Saturday, June 8, 1861

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security for the good behavior of such person for a period not exceeding six months."

MR. FORBES moved the omission of the words "a Magistrate in charge of a division of a District," and the substitution of the words "to an Officer exercising the powers of a Magistrate." He observed that this Chapter gave very large powers—in the first place imprisonment for six months in default of security being given, then of twelve months, and then of three years; and as the Section, as now drawn, would enable a class of Magistrates to exercise these powers whose ordinary jurisdiction would be restricted to imprisonment for one month, he thought there would be great inconsistency in allowing a Magistrate to imprison for three years on suspicion only when he could imprison for only one month for a proved offence. It was on these grounds that he made the present motion.

Agreed to.

MR. HARINGTON moved that the words "or other Officer as aforesaid" be inserted after the word "Magistrate" at the end of the Section.

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

The Clerk of the Council was authorized to insert the words "or other Officer as aforesaid," after the word "Magistrate" wherever it occurred throughout this Chapter.

Sections 257 to 262 were passed as they stood.

Section 263 was passed after an amendment.

Sections 264 to 267 were passed as they stood.

MR. HARINGTON moved the insertion of the following new Section after the above :—

"Any evidence taken under Chapter XVIII or this Chapter, shall be taken in the manner prescribed by Section 230, subject to the provision contained in Section 231."

Agreed to.

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

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

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)."

Committee of the whole Council on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

Committee of the whole Council 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.)"

ARTICLES OF WAR (NATIVE ARMY).

THE CLERK reported to the Council that he had received a further communication from the Military Department relative to the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

SIR BARTLE FRERE moved that the above communication be printed.

Agreed to.

The Council adjourned.

Saturday, June 8, 1861.

PRESENT :

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

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

MALACCA LANDS.

THE CLERK presented to the Council a Petition from certain inhabitants of Malacca against the Bill "to regulate the occupation of land in the Settlement of Malacca."

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

Agreed to.

FINES FOR RIOTS.

THE CLERK reported to the Council that he had received a communication from the Home Department relative to the levy, in certain cases, of a fine on the Town, District, or Division in which a riot or pillage is committed.

MR. FORBES said that, although these papers had been communicated by the Government of India, yet as they referred to certain circumstances which had lately occurred in the Madras Presidency, he hoped that the Members of Government now present would allow him to make a Motion upon them.

The circumstances which had given rise to the presentation of these papers were these. It had always been the custom in Southern India for particular castes and classes to maintain a monopoly of the use of certain roads and streets on occasions of marriage or other ceremonial processions, and to deny the use of them to those of lower castes who had their particular thoroughfares allotted to them. Certain disputes which had arisen in connection with this custom had brought the subject prominently before Lord Harris' Government, and a positive and peremptory order had been issued that all public roads and streets and thoroughfares were to be open to the use of all classes alike, at all times, and under all circumstances, and that there was to be no monopoly on the one hand, and no prescription on the other. This order, as was perhaps not unnatural, gave a good deal of dissatisfaction, and certain persons in the District of Madura determined to endeavor to obtain its annulment. With this view, they sent emissaries to Madras to present Petitions to Government, and to forward their views in any way they could, and the correspondence of these emissaries with their employers, which had been found, gave a curious illustration of the different state of advancement and intelligence in which education and intercourse with Europeans had placed the inhabitants of the Presidency, as compared with those in the Mofussil; for the correspondence said—'It is of no use for us to press this Petition. Even the Hindoos themselves laugh at us when we talk of wishing to retain exclusive use of the streets for processions, and ask us what honor it does us; that others should use them as well as ourselves, and recommend us to be content with liberty to do as we please ourselves, and to give the like liberty to all others. Here in Madras, —they added—'every one goes about when and where he pleases.' But the correspondence went on to say that the writers thought that what the Government would not give on their Petition, they might be frightened into giving by their acts, and they suggested that if a great and violent outrage were seen to have arisen from the obnoxious order, it would probably be at once withdrawn. On this hint the people in the District acted, and on the occasion of a marriage procession in a certain village, which it was known would make use of a street hitherto closed against the class who would compose the procession, the whole male population of a neighboring town turned out to the number, as the Magistrate reported, of some thousands, and in broad day-light destroyed and pillaged the property of the inhabitants of the village in which the procession was taking place, and created the greatest alarm and consternation. The Magistrate at once proceeded to the spot and apprehended 300 or 400 of the offenders, and their cases had been dealt with by the Criminal Court; but in reporting what had occurred, the Magistrate suggested the enactment of a law under which a fine might be imposed on any village in cases in which it was obvious that a great outrage had been committed with the consent and connivance of all the inhabitants, as the best and indeed the only means of bringing punishment home to all the guilty parties.

This suggestion was sent to England with all the reports on the case, and commended itself to the judgment of the Secretary of State, who directed that the papers should be transmitted to the Government of India, and it was by that Government that they were now laid before this Council.

It appeared to him (Mr. Forbes) that a very large question arose on this reference, and that, if legislation were to follow, it should be general for all India, and not confined to one Presidency. He therefore thought that the best means of disposing of the matter would be to refer it to the consideration of a Select Committee composed of the Presidency Members, for consideration and early report, so that, if anything were to be done, it might possibly be included in the Procedure Code.

He therefore moved that the papers be printed and referred to a Select Committee consisting of Mr. Harington, Mr. Erskine, Mr. Seton-Karr, and the Mover, with instructions to present a report on that day fortnight.

Agreed to.

ARTICLES OF WAR (NATIVE TROOPS).

THE CLERK reported to the Council that he had received a further communication from the Military Department relative to the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

SIR ROBERT NAPIER moved that the above communication be printed.

Agreed to.

CATTLE TRESPASS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by cattle)."

SETTLEMENT OF ENAMS (BOMBAY).

MR. ERSKINE said that, in proposing some time ago an arrangement for the settlement of claims to exemptions from payment of land revenue in the Madras Presidency, Sir Charles Trevelyan had begun his Minute by remarking that the question had been before him ever since he entered the public service in 1826. He (Mr. Erskine) believed that if there were any one, whose experience of the public service extended over a much longer period, he might safely make a similar statement as to himself. And since this was so; since the general arguments on this subject had already been more than exhausted; he had no doubt that Honorable Members would readily excuse him if he abstained on that occasion from entering into a preliminary exposition of the origin and nature of alienations of public revenue in Western India, and the measures by which it had been proposed in former times to deal with them. He should therefore leave those general questions on one side for the present, and endeavor rather to explain to the Council, as clearly and as concisely as he could, some of the circumstances which had now induced the Government of Bombay to propose a summary settlement of claims of that description, and the main features of the enactment by which they desired to give effect to that proposal. It appeared then that about five or six years ago, the Supreme Government asked the Government of Bombay for information as to the working of a Commission which was engaged in enquiring into claims to exemption from land revenue demands in one portion of the Bombay territories. That reference called forth a very lengthened report on the subject, which was forwarded by the local Government towards the close of 1856, or beginning of 1857, with a statement of their own views on the whole question. At that time, and indeed up to the present time, the law relative to the adjudication of claims to hold lands exempt from the payment of revenue demands in Bombay, had not been uniform throughout the Presidency. In some districts, as in Khandeish, in the Dekkan, in the Southern Mahratta country, adjudications had been entrusted to Enam Commissioners

and their Assistants, with an appeal to the Governor in Council, under an Act passed in 1852 by the Governor General in Council. But in Guzerat and in the districts of the Northern and Southern Concan adjudications had been left to the Collectors of Revenue, with an appeal to the Zillah Courts, under Regulations passed by the local Government in the years from 1827 to 1833. When the Bombay Government took a retrospect of the working of these two systems on the occasion just referred to, they seemed to have been led to the conclusion that the plan of leaving the decision of cases of this nature to the ordinary revenue officers of Government had been anything but successful, and had resulted in a great loss of public revenue, in the disappearance of quantities of valuable records, and in much fraud and dissatisfaction as regards individuals. They were therefore at that time quite disposed to recommend that some agency similar to the Commission which had been at work in the more Southern districts, should be extended throughout the entire Presidency, and that a careful enquiry into the merits of each individual claim should be effected by those means with the least possible delay. Before, however, the Government of India could pronounce an opinion upon the suggestions then made, the disturbances of 1857 supervened. And the experience of that year and of the following year would seem very naturally and very materially to have modified the views of the local Government on this question, as on many others. By the close of the latter year, 1858, they had apparently become convinced that it was not expedient either on financial or on political grounds to press on, throughout all their districts, a strict special enquiry into every undecided claim to an assignment of public revenue. Looking at the question from a financial point of view, it was apparent not only that the cost of the agency necessary to carry out such an extensive inquisition within any reasonable period, must be greater than the state of the finances would justify the Government in proposing; but also that, even if such a scrutiny were effected with due despatch, very many claims, especially in the Northern Districts, would intermediately become confirmed to the claimants by mere efflux of time—by the mere continuance of prescriptive enjoyment. Political considerations, too, rendered it desirable that eager and protracted enquiries, by which feelings of uncertainty and disquiet were kept alive in the minds of a large and influential class of people throughout the country in connection with a great amount of valuable property, shou d be brought to a close without delay. The papers furnished to him (Mr. Erskine) did not enable him to state with any accuracy the total value of these claims to exemptions from the payment of land revenue in Bombay, or the number of claimants. But he believed he was not wrong in alleging that those claims in twelve Collectorates of Bombay, excluding the Provinces of Sattara and Sind, had been roughly estimated at about seventy-five lakhs of Rupees, or three quarters of a million sterling annually; and that the number of claimants in the same districts, or rather of claims—for, of course, many persons might have an interest in one claim—as known to the authorities five years ago, had been in excess of 108,000. In order to show, moreover, how many of these claimants belonged to the poorer classes, to the ordinary population of the country, he might mention that a reference to 65,000 of the minor claims had proved that upwards of 51,000 of them were for sums not exceeding twenty-five Rupees per annum, or about two Rupees a month. Under these circumstances, the Bombay Government became convinced that it would not be desirable, either on financial or political grounds, to persevere in a detailed enquiry on the plan formerly contemplated, but that some arrangement in the nature of a compromise had become indispensable; that some large measure of healing and pacification should be adopted; and that the conditions of a summary settlement should at

once be proposed to the Government of India. The proposal was made accordingly about two years ago. The provisions were originally suggested by the Government of Lord Elphinstone. They had been carefully reconsidered, and in some respects modified by the Government of Sir George Clerk. They were generally approved by the Supreme Government in India, at whose request this Bill was introduced; and in their main features by the Secretary of State in England. The Bill, by which it was proposed to give effect to the provision so proposed and approved, was drawn in Bombay by the law officers of Government, and had subsequently been amended in some respects by the local Government, in order to bring it into accordance with their latest resolutions. In that shape, he (Mr. Erskine) had now the honor to present it to the Council. Before proceeding, however, to state exactly the conditions which the Bill would offer to claimants, it might be proper to notice that it did not profess to deal with claims of every description. Several classes of cases were specially excluded from the operation of the Bill. It would not apply to any claims advanced under the stipulations of any Treaties. It would not apply to claims connected with holdings which were in the nature of Jageers or Surinjams or political tenures, and which the Government would continue to deal with under separate rules. It would not apply to claims in lieu of which service would be demandable. This last, no doubt, was a very important branch of the enquiry—so important that the Government had found it necessary to provide for it by a separate measure which was under their consideration. And lastly, the Bill would not apply to claims which had already been adjudicated, and found not to be continuable hereditarily. It would apply to all other claims to hold lands exempt from payment of public revenue—especially, to all alleged personal grants, and to all that were in the nature of endowments of religious and charitable institutions. There were also some special provisions in the Bill applicable to cases already adjudicated and in which exempt lands had been declared to be continuable hereditarily in perpetuity. The nature of the scheme by which it was proposed to effect a settlement of these claims, might be explained in a few words. A notice was to be issued to every claimant requiring him within a specified period to declare finally, whether he accepted the terms of the summary settlement as made known to him, or whether he elected to have his title tried. Should he elect to have his title tried, that course was to be left open to him on terms, some of which might be regarded as severe. No doubt, in this instance, it was essential that every legitimate inducement should be employed to encourage claimants to acquiesce in the summary settlement; and, if stringent provisions could ever be made to operate so as to cause little personal hardship, it would be under an administration like that of Sir George Clerk. Still in stating the conditions which would be applied under the Bill to claimants who elected to have their titles tried, he (Mr. Erskine) wished to guard against the supposition that he was pledged to defend them all. Persons so electing, then, would be required, from the date of such election, to pay annually into some Government office, as a deposit, a sum equal to one-fourth of the ordinary assessment on the holding referred to, according to the survey settlement rates; and to furnish security for the payment from the same date of the remaining three-fourths of the assessment, in the event of his failure to establish his claim to exemption. The *onus* of establishing his claim, moreover, would, in such cases, be laid wholly on the claimant; and adjudication would be made in accordance with the laws hitherto in force, modified only in the claimant's favor as regards the period entitling by prescription under Act XI of 1852. Should the result of the trial thus held be unfavorable to the claimant, full assessment would be levied on his holding from the date of his election of trial. Should the result be favorable

to him, the sums taken from him as deposits would be restored with interest; and his claim would be allowed; but only on the most restricted conditions hitherto applied to such claims; that is to say, the right to continued exemption from payment of revenue on the holding would not be recognised on its passing by succession to an adopted son or to collaterals; or on its passing to any one by transfer of any other kind. But in all such cases full assessment would at once be imposed. These then were the conditions on which claimants might still obtain a formal adjudication of their claims to exemption from payment of land revenue. On the other hand, any one who should accept the summary settlement, would at once be confirmed in his immunities on two conditions. In the first place, a quit rent, fixed and unenhanceable, and calculated at one-fourth of the ordinary rates of survey assessments, would be imposed on his lands, and in consideration of that, all enquiry would be dispensed with, all liability to question or interference by officers of Government would cease; a perfect title, not of course as between third parties, but as against the State, would be conferred, and it would be conferred on much more liberal terms than any hitherto recognised in connection with such claims. And this suggested the second condition, namely, that a light *Nuzzurana* would also be imposed on the lands. It was hoped and believed that this would generally be levied in the form of an annual *nuzzur* equal to one-sixteenth of the ordinary assessment. But in connection with considerable claims, an option was to be allowed of paying occasional *nuzzurs* at the rate of one year's assessment on occasion of a succession, and two years' assessment on occasion of a transfer otherwise than by succession. In consideration of this further payment, the right of the claimant to transmit his full interest to an adopted son or to a collateral heir, or to any one by gift or by sale or otherwise without reference to the Government and its officers—and as if his immunity from taxation had been private property—would be fully recognised: or in other words, by agreeing to relinquish an unadjudicated interest of a more limited kind in five-sixteenths of his claim, the claimant would at once be assured of an interest of a more perfect kind in the remaining eleven-sixteenths, and be freed from all future liability to question or interference in connection with it. And, in estimating the value of this concession to claimants in general, it must be remembered that, although the titles of many, no doubt, were derived from grants by native princes and officers of State, who had full authority to alienate the public revenues, still, that in many districts, a very large proportion of such claims originated in grants made in times of tumult by local officers who had no authority at all to make them, or had their origin merely in private acts of fraud or corruption. The present measure was designed to supersede all reference to past misdeeds or mistakes; and to confer upon all unquestionable titles for the future. Then, as regards claims to exemptions on behalf of religious and charitable institutions, there was only one particular in which the terms offered in such cases would vary from those last described. For, as on the one hand such holdings would not be liable to successions, so on the other hand it was not judged proper to accord to the trustees or managers a power of alienating the property of the institution. The fixed unenhanceable quit rent of one-fourth of the assessment would therefore be imposed to cure defects of title; but *Nuzzurana* would not be imposed, and transfer would not be recognised as continuing claims against the State. The only other class of cases to which allusion need be made, was that of persons whose claims had already been adjudicated and declared continuable hereditarily in perpetuity. In such cases, of course, as there were no defects of title to cure, no quit rent would be imposed; but it was proposed to exact *Nuzzurana*, and in lieu of it to accord to these claimants likewise the more

complete and valuable titles now to be assured to others under the summary settlement. These, he (Mr. Erskine) thought, were all the conditions of the proposed measure, to which it was necessary in the first instance to allude. He thought that, when Honorable Members had looked into the Bill, they would find that, in framing their proposals on the subject, the Government had succeeded in keeping constantly in view the two conditions by which it was necessary that they should always be guided. In the first place, that they should not sanction a reckless and excessive sacrifice of the public revenues; but in the next place, that with this one reservation the terms proposed should be as liberal and as acceptable to claimants as any terms could be. These were the objects for which this settlement had been designed; and he hoped that when the Bill in its later stages should have been amended, as doubtless it would be amended by the better judgment of Honorable Members of that Council and by public criticism, it would be calculated to secure those objects. In submitting his proposals on this subject in 1859, Lord Elphinstone had observed :—

"The value of all property held on Enam or any similar tenure will be greatly increased by the settlement, and while Government will at once recover a considerable proportion of its alienated revenue, the minds of a highly influential portion of the community will be relieved from the disquieting influence which the delay and uncertainty of our enquiries into their titles has hitherto exercised."

He (Mr. Erskine) was hopeful that these anticipations would now at last be fulfilled, and that the feelings of uncertainty and mistrust which had too long disquieted the minds of considerable classes of the people, might really be transmuted into feelings of true satisfaction with, and loyalty towards, the Government which would thus have shown its anxiety to deal promptly, fairly, and finally with a large class of their most cherished claims.

He would merely further move that the Bill be read a first time.

The Bill was read a first 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

The consideration of Chapter XX (relating to Juries and Assessors) was postponed, in consequence of the absence of Sir Charles Jackson.

Mr. FORBES moved the introduction of the following as a new Chapter after Chapter XX :—

"The Subordinate Judges and Principal Sudder Ameens in the Presidency of Fort Saint George, shall continue to exercise under this Act, subject to the provisions of Act XLV of 1860 (The Indian Penal Code), the Criminal Jurisdiction which they are competent to exercise under any law for the time being in force, and shall have the same powers of punishment as are given by this Act to an Officer exercising the powers of a Magistrate.

"Subordinate Magistrates of the first and second class in the Presidency of Fort St. George shall, under such orders, as the Sudder Court shall from time to time issue, either commit to such Subordinate Judges or Principal Sudder Ameens the cases of persons accused of offences triable by such Judges or Principal Sudder Ameens, or refer such cases for the orders of the Magistrate of the District or other Officer exercising the powers of a Magistrate. If the case be referred to the Magistrate of the District or other Officer as aforesaid, such Magistrate or other Officer shall examine the parties as if no proceedings had been held in any other Court, and may, if it appear necessary, recall and examine any witness who shall already have given evidence, or may call for or may take any further evidence. It shall be competent to such Magistrate or other Officer to pass such order, or to proceed in the case, as he might have done, had the case been tried by himself in the first instance."

"In cases committed for trial before such Subordinate Judges or Principal Sudder Ameens, they shall be guided by the rules contained in this Act for the trial of cases before the Court of Session which are hereby made applicable to such cases, except that the cases tried by such Judges and Principal Sudder Ameens shall not be tried with the aid of Assessors. The Subordinate Judges and Principal Sudder Ameens may commit any case to the Court of Session in which the evidence is such as to warrant a presumption that the accused person has been guilty of an offence calling for a more severe punishment than such Subordinate Judges or

Principal Sudder Ameens are authorized to adjudge."

He said that, in the Madras Presidency, there was a class of Criminal Courts between the Sessions Judge and the Magistrate, for the procedure of which no provision had been made in this Code. These Courts now followed the same procedure as the Courts of Session with the exception that they did not sit with Assessors. In all other respects their proceedings were conducted in precisely the same form as those of the Sessions Courts. Commitments were made to them by the Magistrates, and they tried no cases but such as were so committed. They had no power to originate a trial; none to make preliminary enquiries, to issue warrants, to summon witnesses, or perform any of those similar functions which had always been, and would still be, confined to the Magistracy. Their jurisdiction extended to two years' imprisonment, and if any case came before them which required a more severe punishment, it would be re-committed to the Court of Session. Such cases would, however, in future very rarely occur, because, although now all Sessions cases were committed by the Magistrates to the Subordinate Courts, and by those Courts were sent on to the Sessions, under the Code on which the Committee was now engaged the Magistrates would make direct commitments to the Sessions; and such cases only as were considered by the Magistrates within the jurisdiction of the Subordinate Courts, would be committed to those tribunals. When he was lately down at Madras, he had proposed to the Government the abolition of those Courts, but had ascertained from the Government that they could by no means consent to such a measure, and it was intimated to him that it was their earnest desire that the Subordinate Courts should be allowed to continue on their present footing without any change whatever. A Bill was now before a Select Committee for re-constituting the Courts of Criminal Judicature throughout India, and whenever that came on for discussion the position and constitution of the Subordinate Courts in Madras would no doubt be fully considered. But so long as these Courts were retained, it was the wish of the Madras Government that their present procedure should be continued; and he was himself of opinion that this should be done. These Courts had hitherto held a much higher position than the Courts of the Magistrates in Madras, for the Magistrate's power had been limited to one month's imprisonment while the Subordinate Court could pass a sentence of two years, and it was to the Subordinate Courts that the Magistrates committed all cases which were beyond their own jurisdiction. It was therefore more in keeping with their past and present position, and with the estimation in which they were held by the people, that their procedure should, under the Code, be that of the Sessions Court, with which, with the sole exception of Assessors, it was at present co-ordinate, rather than that of the Magistrates who had presided in Courts of an inferior grade. The Subordinate Judges were also Civil Judges with extensive civil jurisdiction, and in asking the Committee to assent to his present motion, he (Mr. Forbes) was asking for nothing new, but only that the expressed wishes of the Madras Government should be acceded to in maintaining the Subordinate Courts of that Presidency on their present footing.

The first Section of the Chapter being proposed—

THE CHAIRMAN said, he did not understand why, as it was not proposed to give the Subordinate Criminal Judges and Principal Sudder Ameens in the Madras Presidency, greater powers than were to be exercised by Magistrates under the Code, they should have a different procedure. It was not intended that, in the trial of the cases brought before them, the Subordinate Criminal Judges and Principal Sudder Ameens in Madras should sit with Assessors; and with the limited powers which they were to exercise, he could see no advantage in giving them a procedure which was intended for a much higher class of

Courts. His objection to the Sections proposed by the Honorable Member for Madras was that persons committed to take their trial before the Subordinate Criminal Judges and Principal Sudder Ameens, were, in fact, to be tried only by those who had the same power to punish as full Magistrates and no more, and yet a different course of procedure from that of Magistrates was called for. Therefore, it was merely a question of names or a point of dignity. He did not see why this Council should, in a general law applicable to the whole of India, make a special provision on account of the Madras Presidency. The object of Her Majesty's Commissioners in framing this Code was that there might be a uniform system of procedure throughout India, and he certainly saw no reason for making an exception from that rule in the present case.

MR. HARINGTON said, the object of the Chapter proposed by the Honorable Member for Madras, was to provide in a suitable manner for the trial of cases which what had been called the Tehseeldar Magistrates of the Madras Presidency could not dispose of themselves, and which they were obliged, in consequence, to commit to a higher Court. The Courts to which the commitments were made were the Subordinate Criminal Courts —a class of Courts unknown in the Bengal Presidency—and the Courts of the Principal Sudder Ameens. If these Courts were to deal with the cases now tried by them as an inferior class of Sessions Courts in the same manner as similar cases were dealt with in Bengal and Bombay by the local Magistrates and under the same rules of procedure, they must not only try the cases, but they must make also the preliminary enquiry which was not what was desired, nor would it consist altogether with the constitution of these Courts. The great extent of some of the Madras Districts, and the number of cases arising therein, which the Tehseeldar Magistrates, owing to their limited powers, could not try, had hitherto rendered necessary a class of Courts between the District Magistrates who were also Collectors with very heavy Revenue duties, and the Courts of Session. There could be no doubt that the position of the Subordinate Criminal Courts and of the Principal Sudder Ameens of the Madras Presidency was anomalous and required consideration. The arrangement now proposed was avowedly only temporary. A Bill for constituting Courts of Criminal Judicature of a uniform character in the three Presidencies, was before the Council, and until this Bill passed into law he thought it would be better and more convenient to continue the existing state of things in the Madras Presidency in so far as the procedure of the Subordinate Criminal Courts and the Courts of the Principal Sudder Ameens, as Criminal Judges, was concerned, and to leave them to follow, as they had heretofore done, the procedure of the Courts of Session, without, however, having recourse to the aid of Assessors in the trial of the cases brought before them.

MR. SETON-KARR wished to know if the inferior Magistrates could not make the local investigations and then send on the cases to the Officers exercising the full powers of a Magistrate, namely, those whom it was now proposed to retain and designate as Subordinate Judges or Principal Sudder Ameens? As he understood the case, it was, as remarked by the Honorable and learned Chairman, a change of name on a point of dignity; and as such, he should, on the present showing, vote against the amendment.

MR. FORBES said that, as he had already observed, the proposed arrangement would be only a temporary measure, and the whole question would be considered whenever the Bill for reconstituting the Courts throughout India was brought on, and it would be only consistent with the feeling which had always been entertained for the Subordinate Criminal Courts in Madras, to continue to them the procedure which they now followed. The proposition which had been made that the difficulty should be overcome by the Government simply declaring that the Subordinate Judges should be Magistrates, and that they

The Chairman

would then follow the procedure laid down for the Magistrates, was not one that he (Mr. Forbes) could assent to. There were many duties made incumbent on a Magistrate by the Code which it would not be possible for a Judge to perform. A Magistrate was to issue search warrants; to apprehend any person committing an offence in his presence; to apprehend vagrants; to hold inquests; to visit the site of any great crime; to disperse riotous assemblies; to hold to security those of bad and suspicious character; all of which were duties quite foreign to the position of a Judge who, sitting in a Civil as well as a Criminal Court, could not ever leave his station, and who had at his disposal no subordinate officers to go about the country in execution of his orders. He had no means even of obtaining the presence of a witness without application to a Magistrate, and he (Mr. Forbes) thought it must be obvious that it was out of the question that an officer holding the position of a Judge of one of the Madras Subordinate Courts should be declared to be a Magistrate and be made subject to all the duties incumbent on a Magistrate under this Code. There were two courses open to adoption, the one to give to these Courts the procedure laid down for the Session Courts which was what the Madras Government wished, the other to give them the procedure laid down for the Magistrates, and it was his opinion that the case was one in which the wishes of the Executive Government should be acceded to, for it must be remembered that no question of uniformity was included in this matter. The very existence of the Subordinate Courts was peculiar to Madras, and it would be equally a departure from uniformity with the rest of India to give them the Sessions Courts' procedure as to give them that of the Magistrates.

MR. SETON-KARR asked whether it would not be possible for the Executive Government, by its order, to restrict these Magistrates solely to the exercise of judicial functions, and to declare that they should have nothing to do with preliminary and local enquiries?

MR. FORBES said, that would be doing by an order of Government just the thing which he proposed to do by law. The latter, he thought, was the preferable course.

After some further discussion, the Council divided as follows:—

Ayes 2.	*Noes* 5.
Mr. Forbes.	Mr. Seton-Karr.
Mr. Harington.	Mr. Erskine.
	Sir Robert Napier.
	Sir Bartle Frere.
	The Chairman.

So the Motion with regard to the first of the proposed Sections was negatived.

MR. FORBES then said, he would not press his Motion as to the rest of the Sections.

Sections 297 to 301 were passed as they stood.

The consideration of Section 302 (relating to the examination of witnesses) was postponed, on the Motion of Mr. Harington, in consequence of the absence of Sir Charles Jackson.

Section 303 was passed as it stood.

Section 304 was passed after an amendment.

Section 305 was passed as it stood.

Section 306 was passed after an amendment.

Sections 307 to 310 were passed as they stood.

Section 311 provided that "the accused person shall be allowed to examine any witness not previously named by him," &c.

MR. SETON-KARR moved the insertion of the words "if such witness be in attendance" after the words "named by him." He thought that such words were necessary, in order to prevent the accused from delaying the trial by frivolous excuses.

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

Sections 312 to 314 were passed as they stood.

The consideration of Section 315 was also postponed, on the Motion of Mr. Harington, in consequence of the absence of Sir Charles Jackson.

Sections 316 to 323 were passed as they stood.

MR. HARINGTON moved the introduction of the following new Chapter after Chapter XXII :—

"OF LUNATICS."

1. When any person who is charged with any offence shall appear to the Magistrate having jurisdiction, to be of unsound mind and incapable, in consequence, of making a defence, the Magistrate shall institute an enquiry to ascertain the fact of such unsoundness of mind, and shall cause the accused person to be examined by the Civil Surgeon of the District or other Medical Officer, and thereupon shall examine such Civil Surgeon or other Medical Officer, and shall reduce the examination into writing, and if the Magistrate shall be of opinion that the accused person is of unsound mind, he shall stay further proceedings in the case.

2. When the investigation of a case is postponed under the last preceding Section, the Magistrate may at any time resume the investigation and summon the accused person, if he shall have reason to believe that such person is in a fit state of mind to make his defence, but the Magistrate shall not proceed with the investigation, unless upon the appearance of the accused person, and after making such enquiry as he may consider necessary, the Magistrate shall be satisfied that such person is then of sound mind and capable of making his defence.

3. If any person who shall be committed for trial before a Court of Session, shall, at his trial, appear to the Court to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment, that the accused person is of unsound mind and incapable of making his defence, and thereupon the trial shall be postpond.

4. The accused person may be put on his trial whenever the Court shall be satisfied that he is in a fit state of mind to make his defence. If, when the accused person is again brought before the Court, it shall appear to the Court that he is still of unsound mind and incapable of making his defence, the fact of such unsoundness shall again be tried in the first instance, and the trial shall not proceed, unless the Court shall specially find that such person is of sound mind and capable of making his defence,

5. In any case in which an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court of Session, as the case may be, if the offence be bailable, may release such person on sufficient security being given for his safe custody and for his appearance when required. If the offence be not bailable, the accused person shall be kept in safe custody in such place as the local Government, to which the case shall be reported, shall direct.

6. Whenever a person charged with any offence shall be acquitted as falling within the exception contained in Section 84 of the Indian Penal Code, the Court shall give a special judgment, that such person did the act charged against him, being at the time incapable of knowing the nature of the act, or that he did the act charged against him, being at the time incapable of knowing what was wrong or contrary to law.

7. Whenever such special judgment shall have been given against any person, the Court before which the trial was held, shall order such person to be kept in safe custody, in such place and manner as to the Court shall seem fit, and shall report the case for the order of the local Government. The local Government may order such person to be kept in strict custody in a Lunatic Asylum or other suitable place of safe custody for such time and in such manner as to the local Government shall seem fit.

8. No person, against whom any such special judgment shall have been given, shall be entitled to be discharged out of custody, on being restored to soundness of mind, unless by order of the local Government.

9. Whenever it shall appear to the local Government that any person, imprisoned by the sentence of any Court, is of unsound mind, the local Government, by an order which shall set forth the grounds of belief that such prisoner is of unsound mind, may order the removal of such prisoner to a Lunatic Asylum, or other fit place of safe custody, there to be kept and treated as the local Government shall direct ; and when it shall appear to the local Government that such person has become of sound mind, the local Government by an order directed to the person having charge of him, shall remand such person to the custody from which he was removed, if then still liable to be kept in custody, or, if not, shall order him to be discharged out of custody."

After a verbal amendment in Section 7, the above Chapter was passed, except as to Sections 8 and 9, the further consideration of which was postponed.

Sections 324 and 325 were passed as they stood.

Section 326 was passed after an amendment.

Sections 327 to 330 were passed as they stood.

The consideration of Section 331 was postponed on the Motion of the Chairman.

Section 332 was passed after amendments.

MR. HARINGTON moved the introduction of the following new Section after Section 332 :—

It shall be competent to the Sudder Court to review any order, judgment, or sentence passed by such Court, and to pass any new order,

judgment, or sentence warranted by law in the case, but not so as to sentence to punishment any person for an offence of which he shall have been acquitted by such Court."

THE CHAIRMAN objected to the proposed Section on the ground that proceedings would be rendered endless by it, and that it would encourage carelessness on the part of the Judge. There was always an appeal in such cases to the Government for a commutation of sentence.

MR. SETON-KARR said that, as the cases were rare to which this Section was intended to apply, the application for a commutation of sentence should be made to the Government which was the fountain of mercy.

The Motion was then by leave withdrawn.

Chapter XXV (relating to appeals) was postponed in consequence of the absence of Sir Charles Jackson.

Sections 347 to 349 were passed as they stood.

Section 350 provided as follows :—

"Every person charged before any Criminal Court with an offence, may, of right, be defended by Counsel."

MR. ERSKINE said, he should be glad, if it were possible, to add words to this Section, empowering the Court, at least in important cases, to assign Counsel to a poor and undefended prisoner, according to the practice in the Supreme Court.

THE CHAIRMAN said, in that case the Government would have to pay the fee, as with regard to the Vakeels in the Mofussil, he thought a fee would be indispensable. It was different in the Supreme Court where Barristers would willingly undertake such cases for nothing.

SIR BARTLE FRERE said, he thought that, in cases where Counsel was assigned by law to a prisoner, it would be only reasonable that such Counsel should be remunerated at the public expense.

MR. HARINGTON said, he thought it would be better to leave the case in the hands of the Judge. He had no doubt that a prisoner would be safer in the hands of the Judge than if he were defended by a Vakeel who had had no previous acquaintance with the merits of his case and who appeared in it simply because he was ordered to do so by the Court.

The Section was then passed after the addition of the words "or authorized agent."

Sections 351 to 354 were passed as they stood.

Section 355 empowered the Court of Session "to order payment of the reasonable expenses of any complainant or witnesses," &c.

MR. SETON-KARR moved the insertion of the words "by or on the part of Government," after the word "payment," as such seemed to him to be the intention of the Section.

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

Section 356 was passed as it stood.

Section 357 was passed after an amendment.

Section 358 was passed as it stood.

Section 359 was passed after an amendment, on the Motion of Mr. Erskine, protecting the jurisdiction, duties, or procedure of landholders, specially empowered by law in the Bombay Presidency.

MR. HARINGTON moved the introduction of the following new Section after Section 359 :—

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

Agreed to.

MR HARINGTON moved the introduction of the following new Section after the above :—

"The procedure prescribed by this Act shall be followed, so far as it can be, in all miscellaneous Criminal cases and proceedings which, after the passing of this Act, shall be instituted in any Court."

Agreed to.

Section 360 was passed after a verbal amendment.

Forms A to E were passed as they stood.

Form F was passed after verbal amendments.

The Schedule was passed after an amendment in the 5th explanatory note.

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

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

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)."

Committee of the whole Council on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army."

Committee of the whole Council 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)."

FINES FOR RIOTS.

MR. HARINGTON said, in the early part of to-day's proceedings a Select Committee had been appointed on the Motion of the Honorable Member for Madras to take into consideration and report upon some papers which had been sent to the Council from the Office of the Secretary to Government in the Home Department, on the subject of a very serious outrage which had recently been committed by a large body of villagers in one of the Districts of the Madras Presidency, and he had now the honor to move that it be an instruction to the same Committee to consider the existing laws generally relating to the responsibilities of landowners and the occupiers of land in connection with Police matters, and to submit a report thereon at the same time that they reported on the matter which had been ordered to be referred to them on the Motion of the Honorable Member for Madras. He observed that for some time past the Police responsibilities of Zemindars and other holders or occupiers of land, had been under the consideration of the Council with a view to the consolidation and amendment of the existing law ; and it seemed desirable that whatever provisions of law on this subject were adopted, should be embodied in the Code of Criminal Procedure now passing through a Committee of the whole Council. He understood that this was what was contemplated by the Honorable Member for Madras in respect to any law which might be proposed by the Select Committee appointed that day to meet cases such as that which had lately occurred at Madras, and he thought that the same Committee might conveniently consider the whole question of village responsibilities in connection with Police matters, and submit a general proposition which would greatly assist the Council in coming to a decision on the subject.

Agreed to.

The Council adjourned.

Saturday, June 15, 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,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	W. S. Seton-Karr, Esq.

MALACCA LANDS.

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement regarding the Bill "to regulate the occupation of land in the Settlement of Malacca".