provisions of Act XXXII of 1860, it was imperative to issue a number of notices, whether there was any necessity for them or not. He thought it was right to enable Government, in such cases as he had described, to continue the existing assessment for the full five years, and that at any rate it would be better to leave the power in the hands of the Government, and he should prefer leaving the Section as it now stood.

MR. HARINGTON said, the Bill was so favorable to the public that he could not consider that it would be necessary to publish it before it was read a third time if the Section now under consideration were retained. That Section was merely permissive. The present Bill was a necessity almost for the coming year, and was required to give relief, as well to the Officers employed in carrying out the provisions of the Income Tax Act, as to the public. Its extension to future years would depend upon many circumstances which could not be foreseen; and as the Government would be the sufferers by the extension if, as was supposed by some, loss of revenue would be the consequence of such extension, he thought that they might very safely entrust the Government with the power contained in the proposed Section, and leave the Government to use its discretion in exercising it or not. He should therefore vote for the Section.

SIR CHARLES JACKSON said, he was decidedly opposed to the passing of this Section, because it was contrary to the principle upon which the Income Tax Act was based, and was in effect a frittering away of that measure. That Act had been carried after a hard fight, upon the broad principle that all incomes should be taxed alike. He was himself taxed to the utmost farthing of his income, and he did not see why others should not be taxed in the same way. But this would not be, if this Clause was passed, and the present returns were accepted as returns from natives for the next five years, many of their returns being notoriously incorrect. This Clause, as he had said before, would merely fritter away the provisions of the tax.

MR. FORBES said, the object of this Section was not to remit any portion of the Income Tax, but to relieve the Government of the labor and trouble of issuing fresh notices and making fresh assessments in Districts where the assessments had been already correctly made, and to relieve the people from being harassed with notices and forms of returns when the assessments made on them for the present year were, on the whole, accurate. If, on the extension of this Act to any place, it should appear that any person was not fully taxed, owing to his having dishonestly evaded giving a return of his full income, the circumstance might be brought to the notice of the Collector or Commissioners by any one willing to inform, and the person would then be served with a fresh notice calling upon him to make a fresh return; and if there were any Districts or places in which there was reason to believe that the assessments had, as a general rule, been imperfectly made, it would be quite com-

petent to the Government not to extend the Act to those places, since the Bill gave power to the local Government to extend its provisions to such parts only of the territories subject to their government as they considered expedient.

MR. ERSKINE said that the Section, as it now stood, was perhaps hardly consistent with the Preamble of the Bill. The Preamble recited that it was "expedient to limit in certain cases for the year commencing from the 31st day of July 1861," the amount of assessment chargeable to the Income Tax; whereas this Section would extend the limitation to all or any of the years during which the Income Tax Act should remain in force. In this respect, therefore, some verbal amendment at least seemed to be required. But again he did not know—and it was difficult for any one, except those in the position of the Honorable Member of Government, to know—how far it would be safe and proper to enact this Section without allowing to the local Governments, particularly those of the larger Presidencies of Madras and Bombay, an opportunity of expressing their opinions, if they had not already done so, as to the applicability of this portion of the Act to their territories; or perhaps the application of this Section might be restricted to territories not included in the three older Presidencies. He offered these remarks rather as suggestions to his Honorable friend opposite.

MR. SETON-KARR said that it occurred to him, whether it was not a question, how Government, having once committed itself to the intimation conveyed in this last Section, could practically ever withdraw it again. Government now announced that the assessment for the past year would be the assessment for the next, and the idea seemed to be that the same privilege would extend to the whole four years for which the tax was to last. Now the community which had received a boon for this year, would be discontented, after such an intimation, if the Section were not made use of, and if the boon of one year were withdrawn in the next. Government was binding itself rather needlessly, and it would have been much better if the Section had been omitted from the Act.

THE CHAIRMAN said, he understood that it was intended by this Bill to enable the Governor-General in Council, in any part of the territories subject to any of the local Governments or throughout the whole of India, to order that the assessments already made should be continued for the ensuing year, and on this understanding he had voted for the suspension of the Standing Orders. But it now appeared that the Bill would enable the Governor-General in Council to extend the assessment of one year to the whole term of five years. Now Section I did not apply to persons, but to Districts. It provided :—

> "It shall be lawful for the Governor-General of India in Council, by an order to be published in the Government Gazette, to direct that within the territories or any part of the territories subject to the local Government of any Presidency or place, the general or special notices required by Sections 37 and 38 of the said Act XXXII of 1860, shall not be issued for the year commencing from the 31st day of July 1861, &c."

So that, wherever the Act was extended, no person would be obliged to make a return for the ensuing year, except under Section VII, that is, in case he had made no return for one whole year, or in case there should be reason to believe that he had made a fraudulent return of his Profits or Income.

The Honorable Member for the North-Western Provinces had said, that this Act was in favor of the public. But what did the Honorable Member call being in favor of the public? He (the Chairman) did not consider it beneficial to the public that one man should be forced to make a fresh return and to be re-assessed every year, whilst the assessment originally made on another might be continued, unless he objected, for the whole term of the Income Tax Act; or when one person might have to pay the tax on the full amount of his income, and another might have

to pay only upon his last year's income —in other words, when one person might be taxed on his whole income, and another on only part of his income. The business of a merchant or of a banker might increase considerably during the next four years, and if he happened to carry on his business within a District to which this Clause might be extended, he would not be obliged to make a fresh return. He would not come under Section VII if he had made an honest return for the first year. There might be two merchants carrying on an equal extent of business; and it might happen that the one who chanced to be in a fortunate District, would have to pay only on £5,000, whereas the other would be taxed on his full income of £10,000.

The Honorable Member for Madras then said that any body might give information to the Collector or Commissioners. He (the Chairman) did not know the nature of the information proposed to be given, and the Honorable Member had not explained of what the information was to be. If he meant information of having made a fraudulent return, then the party informed against would come under Section VII. But if he had made a true return in 1860, although his profits in 1862 might have doubled or quadrupled, he would not be required to make a new return, and would not be liable to any new assessment. That was not fair. This Bill was proposed to enable the Government to get over the difficulty of obtaining returns for the ensuing year. It might not be correct in principle to do so; but it was a principle which it was proposed to adopt for the convenience of the public in general—to prevent them from being called upon to make a new return on the ground that the return for 1860 had been only so lately made. It was not a good principle to say that the return of one person for one year, if he happened to live in a particular District, should be taken as a good return for five years, unless every one was placed upon the same footing. He should therefore object to give the Governor-General in Council the power to extend the Act as proposed by this Section, and to alter the principle of the Income Tax Act, which was the principle of dealing with all alike.

SIR BARTLE FRERE said, he thought, with regard to the objection taken by his Honorable friend the Member for Bombay, as to the discrepancy between the Preamble and this Section, that, if he would bear in mind that the Section simply proposed to authorise the Government to continue the Act for all or any of the subsequent years, he would find that the effect was the same as if the Preamble had specified the subsequent years.

With regard to the objections of the Honorable and learned Judge opposite (Sir Charles Jackson) enforced by the Honorable and learned Vice-President, he should have entirely agreed with them, if he thought that in any part of the country there was a backwardness on the part of Government Officers to use their best exertions in carrying out the provisions of taxation with which they were entrusted. But he did not think so. Now what was the object of this Bill? It did not apply to classes or individuals, but to Districts. We undertook last year to devise a measure which should apply to the whole of the immense and varied population of this country. He did not think that there was one man in a hundred who lived in this country, who had an adequate notion of the magnitude and difficulty of the task of carrying out such a measure in detail. That task, however, was undertaken, and the Act had worked for the last ten or twelve months quite as well as might have been expected. But there was not a person who was in the position of an Assessor or Commissioner, or had had anything to do with the practical working of the Act, either as Collector or Tax-payer, who could say that the machinery and forms were the best that could have been devised. They were found to be unsuited to any but Europeanized countries. However, we had gone through the process at the cost of great trouble and some risk of issuing all these notices and of assessing, as best we could, all who up to the present moment had been

brought within the scope of the tax. Returns had been obtained and assessments made. This no doubt had in many cases been very imperfectly done. In others, however, it had been done so perfectly that there would be little necessity for altering the assessment from year to year during the currency of the Income Tax Act. The effect of this Section would be this, that in such Districts Government would absolve the tax-payers from the annoyance of being annually served with all these fresh notices by the tax-gatherers. The Government would not extend the operation of this Act indiscriminately. It must be borne in mind that the duties which would devolve upon the District Officers throughout India during the ensuing year would be heavier than had fallen on them during any previous period of our History. They had been provided with a new Code of Civil Procedure and a new Penal Code, and would be provided with a new Code of Criminal Procedure, in addition to which a new system of taxation had been introduced. The sole effect of this Section would be that, where the work had been well done and where no person would escape taxation, Government would have power to relieve their Officers and the tax-payers from unnecessary trouble in issuing fresh notices and making fresh assessments during the last three years of the tax. These were the reasons why this Clause had been introduced into the Bill, and he must say that he believed it was for the interest of the public that as far as possible the visitation of the tax-gatherer should be limited to those persons to whom we could not avoid sending him. This could be effected to a great extent by giving Government the power of making the assessment of one year applicable to all five years of the tax. But as the majority of the Council thought differently, he was quite willing to withdraw the Clause.

MR. HARINGTON said, the Honorable and learned Vice-President had taken exception to that part of his previous remarks in which he had mentioned that the present Bill was very favorable to the public. He had stated this as his reason for considering that it was not necessary to publish the Bill before it was read a third time. Notwithstanding what had fallen from the Honorable and learned Vice-President and the Honorable and learned Judge (Sir Charles Jackson), he must repeat that the Bill was very favorable to the public, and he believed it would be so considered. The Government might lose by the operation of the Bill, but he did not think that the public at large could do so; while, as regarded individuals, the Bill allowed any person who objected to be assessed under its provisions to make a fresh return and to claim to be assessed thereon. He was most anxious that the Income Tax Act should have fair play, and that it should be strictly enforced, so far as was consistent with the public good. Notwithstanding the part which he had taken in previous measures, he had no wish for any material change in the Act, nor was he prepared to assent to any alteration which would affect the principle of the Act. He did not believe that the Government would be great losers by the present Bill. If he thought so, he might have some hesitation in giving his assent to the Bill. From the time the Act of last year passed, he had carefully watched its working. He had probably enjoyed more favorable opportunities of doing this than most Honorable Members. During the last recess he had visited several of the most important stations in the Upper Provinces, and the Government had lately done him the honor of appointing him to make enquiries in Calcutta and its vicinity, and the result of his enquiries and observation was that, upon the whole, there had been a very fair assessment made under Schedules 1 and 2 of the Act of last year to which alone this Bill related. He did not mean to say that there had not been some cases in which individuals had escaped or been greatly under assessed. This could not be avoided under any circumstances or under any rules; but, on the other hand, there could be no

doubt that there had been over-assessments. He might instance the case of one city, he need not mention the name, which had agreed to a lump assessment of rather more than a lakh of Rupees. After the punchayet appointed to distribute the amount had gone through the whole city and assessed, as they thought, every person in it liable to the Income Tax, they found they had reached only thirty thousand Rupees of the sum. The liability to make up the entire sum agreed to, was fully admitted, but it was felt that the amount could only be obtained by assessing the wealthier classes far beyond the rate fixed by the Act, and it was expected that in some cases the assessment might amount to 8 or 9 or even 10 per cent. What he had just mentioned he had heard from persons who were entitled to credit, and he must repeat that, upon the whole, he believed that there had been a fair assessment made for the present year under the Schedules to which the present Bill related. Entertaining this view, he thought that the Government might be safely left to exercise its discretion in extending the provisions of the Bill beyond the coming year; but as he understood that the Honorable Member of the Government who had charge of the Bill did not wish to press the Section by which such power would be given, it was not necessary for him to say more on the subject.

MR. SETON-KARR said that he must state, after what had been said by the Honorable Member who had spoken last, that, in the part of the country with which he was acquainted, it was understood that the proceeds of this tax would have been considerably increased next year. In Bengal Proper, no machinery for collections existed when the tax was started. It took time to create the necessary Establishments, and great care was taken not needlessly to harass or vex the people. But certainly the Government of Bengal had hoped to increase the proceeds of the tax in the Lower Provinces. As it was, the productive powers of Bengal were to remain at the point which they had reached this year.

After some further discussion, Section XI was by leave withdrawn.

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

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

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

SIR BARTLE FRERE moved that Sir Robert Napier be requested to take the Bill to the Governor-General for his assent.

Agreed to.

FLOGGING.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to provide for the punishment of Flogging in certain cases."

ELECTRIC TELEGRAPHS.

THE CLERK reported that he had received a communication from the Home Department, forwarding copies of papers relative to the expediency of rendering the Telegraph Law more effective for punishing persons found guilty of tampering with the Telegraph or with Telegraph employés.

THE VICE-PRESIDENT moved that the communication be printed.

Agreed to.

HOUSE OF CORRECTION (CALCUTTA).

MR. SETON-KARR moved that the Bill "for the better enforcement of discipline in the House of Correction at Calcutta" be read a second time.

MR. HARINGTON said, he did not rise to oppose the Motion for the second reading of this Bill, which proposed to itself a very proper object, and was intended to supply a want which appeared to have been long felt in the place to which the Bill would immediately apply; but he wished to suggest for the consideration of the Honorable Member who had brought in

the Bill, whether, before the Bill was published, it would not be advisable to refer it to a Select Committee to consider whether the punishments prescribed in the Bill were adequate, and whether their severity might not be increased with advantage. The proposed punishments appeared to him very mild. Three days' solitary confinement or seven days' separate confinement or confinement in irons for four days were the severest punishments which could be given for the most flagrant breaches of Jail discipline falling under the Bill; but looking to the characters which were to be found in all Jails, and he believed he might add Houses of Correction, and to what was often the conduct of such characters, he doubted whether the punishments which he had just mentioned would always prove sufficient to secure the object aimed at in the Bill, namely, the maintenance of Jail discipline and of good order within the walls of the Jail. The last Section of the Bill gave power to the Governor-General in Council to extend the provisions of the Bill to any Jail established or to be established in any part of the British territories in India. But under the laws now existing in the three Presidencies, corporal punishment was included amongst the punishments which could be awarded for breaches of Jail discipline, and in the very able paper by the learned Advocate General of Bengal which was amongst the annexures of the Bill, it was stated at the end of paragraph 8 :—

> "And the Justice is empowered to extend those periods, and to order corporal punishment and close and solitary confinement not exceeding one month. Similar provisions should, I think, be introduced into the Acts of the Legislative Council."

He concurred with Mr. Ritchie in thinking that corporal punishment should be added to the punishments to be awarded under the Bill. This might be done in Committee, but if the provision should be added in Committee after the Bill had been published, its republication would be necessary, and the consequence would be that the passing of the Bill would be greatly retarded, which was not desirable. For this reason he thought that, if the Council at large agreed with him in thinking that without corporal punishment the Bill would be incomplete and not likely to prove effective, the addition of the punishment to the penalties now contained in the Bill should be made at once.

THE VICE-PRESIDENT said, he had no objection to this Bill being referred to a Select Committee for the purpose of being amended previously to its being published. But he must confess he saw no necessity for so doing. He thought that some provisions were requisite regarding the discipline of the Great Jail. This Bill applied only to the discipline of the House of Correction, and he believed sufficiently provided for that object. The Great Jail however would continue to be under the authority of the Sheriff of Calcutta and the superintendence of his Officer the Governor of the Jail.

With regard to corporal punishment, he very much objected to pass a Bill allowing the local Government to frame rules for Prison discipline, and to allow the Chief Commissioner to award corporal punishment to Europeans or persons of any class for any breach of such rules. He objected entirely to such a provision. It had never been allowed hitherto, and no good reason had been shown why it should now be allowed. In cases of serious disturbances the prisoners were liable to be tried by the Criminal law of the country, and the prisoners concerned in the emeute which lately took place in the House of Correction had been so dealt with. For simple breaches of Prison discipline, he thought it would be sufficient to confine the offenders in irons, or to place them in separate or solitary confinement, as provided for in the Bill. If any further and more severe punishment were necessary, he would much rather that the offenders were brought up and punished by a Magistrate publicly, than that they should be punished inside of the Jail out of the eye of the public.

MR. ERSKINE said that, perhaps, the Honorable and learned Vice-President would explain what part of the Bill indicated that, if flogging were made a punishment under this Act, any breach of discipline might be punished in that way by the Chief Commissioner.

THE VICE-PRESIDENT said that Section II empowered the Commissioner or other Officer in whom the control of the House of Correction should be vested to take cognizance of all breaches of prison discipline, and to punish persons guilty of mutinous and violent conduct or of insolent language, or contumacious refusal to perform the work allotted to them. He (the Vice-President) had understood the Honorable Member for the North-Western Provinces to propose that corporal punishment should be awarded for any breach of prison discipline to be provided for by Section III, which authorized the local Government, from time to time, to frame rules for the proper discipline of prisoners in the House of Correction.

MR. HARINGTON said in explanation, that the breach of Prison discipline might consist in mutinous or violent conduct as described in Section II of the Bill, and it was cases of that nature which he had in view when he stated it as his opinion that the punishments proposed in the Bill were not sufficiently severe. Whether the Commissioner of Police should have power to award corporal punishment, was a distinct question into which he had not gone. If a Committee were appointed to consider the Bill, as suggested by him, before the Bill was published, one of the points for their consideration would be, to whom the power of passing a sentence of corporal punishment, when that punishment might be awarded, should be given.

THE VICE-PRESIDENT said, the Honorable Member for the North-Western Provinces had referred to that part of the opinion of the Advocate General, in which he alluded to the Code of Prison Regulations in England sanctioned by Parliament in 1823. He (the Vice-President) would read what the Advocate General had said on the subject. He said :—

"I think it very desirable that Rules for the regulation of Criminal Jails, and for enforcing Prison discipline in regard to Europeans, and to persons sentenced to imprisonment with hard labor, or to penal servitude, by the Courts established by Royal Charter in all parts of India, or by Courts Martial, should be framed, and should, when sanctioned by the Supreme Government, be embodied in an Act of the Legislature, and that power, from time to time, to frame additional Rules, or to sanction such Rules, when made by the Magistrate of the place, in concurrence with the Sheriff or Officer vested by law with the charge of the Prison or Jail, should be expressly conferred on the Government by such Act. A similar course has been adopted in England since 1823, when a general Code of Prison Regulations (see 4 Geo. IV. c. 62) was sanctioned by Parliament, while power to pass additional Rules, with the sanction originally of the Chief Justices and Judges of Jail Delivery, but subsequently of the Secretary of State, was conferred on the Justice of the Peace in Sessions. Summary and appropriate punishments for breach of those Rules, and for refractory conduct, are provided for by the Act (Sections 41 and 42.) In minor cases, and cases of urgency, the Keeper of the Prison is expressly authorised to confine refractory prisoners in solitary cells and keep them on bread and water, though not for more than three days, and to put them in irons, though not for more than four days, without the order of a Justice. And the visiting Justice is empowered to extend those periods, and to order corporal punishment and close and solitary confinement not exceeding one month. Similar provisions should, I think, be introduced into the Acts of the Legislative Council."

He had understood the Honorable Member for the North-Western Provinces to recommend that, for any breach of the Rules of Prison discipline, corporal punishment should be awarded, which certainly was not in accordance with the suggestion of the Adocate General. Even in cases of mutinous or refractory conduct or contumacious refusal by a prisoner to perform the work allotted to him, it appeared to him (the Vice-President) that placing the offender in irons or solitary or separate confinement was sufficient, and that prisoners guilty of offences under the Penal Code should be brought before a Justice of the Peace and publicly dealt with. He was not aware of any case of serious

disturbance up to the time of the late emeute, or that any one had ever suggested that corporal punishment was necessary for the enforcement of Prison discipline.

MR. SETON-KARR said that he had no objection whatever to the proposal of the Honorable Member for the North-Western Provinces, to refer the Bill to a Select Committee before publication of the Bill. With regard to the question of corporal punishment, he had at first included it in the punishments mentioned in Section II, for mutinous conduct, insolent language, and refusal to work. But on second thoughts, he had struck it out. In any case, he was of opinion that the point of corporal punishment should be distinctly settled in the law. If included, it should be so in Section II. It should not be left to the general authority proposed to be vested in the Government to provide for the minor breaches of discipline as mentioned in Section III, and for the general order and regularity of the Jail. With this view he suggested that the Bill be referred to a Select Committee, by which any amendment or extension of the enactment could be considered.

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

SIR CHARLES JACKSON moved the introduction of the following new Sections after Section 310 :—

"The Court, at the close of the evidence on behalf of the accused person if any evidence is adduced on his behalf, or otherwise at the close of the case for the prosecution, may put any question to the accused person which it may think proper. It shall be in the option of the accused person to answer such question.

The accused person or his Counsel or Agent may, at his option, address the Court at the close of the case for the prosecution, or at the close of any evidence that may be adduced on his behalf, or, if any question shall be put to the accused person by the Court, after such question has been so put."

Agreed to.

SIR CHARLES JACKSON moved the introduction of the following new Section after Section 311 :—

"If any evidence is adduced on behalf of the accused person, or if he answers any question put to him by the Court, the prosecutor or the Counsel or Agent for the prosecution shall be entitled to a reply."

Agreed to.

MR. HARINGTON said, while they were on this part of the Code, he would ask the attention of the Committee again to the Section immediately preceding the one which they had just settled. On Saturday last they had agreed to strike out from Section 309 the words "whose death is the subject of enquiry." The effect of this omission would be to let in the evidence of any dying person to whatever it related, and without any regard to time. They were thus going far, very far, beyond the English law, which he believed he was correct in saying allowed the declaration of a deceased person to be received in evidence only when the death of such person was the subject of enquiry. It might be open to doubt, whether they were right in thus extending the English law, and in making it applicable to all dying declarations; but he would not again raise that question. The object which he had now in view in addressing the Committee was to suggest for their serious consideration whether, supposing the Section to remain general as it at present stood, some safeguard should not be introduced, and whether, instead of trusting entirely to the memory of witnesses as to what a dying person had said, they ought not to require that the declaration, to be admissible as evidence, should be in writing, and that the writing should be attested by witnesses. He considered some provision of this kind to be absolutely necessary by way of precaution. No doubt written statements, purporting to be the

dying declarations of deceased persons, might be fabricated, but this would be less easy than fabricating evidence as to what a dying man had said, and mere failure of memory without any improper motives might often lead to very serious misrepresentation. He begged, therefore, to move that the words "if taken down in writing, and the writing be attested" be inserted in the Section after the word "person" in line 2.

MR. ERSKINE said, he did not feel that he could acquiesce in the proposed amendment. The question now before the Council related, not to the value or effect, as evidence, of the contents of a dying declaration, but to the nature of the proof to be required in any case of the fact that any statement was or was not the declaration of a dying man. He (Mr. Erskine) was not prepared to enact that no evidence of this fact, except written evidence, should be accepted in our Courts. A dying declaration might be made in presence of a hundred villagers, who had no interest in deposing untruly regarding it. It might be made in presence of many most credible and intelligent witnesses, who nevertheless had no writing materials at hand. It might be made in presence of the Magistrate himself. But the Honorable Member for the North-Western Provinces proposed that in all such cases the dying declaration should be inadmissible in evidence, if it were not offered in the form of a written and attested statement. He (Mr. Erskine) did not consider that such a rule would conduce to the ends of justice. The true principle, he believed, was the general one—that all evidence of this fact, as of other facts, should be admitted *primâ facie;* and that the appreciation of such evidence, whatever it might be, should be confided to the Court to whom it was given. A dying declaration, of course, would always be received and weighed with caution; and so would oral evidence to prove that any statement had really been made by a dying man.

THE CHAIRMAN said, he confessed it appeared to him that the introduction of the words proposed by the Honorable Member for the North-Western Provinces might prevent dying declarations from being given in evidence at all, in cases where it might be of the utmost importance to give them; and, on the other hand, that the safeguard proposed was no safeguard in substance, but only a safeguard in appearance. For instance, take the case put by the Honorable Member for Bombay. A man was dying on the road, and a Magistrate was going past him. The Magistrate had no paper or pen and ink with him, and the man made his declaration and died. The Magistrate could not give evidence according to the proposed amendment. Suppose the Magistrate and two or three gentlemen of the highest credibility were present at the time the declaration was made, and were to make a statement on oath that the evidence offered was the substance of the dying man's declaration; but because that evidence was not written down before the man died, therefore it was to be inadmissible. On the other hand, how easy would it be for persons to bring forward a dying declaration reduced into writing and duly attested, and say that the dying man had made that statement, and they had written it down before his death? Why, you saw daily in Courts of Justice writings brought forward in that way and attested by witnesses, which you were forced to believe until, upon cross-examination, their proper character was discovered. Therefore, he thought that declarations of this sort, though reduced into writing and though attested by witnesses, would be no security at all. Suppose a dying declaration were required to be written down by one person and signed by at least another; it would be always necessary, in order to give a dying declaration in evidence, that at least two persons should be present at the time it was taken. He thought that the introduction of the proposed words would throw great difficulty, and was fraught with no essential benefit, in the administration of justice.

Then with regard to dying declarations in England being admissible

only in cases of homicide where the circumstances of the death were the subject of the declaration, he confessed he did not see the principle on which that rule had been made. It was a principle which had been handed down from case to case, and that, he thought, was the only reason why it was still acted on. He would read the following passage from Roscoe's Criminal Evidence, to show what the English law on the subject was :—

" It is a general rule, that dying declarations, though made with a full consciousness of approaching death, are only admissible in evidence where the death of the deceased is the subject of the charge, and the circumstances of the death is the subject of the dying declarations. * * * * Therefore, where a prisoner was indicted for administering savin to a woman pregnant, but not quick with child, with intent to procure abortion, and evidence of the woman's dying declaration was tendered, Mr. Justice Bayley rejected it, observing that, although the declarations might relate to the cause of the death, still such declarations were admissible in those cases only, where the death of the party was the subject of inquiry. * * * *A man having been convicted of perjury, a rule for a new trial was obtained, pending which, the defendant shot the prosecutor, who died. On showing cause against the rule, an affidavit was tendered of the dying declarations of the prosecutor, as to the transaction out of which the prosecution for perjury arose ; but the Court were of opinion that this affidavit could not be read. * * * * So evidence of the dying declarations of the party robbed has been frequently rejected on indictments for robbery. * * * * The following case seems rather an exception to this rule. The prisoner was indicted for poisoning John King. The poison was administered in a cake on which the deceased breakfasted, and was immediately taken ill, whereupon he told his son not to eat the remainder of the cake. His maid-servant who was present, and who had made the cake, said she was not afraid of it, and she proceeded to partake of it, and was in consequence poisoned, and speedily died. Her dying declarations (made after she knew of her master's decease), as to the manner in which she had made the cake, and that she had put nothing bad in it, and that the prisoner was present eating his breakfast at one end of the table, while she was making the cake at the other, were tendered in evidence on the part of the prosecution. An objection to their admissibility was taken for the prisoner, and Hutchinson's case (*Supra*) was cited. Mr. Justice Coltman, after consulting Baron Parke, expressed himself of opinion, that as it was all one transaction, the declarations were admissible, and accordingly allowed them to go to the Jury ; but he said he would reserve the point for the opinion of the Judges. The prisoner, however, was acquitted."

Now these were refinements of the English law. Were all these refinements to be introduced into the Mofussil Courts where the parties had not the authorities to refer to ? He thought that, in making a law for this country, we ought to make it intelligible upon some principle. If a principle was safe in reference to one case, it was safe in reference to another. He would, therefore, lay down the principle that when a man made a dying declaration, if he believed at the time that he was about to die although he might entertain hopes that he might recover, the declaration ought to be received in evidence, whether it was made in the presence of the accused person or not. That, he believed, was entirely a correct principle. If it was not a safe principle, it ought not to be admitted at all ; but if it was admitted in one case, it ought to be admitted in all cases.

Then the English law, in those cases where it was admitted, did not require that a dying declaration should be reduced into writing.

For these reasons he objected to the proposed amendment, and thought that its adoption would introduce a principle which would provide no safeguard ; whereas the principle of the Section, as it now stood, was preferable, namely, of admitting dying declarations in all cases and leaving it to the Judge in each case to give such credence to a declaration as he might find it to deserve after it had been subjected to cross-examination.

SIR CHARLES JACKSON said, when this matter was last before the Committee, he was the only Member who doubted the expediency of admitting in evidence dying declarations when the death of the deceased person was not the subject of enquiry. He did not, however, entertain a strong opinion on the subject, and did not call for a division, but merely met the question with a negative. He must say, therefore, that if he thought the amendment proposed by the Honorable Member for

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the North-Western Provinces amounted to any safeguard, he should gladly support it. But for the reasons given by the Honorable and learned Chairman, he (Sir Charles Jackson) thought that it was no safeguard. There was no difficulty in this country to get any amount of witnesses to prove any document. He would rather trust to another safeguard, and that was the common sense of the Judge and of the Jury, if a Jury was called. He apprehended that the Judges would always receive such testimony with great caution, and he trusted they would be competent to sift it. He thought that it would strike most Judges that nothing would be easier than to put words into a dead man's mouth when he could no longer contradict the witnesses, and that all Judges and all Juries would be very careful before they attached any weight to such evidence.

MR. HARINGTON said, after what had fallen from the Honorable and learned Chairman and the Honorable and learned Judge (Sir Charles Jackson), he would not press his Motion, but, with the permission of the Committeee, would withdraw it.

The Motion was accordingly by leave withdrawn.

MR. HARINGTON moved the omission of Sections 239 and 239*a*, and the substitution of the following :—

"If, in the course of a trial before a Subordinate Magistrate, the evidence shall appear to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent to try, or for which he is not competent to commit the accused person for trial before the Court of Session, he shall stay proceedings, and shall submit the case to the Magistrate to whom he is subordinate. Such Magistrate shall either try the case himself or refer it to any Officer subordinate to him having jurisdiction, or he may commit the accused person for trial before the Court of Session. In any such case, such Magistrate or other Officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects, as if no proceedings had been held in any other Court.

If in any case tried by a Subordinate Magistrate having jurisdiction, in which the accused person is found guilty, such Magistrate shall consider the offence established against the accused person to call for a more severe punishment than he is competent to adjudge, he shall record the finding and submit his proceedings to the Magistrate to whom he is subordinate, and such Magistrate shall pass such sentence or order in the case as he may deem proper and as shall be according to law. In any such case, the Magistrate to whom the proceedings are submitted, may examine the parties, and recall and examine any witness who shall already have given evidence in the case, and he may call for and take any further evidence.

Nothing in the last preceding Section shall be held to prevent the Subordinate Magistrate in any such case as is therein described, if such Magistrate is empowered to hold the preliminary enquiry into cases triable by the Court of Session, and to commit persons to take their trial before such Court, from committing the accused person for trial before the Court of Session, instead of finding him guilty. If the Subordinate Magistrate shall be of opinion that the accused person should be committed for trial before the Court of Session, he shall proceed in accordance with Chapter XII of this Act for conducting the preliminary enquiry in cases triable by the Court of Session."

Agreed to.

MR. HARINGTON moved that the Clerk of the Council be authorized to substitute the words "Subordinate Magistrate" for the words "Subordinate Court" throughout this Chapter.

Agreed to.

INCOME TAX.

SIR BARTLE FRERE said, before the Council adjourned, he desired to remove what appeared to him to be a misapprehension, and of giving his Honorable friend opposite (Sir Charles Jackson) and the Honorable and learned Vice-President, an opportunity, of which he felt sure they would be glad to avail themselves, of correcting a misrepresentation. On referring to the speech with which he introduced the Bill for amending the Income Tax Act, he found that he had expressly stated—

"We propose that the Bill should not be general; but should be applied only to those Districts where Government may be satisfied that it would not act unjustly either to the public revenue or the tax-payers. *We propose to ask for power to continue it for future years, should it be found to work well.*"

He was sure that that passage of his speech would satisfy the Honorable and learned gentlemen that he did not attempt to draw the Council farther than he proposed at starting

when he asked them to suspend the Standing Orders, and that he had not slipped into the Bill an important provision of that kind after it had been introduced.

SIR CHARLES JACKSON said that his objection was not based upon that ground. He had only referred to the substance of the Section, and had pointed out that it would in effect be a frittering away of the Income Tax.

THE VICE-PRESIDENT explained that what he meant to say was that, if he had understood that it was intended to introduce such a Clause, he should have voted against the suspension of the Standing Orders for the purpose of passing the Bill with that Clause without a republication of the Bill.

SIR BARTLE FRERE said, he only wished to set himself right with the Council, and to show that he had given ample notice of the intention of Government.

The Council adjourned for ten minutes.

CRIMINAL PROCEDURE.

The Council having resumed its sitting, the consideration of the Criminal Procedure Bill was proceeded with.

MR. HARINGTON moved the introduction of the following as a new Chapter after Chapter XIX :—

"OF LOCAL NUISANCES.

1. The Magistrate of the District or other Officer exercising the powers of a Magistrate may cause unlawful obstructions and nuisances to be removed from thoroughfares and public places, and may suppress or cause to be removed to a different place, trades or occupations injurious to the health or comfort of the community, and may prevent such construction of buildings and such disposal of combustible substances as may appear to him likely to occasion conflagration, and may cause the removal of buildings in such state of weakness as by the probability of their falling may appear to him to expose persons passing by to danger.

2. The Magistrate or other Officer as aforesaid shall, in the first instance, issue an injunction containing such directions as he may consider necessary. Such injunction shall, if practicable, be served personally on the person concerned; but if such personal service is found to be impracticable, the injunction shall be notified by proclamation, and a written notice thereof shall be set up at such place or places as may be best adapted for conveying information to the person concerned. If such injunction be not obeyed, the Magistrate or other Officer as aforesaid may compel observance thereof, and punish disobedience by a fine not exceeding two hundred Rupees, or by imprisonment without labor for any period not exceeding one month. If the Magistrate or other Officer as aforesaid find it necessary to incur expense in removing noxious or dangerous articles or buildings, it shall be lawful for him to sell the same or their materials by public auction, in order to defray the charge, delivering any surplus that may remain to the owner. The Magistrate or other Officer as aforesaid may, under the like penalty, compel the owner of any tank or well adjacent to any public thoroughfare to fence the same in such manner as to prevent danger to the public arising therefrom.

3. Any person who is affected by such injunction or written notice as is above described, if he shall object thereto, may claim, by written Petition, to be presented to the Magistrate or other Officer as aforesaid within the period of ten days if reasonably practicable, if not, within the shortest reasonable further time from the receipt of such injunction or the publication of such notice, that a Jury may be appointed to try and decide the question. On receiving such Petition, the Magistrate or other Officer as aforesaid shall pass order thereupon for the appointment of a Jury which shall consist of not less than five persons, whereof the President and one-half of the other Members shall be nominated by the Magistrate or other Officer as aforesaid from the residents in the vicinity, and the remaining Members shall be nominated by the party petitioning. The Magistrate or other Officer as aforesaid shall suspend the further execution of the injunction or order pending such enquiry, and be guided by the decision of such Jury, which shall be according to the opinion of the majority. If the Petitioner shall, by neglect or in any other way, prevent the appointment of a Jury, or if from any cause the Jury so appointed shall not decide and report within a reasonable time to be fixed in the order for their appointment, their functions shall cease from the date of the expiration of such period, unless they be continued by special order of the Magistrate or other Officer as aforesaid; and if from any of the above causes no decision be made by the Jury, the order of the Magistrate or other Officer as aforesaid shall take effect in the same manner as if no objection had been made to it."

THE CHAIRMAN observed that this Chapter related not only to Procedure, but also to punishments which were already provided for by the Penal Code. He thought that the parts which related to punishments had better be left out of this Bill.

After some conversation, the Chapter was withdrawn with a view to its being re-cast.

Chapter XXV next came under consideration.

Sections 333 and 334 were passed as they stood, the latter after some discussion.

Section 331 of the preceding Chapter, which empowered the Sudder Court to call for and examine the records of any case tried by any Court of Session, and which was ordered to stand over for the purpose of being considered in connection with Section 334, was passed after a verbal amendment.

Section 335 was passed as it stood.

MR. SETON-KARR moved the introduction of the following new Section after Section 335 :—

"In all Criminal cases in which the Magistrate of the District, or other Officer exercising the powers of a Magistrate, shall pass a sentence of imprisonment not exceeding fifteen days, or of a fine not exceeding fifty Rupees, no appeal shall be allowed. In cases of theft, if the sentence passed by such Magistrate or other Officer be a sentence of imprisonment not exceeding two months, no appeal shall be allowed."

He said—Sir, I must request Honorable Members, in reading this amendment, to substitute 'one month' for 'two months,' in the last line but one.

My object in proposing it, is to keep the law of appeal exactly where it is now. The Officers who will try these cases, without appeal, only attain full powers after passing two severe examinations in law, languages, and procedure, which form as good a guarantee for efficiency and experience as any ordeal of this nature can reasonably be supposed to give.

In framing this amendment, I have taken no notice of the provisions of the old law which, in particular cases, allows a fine of higher amount than fifty Rupees to be inflicted without appeal. The law says,—

"Unless the offender is a Zemindar, or independent Talookdar or other actual proprietor of land, paying an annual rent to Government of more than 10,000 Rupees, or a proprietor of Ayma land paying a quit rent to Government of 200 Rupees per annum, or of Lakhiraj land the annual produce of which is above 1,000 Rupees; in which cases the fine may be 200 Rupees."

This provision is seldom resorted to and almost obselete; so I have not thought it necessary to renew it.

I would further observe, Sir, that many of the Officers who will try these cases are Principal Sudder Ameens, and men of considerable ability. But the necessity for allowing appeals will be considerably decreased by the expected severance of the Executive from the Judicial functions in the case of Magisterial Officers, which severance will be gradually carried out over Bengal. Still, hitherto, the kind of cases in which the new law, as it now stands without the amendment, will take away the power to appeal, are not of the kind which necessarily set the professional activity of the detective and Police Officer in chronic opposition to the cool and impartial bearing which he should maintain as a Judge. The commonest assaults, bazar squabbles, and petty cases of theft, of which the Magistrate knows nothing whatever till they are brought into Court ripe for decision, are the cases which fall under this category. No one that I know of, has protested against the exercise of the authority which I propose to retain, and I believe that the most experienced Commissioners, the ablest Magistrates, and the most impartial Judges would demand its continuance. Now, Sir, if it should be taken away, I believe the consequence would be that authority would be weakened, appeals multiplied, and business increased. At all times natives are anxious to protract litigation, and if the Judge should be gifted with a fatal facility for generating grievances, for inviting complaints, and finding flaws in evidence which, after all, he must judge of, not from the living witness, but from the dead record—why, Sir, the business would be absolutely interminable! Or should the native community perceive hostility to exist between the Judge of the appellate and

the Judge of the lower Court, or even imagine it to exist when it did not, the consequences would be exactly the same. I say that it is perfectly easy to conceive the existence of a long standing dispute between two rival Zemindars, which should take the form, not of violent affrays or of sanguinary breaches of the peace, which are now, happily, of rare occurrence, but of complaints and counter complaints between the dependants and retainers of one party or the other. In such a case the Magistrate, with a Judge of a peculiar temperament, could not be sure of fining any man five Rupees, or of imprisoning him for a week, or of calling on him for recognizances, without having his authority appealed against and consequently weakened. I trust that in this point I shall have the support of the Honorable Member for the North-Western Provinces, who has had much greater experience of the working of the old system in all its branches from the lowest to the highest, than I have had; but my great argument is, that in a case like this, the *onus probandi* lies upon the party who would introduce the change in the system of appeal, and that no cause whatever is made out. Indeed, the tendency now in legislation is rather to limit appeals, and to go back in the other direction. I trust, therefore, that the Council will see fit to pause before they take away a power which was conferred with forethought, which has been exercised with discretion, and which, over a long series of years and a large tract of country, has certainly contributed to maintain the wholesome authority of the established tribunals, and to assert that supremacy of law which we all desire to uphold.

MR. HARINGTON said that although the Royal Commissioners by whom the present Code was prepared, seemed to have taken a different view of the question now before the Committee from the Honorable Member for Bengal, and had proposed to give an appeal from every sentence, whether passed by a Magistrate exercising full powers, or any subordinate Magistrate, he was inclined to agree with the Honorable Member for Bengal, and to consider it unadvisable to alter what was the present law and practice on this side of India. Indeed, he was quite prepared to go farther, and when a sentence of imprisonment was passed by an Officer exercising the full powers of Maagistrate, to extend the period which should bar an appeal, from fifteen days to one month, without reference to the character of the offence for which the imprisonment was awarded. There were many offences other than theft, in respect of which he thought the limitation proposed by him would be equally proper, and he saw no reason why theft should be singled out, and why the distinction contained in the proposed amendment should be confined to that offence. He should prefer to see the amendment made general.

THE CHAIRMAN said, he should support the Motion of the Honorable Member for Bengal. The only question was whether, as shown by the Honorable Member for the North-Western Provinces, the proposed Section should not be made applicable to many cases besides theft. For instance, in similar cases of criminal misappropriation of property, he thought there should be no appeal. In point of principle it appeared to him that all cases punishable with imprisonment not exceeding one month, or fine not exceeding 50 Rupees, should be included. He should also like to introduce cases triable by the Sessions Judge who was quite as competent to decide without appeal as a Magistrate.

The Section was ultimately passed as follows :—

"In all criminal cases in which a Court of Session or a Magistrate of a District, or other Officer exercising the powers of a Magistrate, shall pass a sentence of imprisonment not exceeding one month, or of a fine not exceeding fifty Rupees, no appeal shall be allowed."

Section 336 provided as follows :—

"Any person convicted on a trial held by an Officer not exercising the powers of a Magistrate, may appeal to the Magistrate of the District, or other Officer exercising the powers of a

Magistrate, who shall have been empowered by the Government to hear such appeals."

MR. FORBES moved the addition of the words, "to whom the Officer to whom the appeal may be brought is subordinate."

After some discussion, the Motion was by leave withdrawn; and the Section was passed after the substitution of the words "exercising powers less than those of a Magistrate," for the words "not exercising the powers of a Magistrate."

MR. ERSKINE moved the introduction after Section 336 of the following new Section prepared by the Honorable gentleman lately the Member for Bengal (Mr. Sconce), who, however, had no opportunity of himself moving its adoption:—

"Any person convicted by any Civil Court, under Chapter X of this Act, may appeal to the Court to which decrees or orders made in such Court are ordinarily appealable, subject to the rules provided in Sections 339, 340, 341, 342, 343, and 344 of this Act. Petitions of appeal under this Section, if presented to any District Court, must be presented within thirty days immediately following and exclusive of the day on which the sentence or order appealed against is passed. Petitions of appeal to the Sudder Court must be presented within six weeks calculated as above. The Sudder Court and District Court may admit an appeal after the time herein provided, on sufficient cause shown."

The object of the amendment was, in cases falling under Chapter X of the Code, to allow parties to make appeal from orders passed by any Civil Court to the Court to which the decisions of such Court were ordinarily appealable. He (Mr. Erskine) was glad to express a general concurrence in the object which the new Section was intended to secure, and therefore to bring the Section to the notice of the Committee. But he was not quite sure that it did not go somewhat too far. He was disposed to think that some distinction should be made between penalties imposed by Courts for contempt of Court committed in their presence, and penalties imposed for other offences under Chapter X. The Honorable Member for the North-Western Provinces had drawn his attention to a proviso in the Code prepared by that Honorable Member and Mr. Mills, which seemed to him (Mr. Erskine) to be very reasonable, and which he should be glad to see added to the new Section. The proviso was to the effect that, in cases of contempt committed in open Court, the order of the Court should state the facts constituting the contempt, and that the correctness of such statement should not be open to question in appeal.

THE CHAIRMAN observed that, as Chapter X was now framed, the Civil Courts might send persons whom they might punish under that Chapter, to the Criminal Jail, even though they might be European British subjects. He thought that this was a power which these Courts should not possess, and he should therefore move the addition of the words "in the Civil Jail" at the end of Section 134.

MR. HARINGTON said that the Code did not specify whether the imprisonment was to be in the Civil or Criminal Jail. With regard to the addition proposed by the Honorable and learned Chairman, it must be borne in mind, that the imprisonment for some of the offences mentioned in Chapter X, might be rigorous, that was with hard labor, which could not be given in the Civil jail.

THE CHAIRMAN then moved an addition to the Section proposed by Mr. Erskine, to the effect that Civil Courts, when acting under Chapter X of the Code, should be deemed Criminal Courts within the meaning of the Code.

SIR BARTLE FRERE asked, what was the object of the proposed addition?

THE CHAIRMAN said that the Bill now before the Council was one entitled a Bill to simplify the Procedure of the Criminal Courts in the Mofussil. A certain Section in the beginning of the Bill exempted certain classes from the jurisdiction of those Courts, and he had all along understood that the Courts mentioned throughout the Bill were Criminal Courts. When he found, however, that the right of appeal was to

be allowed to persons convicted by a Civil Court, he was anxious to have it carefully defined that Civil Courts pronouncing such sentences were in reality Criminal Courts within the meaning of the Code, and should be treated as such. It was not the power to fine that he objected to, but the imprisonment in the Criminal Jail.

SIR BARTLE FRERE wished to know whether the proposed addition would make any change in the law as it now stood ?

THE CHAIRMAN said, he objected to any of the Courts in the Mofussil having the power of imprisoning European British subjects in the Criminal Jail. At present there were no Jails in the Mofussil suitable for the confinement of European criminals. If the Chapter were passed as it now stood, the Mofussil Courts would have larger power over Europeans than was possessed by the Supreme Court, to which alone European British subjects were amenable for criminal offences. The Supreme Court, though it might punish for contempt, could not send the person convicted to the Criminal Jail. If he were to be punished under the Penal Code, he would have to be tried by a Jury as in all other Criminal cases. In order therefore to avoid all doubt as to the construction to be put upon this Bill in consequence of the introduction of the words "Civil Courts," he wished to move his addition to the amendment proposed by the Honorable Member for Bombay.

MR. ERSKINE suggested that the proposed addition and the interpretation placed on a former Section of the Code would exclude altogether the jurisdiction of the Courts, both Civil and Criminal, as regards European British subjects in cases of contempt. He thought he had read a letter published sometime ago in one of the newspapers, in which the Advocate-General advised an Officer—in the Punjab, he (Mr. Erskine) believed—that there was in every Court of record an inherent power to punish for contempt committed in respect to itself; and this power—unless his memory failed him—was held to extend even to European British subjects in a Non-Regulation District.

MR. HARINGTON concurred with the Honorable Member for Bombay as to the effect of the addition to the Section proposed by the Honorable and learned Chairman. Under that addition, taken with what had fallen from the Honorable and learned Chairman, no Civil or Criminal Court in the Mofussil would be able to punish a European British subject for contempt.

THE CHAIRMAN said, he doubted the correctness of the view taken by the Honorable Members for Bombay and the North-Western Provinces. But, if it was correct, he thought a separate Act might be passed, or any Honorable Member might propose to introduce a Section to meet such cases. He did not pledge himself to support the Section that might be proposed until he knew what it was. He should move his amendment as a new Section, and if he carried the Motion, any Honorable Member might take what steps he thought proper. He could not consent to give the Courts in the Mofussil, in respect of European British subjects, the powers which they would be competent to exercise under the Chapter as it now stood.

MR. ERSKINE'S Section, without the addition of the proviso proposed by himself, was then put and carried.

THE CHAIRMAN moved that the following new Section be introduced after the above Section :—

"All Courts, when acting under Chapter X of this Code or under the last preceding Section, shall be deemed Criminal Courts within the meaning of this Act."

SIR BARTLE FRERE said that, as the law stood, it seemed to him that any Civil Court had power to send a European, guilty of contempt, to a Civil Jail ; but we were now asked to provide that, when such a Court dealt out such punishments, it should be looked upon as a Criminal Court, and *ergo*, that it should have no power of punishing any European guilty of such offence. That did not seem to him to be a reasonable proposition, and

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he thought it better to leave the law as it now stood than to alter it in the manner proposed.

SIR CHARLES JACKSON said that the punishment provided by Chapter X for contempt of Court, was a penal proceeding, and ought to be incorporated as part of this Act. If so, ought not the Court dealing with it to be looked upon as a Criminal Court? It seemed to him that that was a natural logical sequence. The discussion now raised was substantially a revival of the discussion on the Black Acts, and he could not see why such a discussion should be revived.

SIR BARTLE FRERE said, he must beg the Honorable and learned Member's pardon for saying that this question had no connection whatever with the Black Acts. We were now asked to say that that which was a Civil offence should be made a Criminal offence, and the only result would be that it would be impossible to punish for that offence certain persons against whom the same power could now be exercised without challenge.

THE CHAIRMAN said that by Section 132, Chapter X, of the Bill it was provided that :—

"When any offence described in Chapter X of Act XLV of 1860 (The Indian Penal Code), except Section 181 or 182, is committed in any Court, Civil or Criminal, in contempt of such Court, or of the lawful authority of such Court, it shall be competent to such Court to take cognizance of the same, and to adjudge the offender to punishment as authorized by the Sections applicable thereto."

Now Section 183 of the Penal Code provided that—

"Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description, for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both."

According to this Section, if a Civil Court issued an order for sale, and a European resisted the order, he would be liable to be tried by that Court for that offence, and sent to jail for six months with hard labor, or fined a thousand Rupees. He certainly did think that that was introducing the Black Acts. It was merely by calling what was in fact a Court of Criminal Judicature a Civil Court, that certain Courts might exercise criminal jurisdiction which they were, by Section 4, expressly prohibited from doing. This was a Bill for simplifying the Procedure of the Courts of Criminal Judicature, so that all the Courts which acted under it were to be presumed to be Criminal Courts. Therefore, those persons who were already exempted from the jurisdiction of the Criminal Courts should continue to be so exempt; and, to remove all doubt on the subject, he proposed his Clause, which, he thought, would show clearly what the intention of the Council was.

MR. ERSKINE said, he would remark in the first place that the allusion to Section 183 of the Penal Code had also occurred to him, and he was prepared to introduce into this Act any such restriction on the power of the Civil Court as would prevent them from passing a sentence of imprisonment with hard labor. Then again, he was not sure whether, under the construction placed by the Honorable and learned Chairman on a former Section, a Civil Court would have power to pass a sentence, even of fine, upon a European. If that were so, then no Civil Court would have any power at all to punish a European for contempt of Court.

SIR BARTLE FRERE said, he should vote against the proposed amendment, as he thought the better way would be to leave matters as they now stood. It seemed to him also that the amendment went far beyond what any Honorable Member of the Council had looked for or expected. At the same time he must protest against its being thrown in his teeth, whenever he spoke about the Mofussil Courts, that he was trying to introduce the Black Acts by a side-wind. The power to punish for contempt was not a power peculiar to Indian Courts. It was a power vested in all civilized

Courts of Justice every where, and he could not see that, in introducing a provision of this kind, he was introducing any Black Act or any law which did not already exist.

SIR CHARLES JACKSON said, he did not know what his Honorable friend meant by saying that he had been charged with wishing to bring in a Black Act by a side-wind. He (Sir Charles Jackson) had made no such charge. What he had contended was that a Mofussil Civil Court should not be allowed to act as a *quasi* Criminal Court, and pass sentences and orders in cases of contempt which were sentences and orders of a Criminal Court, and yet not be treated as subject to the Code of Criminal Procedure. He thought it most unfortunate that the Black Acts should be brought to bear on this question. He had never charged the Honorable Member with any intention of the kind referred to, and he was very much astonished to hear him saying that he had done so.

THE CHAIRMAN said, he had never intended to throw in the Honorable Member's teeth that he was attempting to bring in the Black Acts by a side-wind. But the Honorable Member had said that the Black Acts had nothing to do with the question, and he (the Chairman) had tried to show how they had. He would draw the attention of the Council to how the case now stood. This Code of Procedure related to Criminal Procedure. The Penal Code provided for the punishment of certain offences committed by way of contempt in the face of the Court, and also for like offences committed at a distance; and in these cases any Court, when dealing out such punishments, became a Criminal Court and ought to be dealt with as other Criminal Courts which had no jurisdiction over European British subjects. As an instance of an offence by way of contempt punishable with hard labor under the Penal Code, he had alluded to Section 183. Section 184 then provided that—

"Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both."

And Section 185 provided that—

"Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both."

Now these were offences not only in contempt of Courts of Justice, but also in contempt of public servants. Suppose any one at a public revenue sale hindered such sale by not carrying out his bidding, he would not be punished by the Board of Revenue or by a Civil Court, but probably by the nearest Magistrate or by some person who had Criminal Jurisdiction. If in any case a Civil Court was converted into a Criminal Court, it should be treated like all other Mofussil Courts which had no jurisdiction over European British subjects. Then it was said that no power at all was given to Civil Courts to punish Europeans for such offences. Some Clause might be introduced providing for this. But it was quite a different matter to make Europeans liable to be punished for contempt with three months' hard labor rather than not punish them at all. In the Supreme Court, if a person were guilty of a contempt of Court, he could now be sent to a Civil jail, while under the Penal Code he would have to be tried by a Jury and, if convicted, sent to work out his penal sentence in the House of Correction. In other words, when the Penal Code came into operation, the Supreme Court could only try a man by Jury, whereas, if the matter were to be left as it stood, the Mofussil Courts would possess a Criminal Jurisdiction over European British subjects far beyond that which could be exer-

cised by the Supreme Court; and therefore he said that it was a Black Act, notwithstanding all that had been urged by the Honorable Member of Government. In saying so, however, he did not intend to say that the Honorable Member was trying to introduce it by a side-wind.

MR. HARINGTON said that, in order to show that the Honorable Member for Bombay and himself were right as to the effect of the Section proposed by the Honorable and learned Chairman, he would read Section 4 of the Code which appeared to have been overlooked in framing Chapter X. The Section said,—

"The Criminal Courts shall have jurisdiction over all persons except such persons as by any Act of Parliament or by any regulation of the Codes of Bengal, Madras, and Bombay respectively, or by this or any other Act of the Government of India in Council, are or shall be exempted from their jurisdiction."

The exception contained in this Section would extend to all cases falling under Chapter X arising in any Criminal Court in which a European British subject was concerned, and if the Civil Courts were declared to be Criminal Courts when exercising jurisdiction under that Chapter, they equally with the regular Criminal Courts would have no power to punish Europeans for contempt. With regard to other offences, the effect of the Section proposed by the Honorable and learned Chairman, taken in connection with Section 4, would be to place European British subjects on a different footing, in respect of such offences, not only from the natives in the Mofussil, but also from their own countrymen in the Presidency towns; for it was preposterous to suppose that a European could be sent down to the Presidency to be tried by the Supreme Court when the only punishment to which he was liable was one or even three months' imprisonment with labor. They ought to look the matter in the face, and carefully to consider whether this would be right. It might be objectionable to subject Europeans to trial for such offences before the subordinate Civil Courts, but there seemed no reason why they should not be tried by the Zillah Judge or a Justice of the Peace. The Chapter, as it now stood, was framed by the Royal Commissioners, and it had been twice carefully and fully considered in Committee. If it went too far as regarded European British subjects, the parts considered objectionable might be struck out, but they should retain at least what related to contempts of Court. In respect of that offence, the Chapter, in so far as the question of jurisdiction was concerned, did not go beyond the present law. He would read the law in force. This was contained in Act XXX of 1841. It 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 Civil or Criminal Court of the East India Company, shall be liable to be fined by the authority whose proceedings are obstructed, to any amount not exceeding 200 Rupees, or in case such fine be not paid, to be imprisoned for any period not exceeding one month."

This law had been in force twenty years. It applied alike to Europeans and natives. It was required for the protection of the Courts of Justice, whoever presided in them, and he had heard no sufficient reason for changing the law.

SIR BARTLE FRERE said that all he wished was that the same course should be pursued in these cases by the Civil Courts in the Mofussil as was pursued by the Supreme Court. He did not wish that they should have Criminal powers. He would have them act as Civil Courts; and if the Honorable and learned Vice-President would put his amendment in that form, he was perfectly willing to support it.

After some further discussion, the Chairman's Section was put, and

the Council divided upon it as follows :—

Ayes 2.	*Noes* 6.
Sir Charles Jackson.	Mr. Seton-Karr.
The Chairman.	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	Sir Robert Napier.
	Sir Bartle Frere.

So the Motion was lost.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

HOUSE OF CORRECTION (CALCUTTA).

MR. SETON-KARR moved that the Bill "for the better enforcement of discipline in the House of Correction at Calcutta" be referred to a Select Committee consisting of the Vice-President, Sir Charles Jackson, and the Mover, with an instruction to submit a preliminary Report under the 62nd Standing Order.

Agreed to.

The Council adjourned.

Saturday, August 3, 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-General Sir R. Napier,	Hon'ble Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.
H. Forbes, Esq.,	

INCOME TAX.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "for limiting in certain cases for the year commencing from the 31st day of July 1861, the amount of assessment to the Duties chargeable under Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices), and Act XXXIX of 1860 (to amend Act XXXII of 1860)."

LIMITATION OF SUITS.

THE CLERK presented to the Council a Petition from the Calcutta Trades' Association, praying for an amendment of Act XIV of 1859 (to provide for the limitation of suits.)

Also a similar Petition from Bankers, Merchants, and Traders, carrying on business in Benares in the North-Western Provinces.

THE VICE-PRESIDENT moved that the above Petitions be printed.

Agreed to.

THE VICE-PRESIDENT also gave notice that he would, on Saturday next, move the first reading of a Bill to amend the above Act.

SALTPETRE.

THE CLERK reported to the Council that he had received a communication from the Government of the North-Western Provinces, relative to the necessity of confining the eduction and purification of Salt to Saltpetre Refineries absolutely.

MR. HARINGTON moved that the communication be printed and referred to the Select Committee on the Bill "to regulate the manufacture of Saltpetre and of Salt educed therefrom."

Agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS' SETTLEMENTS).

MR. FORBES presented the Report of the Select Committee on the Bill "to extend to the Straits' Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil)."

PARSEES.

SIR BARTLE FRERE presented 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.