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Abstract of the Proceedings of the Councils of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

The Council met at Government House on Wednesday, the 30th March 1864.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K.C.B.
The Hon'ble W. Grey.
The Hon'ble R. S. Ellis, C.B.
The Hon'ble A. A. Roberts, C.B.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Rajah Sahib Dyal Bahadoor.

SMALL CAUSE COURTS (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. MAINE, in moving that the Report of the Select Committee on the Bill to extend the jurisdiction of the Courts of Small Causes in the Towns of Calcutta, Madras, and Bombay, and to provide for the appointment of an increased number of Judges of those Courts, be taken into consideration, said that, as a paper signed by one of the Judges of the High Court of Bengal had been circulated in connection with this Bill, he was extremely desirous of relieving himself from any imputation of disrespect to the High Court in having submitted to the Council a measure affecting the Court's jurisdiction without having asked its opinion. The facts were these. On August the 4th, 1862, that is about a year and a half ago, the opinion of the High Court was solicited on two points. One was whether the Small Cause Courts of the Presidency Towns should be placed under the general superintendence of the High Court, as are the Small Cause Courts of the Mofussil. The other referred to a suggestion of Her Majesty's Government which

struck him (Mr. Maine) as more serious than the proposal of the Bill; it was whether the exclusive jurisdiction of the Presidency Small Cause Courts, or in other words the jurisdiction which absolutely excluded and shut out the jurisdiction of the High Court, should not be raised from Rs. 100 to Rs. 500. To the first of these questions, Mr. Justice Norman had now replied in the affirmative, but in apparent ignorance that he was answering a question. To the second question no reply had been received. Now he (Mr. Maine) must not be understood as for a moment complaining of the High Court. He knew that the demands on the time had been enormous, and he was not stating his impression too strongly when he said that he believed them to have made the most of every minute of their time. But still it had become obvious that no very speedy reply to requests for its opinion could be looked for from the Court; and that in the present case there was urgent necessity for speedy legislation, he (Mr. Maine) thought that he could convince the Council. The history of the Bill had been partially given a fortnight ago. Last autumn, a Bill extending the jurisdiction of the Bombay Small Cause Court to Rs. 1,000 was passed by the Bombay Legislature and sent to the late Lord Elgin for his assent. The Viceroy vetoed the Bill, having been advised that a peculiarity of the Letters Patent, of which all the consequences had not perhaps been foreseen, prevented the local Council from passing such a measure. But, at the same time that he signified his veto, Lord Elgin pledged himself that a similar Bill should be introduced into the Viceregal Council. As soon, however, as the matter came to be enquired into, it appeared that there were strong reasons for extending the provisions of the Bill to the other two Presidency Towns. He (Mr. Maine) ascertained that, when the old Calcutta Court of Requests was abolished, the original wish of the mercantile public had been that the new Court of Small Causes should have jurisdiction up to Rs. 1,000, and the contemporary papers seemed to show that the jurisdiction was only limited to Rs. 500 because the measure was regarded as tentative. Since that time, there had been a series of memorials in favour of extending the jurisdiction to the amount originally intended, and it was no doubt in consequence of strongly expressed feeling that a Bill closely resembling the present had been introduced into the Council of the Lieutenant-Governor of Bengal. The Lieutenant-Governor would be able to state his own impression, but from all he (Mr. Maine) had learned, he imagined the Bill, in some form or other, would have been carried, so to speak, by acclamation. It could not, however, be proceeded with on account of the same defect of legislative power which impeded the Bombay measure. Whether the like Bill had been introduced into the Madras Council, Mr. Maine could not say; but as the Madras Government had telegraphed their approval of the present Bill, they had probably only abstained (if they had abstained) from moving in the matter, because they were cognizant of their incom-

petence to deal with it legislatively. When, therefore, Mr. Justice Norman, passing from the singular to the plural, observed "we think it convenient that Bills of such general importance as the one in question should be passed without being published in the Gazette a sufficient time to enable the public to express their opinion upon the proposed alterations of the law," he could not be aware that this was an old Bengal Bill which had been published in the Calcutta Gazette two years ago, that it had been discussed in the Bengal Council at intervals during three quarters of a year, and that a strong current of public opinion had been running in its favour for more than twenty years. Mr. Maine would now pass to the specific points of difference between himself and the learned Judge. In the first place, Mr. Justice Norman seemed to complain that the Bill departed from example of the English County Court Acts. Now among many advantages which might be looked for from bringing English legal opinion to bear on Indian law, there was one danger to be apprehended, the abuse of English analogies. He (Mr. Maine) affirmed without hesitation that there was no true analogy whatever between the relation of the English County Courts to the Courts at Westminister Hall, and the relation of the Presidency Town Small Cause Courts to the High Courts. The difference between trying a case in a County Court and trying it in Westminster Hall was the same thing as the difference between trying it before a single Judge and trying it before a Judge and Jury; and as nobody who had ever seen a civil case involving facts tried by a Jury would entertain a moment's doubt of the superiority of that tribunal, the English Legislature was naturally chary and hesitating in the transference of jurisdiction from Westminister Hall to the County Courts. It was reluctant to deprive the suitors of the option of resorting to a mode of trial at once popular and most effectual. But civil cases in the Indian High Courts were tried, as everybody knew, by single Judges; and hence the difference between taking a case into those Courts or the Small Cause Courts amounted simply to the difference between trying it before a single High Court Judge and trying it before a single Small Cause Court Judge. Now, of course, he (Mr. Maine) need hardly say that the opinion of the High Court on aquestion of law was to be preferred to the opinion of the Small Cause Court; but that was met by the Bill which provided for a virtual appeal on points of law. But when questions of fact had to be discussed, it by no means followed that a higher degree of legal knowledge and legal ingenuity conferred a corresponding superiority in dealing with them to that which it conferred when law had to be applied. The principle which underlay the whole English system of administering civil justice was, that average capacity and average integrity and average good sense were sufficient for the solution of questions of pure fact. Who then would venture to say that these Small Cause Court Judges—of whom no complaint was made—who were engaged in solving

questions of fact all day long—who were thoroughly used to native character and native evidence—who, several of them, spoke the vernacular language—who under the amended Bill would have the advantage of Counsel before them—were unequal to disposing of the generally simple class of cases to which their jurisdiction was restricted, subject to correction by the High Court on questions of law, usage, and the admissibility of evidence? If the Council would be good enough to look at Section XII of the amended Bill, they would see a provision empowering the first Judge of the Small Cause Court, who was always, it should be remembered, a Barrister, to distribute the business among the Judges as he should think fit. The principal object of that provision was to enable him to determine in his own branch of the Court all the more difficult suits which might be instituted under the present Bill. What grounds were there for supposing that he would not be competent to dispose of them satisfactorily? The question might be tested by reference to a gentleman whose legal knowledge and acuteness had been abundantly proved to the Council. Three years ago Mr. Macpherson was first Judge of the Small Cause Court, and there was no reason to believe that other first Judges were ever likely to be his inferiors; the other day His Excellency placed Mr. Macpherson on the Bench of the High Court, and the remainder of the Judges would be the first to admit that he was a worthy colleague. It appeared to him (Mr. Maine) that those who maintained the necessary inferiority of Small Cause Court judgments to Hgh Court judgments were bound to maintain the necessary inferiority of the decisions of Mr. Macpherson to the decisions of Mr. Justice Macpherson. So much for the calibre of the Judges. As to procedure, was it true that a trial before the High Court presented in all respects the same security for justice which was furnished by enquiries before the Small Cause Court? He (Mr. Maine) disclaimed all sympathy with those who considered that the introduction of the Code of Civil Procedure on the Original Side of the High Court was a retrograde measure, but no doubt the change had one unfortunate effect in subjecting the original jurisdiction to the system of Regular Appeals, which had its sole justification in the condition of the Indian judicial body in the Mofussil. It might thus happen—at all events in theory—that the decision of a Judge like Sir Barnes Peacock on a question of pure fact, a decision arrived at after observing the demeanour of the witnesses, and hearing the story from their own lips, might be reversed by a Bench of Judges, who labored under the really incalculable disadvantage of merely gathering the evidence from paper. It was a point of positive advantage in the Small Cause Court that its decisions on facts were not subject to review on a mere paper appeal. Perhaps, however, although some of Mr. Justice Norman's expressions seemed to point to a wider divergence of view, the only real difference between himself and the learned Judge was on the question of concurrent jurisdiction. On this point he was quite ready to give way if the feeling of the Council was against

him, but he must beg the Council to attend to the true issue. His Bill permitted a suitor to go freely into the High Court for claims under Rs. 1,000 and it further permitted him, if successful, to obtain his costs. if only the Judge who tried the case would certify that it was a proper case for trial in the High Court; in other words, if the Judge, when the trial was over, would take his pen and write a dozenwords on the back of the record, which would show that the plaintiff had not vexatiously endeavoured to harass the defendant by bringing him into the more expensive Court. Mr. Norman, however, thought that a plaintiff ought to have his costs unconditionally. The difference, therefore, would seem to be that, whereas, he (Mr. Maine) wished the plaintiff to have his costs when the action was properly brought, the learned Judge desired he should have them even when the action was improperly brought. That the learned Judge's opinion was nothing less than this would appear from the breadth of the basis on which he rested it. " The great principle," he said " was that any interference with the right of the subject to choose his own tribunal is undesirable." Now, far be it from him (Mr. Maine) to deny the right of the subject to spend any money he pleased upon luxurious forms of litigation, provided only that the money came out of the subject's own pocket; but what he objected to was that the defendant should be made to pay for the indulgence of this taste. Unsuccessful defendants were entitled to consideration no less than successful plaintiffs. The true principle was one which, he feared, could not be connected with anything so magnificient as the liberty of the subject; it was that every litigant, though he should be in the right, was bound to enforce his rights *civiliter*, with reasonable moderation. A plaintiff was entitled to have his rights against the defendant who had wronged him, or contracted with him, but he was only entitled to have them with the least possible expense, and annoyance, and vexation to the defendant. It was, of course, true that this vexation and expense were less, now that the High Court was established, than they were in the days of the old Supreme Court. But the balance of expensiveness, as between the High Court and the Small Cause Courts, was still heavily against the High Court; for, although the mere Court expenses had certainly diminished, the rate of professional remuneration had largely increased, if Mr. Maine had not been misinformed. But the chief advantage was that, after all, after a decree had been obtained, there hung over the suitor the menace of a Regular Appeal; and though these appeals had not at first been frequent, probably owing to the new procedure not being fully understood, he feared they were becoming commoner, and would multiply every year. Mr. Maine, therefore, still preferred the present form of the Bill, but he would readily give way if the sense of the Council was not strongly in his favour. In truth, he deprecated the point being decided either by his own

authority or Mr. Norman's. It was possible that the learned Judge, from his position, was too much under the influence of one besetting sin of lawyers; it was equally possible that he (Mr. Maine), from the nature of his duties, was too much on his guard against it. Among many false charges brought against the legal profession, they were open to one which was true—that they were always over-anxious to have the ends of justice obtained by what he might call too artistic a process. They were apt to prefer what the Advocate General called in a paper that had been circulated "the superior article" to merely serviceable ware. Their tendency was always to employ machinery too fine and delicate for their object, and he confessed he saw no better corrective of that tendency than the obligation which this Bill would throw on the Judge who tried the cause to certify that there were reasons for bringing it in the more expensive Court.

The Honorable MR. ROBERTS would draw the attention of the Council to what, notwithstanding what had been said by the Honorable and learned mover, he would call the extraordinary haste with which this Bill had been brought to its present stage. On the 16th of March it had been introduced into the Council after the suspension of the Rules, and within two weeks the Council were about to be asked to pass the Bill. No reasons had been assigned for this great haste. The Bill was avowedly founded on the desire of the public for the extension of the jurisdiction of the Small Cause Court. That desire in his opinion had not been shown. Neither in the Statement of the Objects and Reasons, nor in the argument of the Honorable Member, was there anything to show that the public wanted such an enactment. Allusion had been made to similar Bills which had been introduced into the Councils of the Governor of Bombay and of the Leutenant-Governor of Bengal; but that was two years ago, when the Supreme Courts existed, and when the expense and the delay in the decision of suits were great. The Honorable and learned mover had not sufficiently allowed for the improvement in these respects since the establishment of the High Court and the adoption by it, in its original jurisdiction, of the Code of Civil Procedure. In the Bengal Administration Report for 1862, it was stated,—

"The number of suits instituted in the Calcutta Small Cause Court during the year was 33,581, and the amount of property under litigation was Rs. 10,54,238. In the previous year the results were 33,224 suits for property amounting to Rs. 11,19,418. The decrease in the value of property under litigation during the year under review was partly attributable to the adoption of similar procedure in the original jurisdiction branch of the High Court, which has left less inducement to litigants to adopt, on grounds of cheapness and despatch, the plan of foregoing a portion of their claim to bring it within the jurisdiction of the Small Cause Court."

When the Bill referred to by the Honorable Member had been introduced into the Council of the Lieutenant-Governor of Bengal, one of the principal reasons urged for the passing of the Bill had been that in many cases large sums had been abandoned for the purpose of bringing the amount claimed within the limits of the jurisdiction of the Small Cause Court. But during the period of 11 months from 1st May 1863 to 10th of the present month of March there had been only 35 cases in which sums in excess of the limit of Rs. 500 had been abandoned by claimants, and in only seven of those cases did the amount abandoned exceed Rs. 100. He therefore concluded that the public were not now driven, as they formerly were to the Small Cause Courts, and that the great reason for the desire formerly shown for the increase of the jurisdiction of that Court no longer existed even in Calcutta. There were, in fact, no sufficient data before the Council for making the proposed extended jurisdiction compulsory. The only memorial that he could find on the subject was from the Calcutta Trades Association, and was annexed to the Bill brought into the Bengal Council in 1862. It was dated so far back as 1851, when a very different state of affairs existed. It appeared to him that before the Council made the jurisdiction compulsory, the Governments of Madras and Bombay, the Judges of the High and of the Small Cause Courts, as well as the public of those Presidencies, should have an opportunity of expressing their views upon the subject.

The Honorable Mr. Harington said that it was certainly the case that the Bill had been but a short time before the Council, and that it had not been published for the usual time; but he considered that Mr. Maine had given good and sufficient reasons for the Rules of the Council having been suspended in order to admit of the early passing of the Bill. As noticed by Mr. Maine, the Bill was really not a new Bill, and it could not, he thought, be said that the public had been taken by surprise by its introduction. Bills having the same object in view had been introduced some time ago into the local Councils of Bengal and Bombay. These Bills had been published for the usual period. He believed that no objection had been made to the Bombay Bill. When the Bengal Bill was under consideration, it was suggested that, as regarded the larger jurisdiction which the Bill proposed to give to the Small Cause Court at Calcutta, plaintiffs should have the option of taking their suits into that Court or into the High Court without any risk of losing their costs in the event of their succeeding in their action; but he did not know that there was any general feeling in favour of a provision to this effect. A fortnight had elapsed since the present Bill was introduced, and so far as Calcutta was concerned, there had been ample time for that portion of the community, which was most interested in the Bill, to petition against it, if they ob-

jected to its provisions; but the only communications which had been received on the subject of the Bill were from one of the learned Judges of the High Court and two other gentlemen connected with that Court, whose objections to the Bill had, he thought, been fully met by Mr. Maine. He saw no reason, therefore, why they should not proceed with the Bill, and pass it through its remaining stages.

The Honorable MR. MAINE said that the Council would do him the justice to remember that when he had introduced the Bill, he had expressly said that it was a measure on which he considered local opinion to have been pronounced, and which he believed that the local Councils would certainly have passed but for an accidental want of legislative power. He had never pretended that sufficient time had been given to discuss it, if it had been a Bill introduced into this Council on the ordinary footing. But, as he had stated, it was actually published in Calcutta in December 1862. Since Mr. Justice Norman's letter had been received, he had done his best to ascertain the views of the trading community on the Bill, but had not succeeded in discovering a single objector to its principle. There was certainly some difference of opinion as to the mode and degree in which the jurisdiction should compete with that of the High Court, but no difference of opinion whatever as to the principle of extending the jurisdiction. Unless the Members of Council who represented the mercantile community desired delay, he saw no reason for postponement.

The Motion was put and agreed to.

The Honorable MR. HARINGTON moved the following amendments, of which notice had been given :—

Section II, line 6, after the word "demand" the introduction of the words "exceeding the sum of five hundred Rupees but".

Line 10. The omission of the word "and" before the word "The" and the introduction of the words "provided that the cause of action shall have arisen or the Defendant at the time of bringing the action shall dwell or carry on business or personally work for gain within the local limits of the jurisdiction of the Court."

He said the first amendment was merely a verbal one. The object of the proviso, which formed the subject of the second amendment, was to place the jurisdiction of the Courts of Small Causes, in respect of the cases to which it was now proposed to extend their cognizance, on precisely the same footing as the jurisdiction of the High Courts under the letters patent from which the words of the proviso had been taken.

The Motions were severally put and agreed to.

The Hon'ble MR. ROBERTS moved that the following section be introduced :—

" If both parties shall agree, by a Memorandum signed by them or by their Attornies and filed with the Clerk of the Court of Small Causes that the said Court shall have power to try any action (not included in the proviso in Section XXV of Act IX of 1850), in which the sum sought to be recovered shall exceed the sum of one thousand Rupees, then and in such case the said Court shall have jurisdiction to try such action."

He said that such a provision existed in both the Bengal and Bombay Bills, and should the Bill now before the Council be passed, he thought that, when parties consented, there should be no limit as to amount to the jurisdiction of the Small Cause Court.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON then proposed that the later part of Section II, after the words in a parenthesis, should form a separate Section, with the following amendments :—

Line 16. The omission of the word " not " after the word " Courts."

Line 17. After the word "of" the substitution of the words "five hundred" for " one thousand."

and that the Section so formed should follow Sections V and VI which equally with the early part of Section II proposed to enlarge the present jurisdiction of the Small Cause Courts in the three Presidency Towns. He would suggest that the Section introduced on the motion of Mr. Roberts should follow Section II.

He would also suggest that the words " the debt or damage claimed or value of the property in dispute, whether on balance of accounts or otherwise " be substituted for the words " the sum sought to be recovered " in the new Section proposed by Mr. Roberts. The words proposed to be substituted would show clearly that the new Section was intended to apply only to cases of the description referred to in the present Small Cause Court Act (IX of 1850), not to cases of real property which, whatever might be the value of the property in dispute, could now be heard only in the High Courts. He believed that it was not intended that the proposed new Section should extend to cases of this description. He thought that the present Sections V and VI should follow Mr. Roberts' new Section. They would then be numbered IV and V, and the latter part of Section II, which he had propose should form a separate Section, should follow as Section VI of the Bill. This arrangement of the Sections would prevent any doubt arising as to the application of the new Section VI to the cases falling under the preceding four Sections.

The Motions were severally put and agreed to.

The Hon'ble MR. ROBERTS moved that Sections VII and VIII be omitted. He observed that the effect of this amendment would be to leave the jurisdiction of the Courts, as now, up to Rs. 500, and to give them a concurrent jurisdiction with the High Courts in suits above that amount. He (Mr. Roberts) would not follow the Hon'ble and learned framer of the Bill into a discussion of the comparative merits of the two descriptions of Courts or of their Judges. He would only observe that all that the Council had before them was, on one side, the opinion of the Hon'ble and learned Gentleman for making the proposed extended jurisdiction compulsory, while they had, against it, the opinion of the Hon'ble Mr. Justice Norman and of the Advocate General. When the Bill was before the Bengal Council, his Hon'ble friend Mr. Bullen and the late Baboo Ramapershad Roy opposed the proposition to make the extended jurisdiction compulsory. The only expression of public opinion which he had been able to find was an extract from a Memorial from the Calcutta Trades Association, dated so far back as 26th July 1851, when the Small Cause Courts were first established. It was therefore his opinion that until the present state of public opinion at all the Presidencies could be ascertained, the Council would not be justified in making the extended jurisdiction compulsory, and he therefore proposed the omission of Sections VII and VII.

The Hon'ble MR. BULLEN concurred with what had been said by the Hon'ble Member. It could not be denied that the heavy lists of the Judges of the Small

Cause Courts showed that they could not bring to the consideration of cases the time and care which would be bestowed upon them in the High Court. The Hon'ble Member who had introduced the Bill had gone beyond what he (Mr. Bullen) understood the mercantile community to have asked for.

The Hon'ble MR. BROWN desired to express his support of the Bill as it was amended by the Committee. In his opinion it was calculated to prevent suitors from unnecessarily resorting to the more expensive mode of litigation, while at the same time it would not prevent them from taking proceedings in that mode under circumstances which might warrant their so doing.

The Hon'ble MR. HARINGTON said he did not attach any very great importance to the retention in the Bill of the two Sections which Mr. Roberts had moved should be omitted. It should not, however, be overlooked that the Sections proposed nothing new. They merely extended the provisions of the existing Act for constituting Courts of Small Causes in the Presidency Towns to the cases of larger amount which would be cognizable by those Courts, should the present Bill become law. This fact was in favour of the retention of the Sections. The principal object of the present Bill was to enlarge the jurisdiction of the Court to which the Bill related, leaving the procedure to be observed in disposing of the cases which their enlarged jurisdiction would enable those Courts to try, and generally all other matters, except as to stating cases for the opinion of the High Court, and as to the amount of the institution fee, as in the cases now cognizable by them. Under the Code of Civil Procedure, the question of the apportionment of the costs which under the old law, he believed, ordinarily followed the event, or were made payable by the losing party, was left entirely in the discretion of the Court. Section 187 of the Code said "the judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion, and the Court shall have full power to award and apportion costs in any manner it may deem proper." If, therefore, Sections VII and VIII were struck out of the Bill, it would still be within the competency of the Judges of the High Court, acting on the discretionary power given by the Section of the Code which he had quoted, to decline to give a successful plaintiff his costs in a case exceeding in amount Rs. 500, but not exceeding Rs. 1,000 which had been needlessly instituted in the High Court, instead of in the Court of Small Causes on the ground that the case was one which ought to have been brought in the Small Cause Court, and probably this was what would generally be done. It was rather in the interests of the plaintiffs that he would advocate the retention

of the Sections. They would serve as a warning to plaintiffs that if they subjected the defendants to the heavier costs of the High Court by bringing suits in that Court, which ought properly to be brought in the Court of Small Causes, they would do so at their peril as regarded their own costs.

The Hon'ble MR. MAINE said that in reference to what had fallen from the Hon'ble Mr. Bullen, he was aware that some persons who were in favour of the Bill desired an absolute concurrence of jurisdiction with the High Court. Doubtless if the interests of plaintiffs were solely considered, there would be nothing to be said against that arrangement, but if the principle were recognised that a plaintiff must not put the defendant to more expense than was absolutely necessary for the enforcement of his rights, the present form of the Bill was to be preferred. He should not press the point unless he had the Council decidedly with him.

The Motion having been put, the Council divided—

AYES.	NOES.
Hon'ble Mr. Roberts.	The Hon'ble the Lieutenant-Governor.
„ „ Bullen.	Hon'ble Sir R. Napier.
	„ Mr. Harington.
	„ Sir C. Trevelyan.
	„ Mr. Grey.
	„ „ Ellis.
	„ „ Anderson.
	„ „ Brown.
	„ Rajah Sahib Dyal.

So the Motion was negatived.

The Hon'ble MR. MAINE did not vote.

The Hon'ble MR. MAINE then moved the following amendments, of which notice had not been given :—

Section VII.—The omission of the words "on the back of the record" in lines 22 and 23.

Section XII.—The omission of the words "and assistant Judges" in lines 12 and 13.

The Motions were severally put and agreed to.

The Hon'ble MR. MAINE having applied to His Excellency the President to suspend the Rules for the conduct of business,

The President declared the Rules suspended.

The Hon'ble MR. MAINE then moved that the Bill be passed with the amendments recommended by the Select Committee and those now adopted.

The motion was put and agreed to.

CALCUTTA MAGISTRATES' JURISDICTION EXTENSION BILL.

The Hon'ble the Lieutenant-Governor of Bengal, in moving that the Report of the Select Committee on the Bill for the extension of the jurisdiction of the Magistrates of Police in Calcutta be taken into consideration, said that the Report explained the nature of the changes they proposed in the Bill. It was thought that two of the Sections of Chapter XIV of the Penal Code should be omitted, as the offences defined in them were not strictly in the nature of nuisances. A clause was added to enact expressly that if the Magistrates thought any offence deserving of a higher punishment than they could inflict, they might commit the offender to the High Court. Lastly, the Committee had altered the definition of the word Magistrate, so that the powers of a Magistrate under the Bill would only be exercised by persons specially authorized by the Local Government.

The Hon'ble SIR R. NAPIER said, that he had had some doubt regarding the Bill for extending the jurisdiction of the Magistrates of Police in Calcutta, lest it should lead to the punishment of some unconscious and involuntary offenders, but those objections had been removed by the amendments to the Bill, one of which reserved to the Lieutenant-Governor the selection of the Magistrates on whom the extended powers were to be conferred. He had recently passed through a District of Calcutta, not more than half a mile from Government House, the condition of which would justify stronger language than that of Mr. Strachey, if it were possible for language to be stronger. It was apparent that no individual efforts could be of any use in improving the present condition of the city. If any one was to blame for the condition of Calcutta, it was first the Supreme Government, honorably excepting the Viceroy, all the Lieutenant-Governors of Bengal, and the old Municipal Commission. Nothing but the vigorous action of Government could do any good. It appeared to him that the proper course for the Municipal

Commission to follow was to borrow money at once to complete the new drainage, to employ a part of their income to pay the interest of the debt, and to form a sinking fund for its gradual repayment; and to apply the remainder for the employment of large working parties, together with chemical appliances, for the immediate cleansing of the city. He should vote for the Bill.

The Hon'ble the Lieutenant-Governor said that he quite concurred with what had been stated by the Hon'ble Member, and added that now the inhabitants had consented to tax themselves largely for purposes of conservancy, there were great hopes that the work of improvement commenced would be carried out by the Municipal Body and the able Officer who presided over it.

The Motion was put and agreed to.

The Hon'ble the Lieutenant-Governor then moved that the Bill as amended, be passed.

The Motion was put and agreed to.

MILITARY CANTONMENTS BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to regulate the administration of Civil and Criminal Justice, and the superintendence of Police and Conservancy within the limits of Military Cantonments, be taken into consideration. He said that as it was desirable that the discussion should be narrowed as much as possible, he would not make any observations unless the course of the debate seemed to require it.

The motion was put and agreed to.

The Hon'ble MR. ROBERTS then moved the following amendment, of which notice had been given:—

Section XI.—The omission of the last eight lines after the words "such Force." He said that the section as it stood would place the District Superintendent of Police under the general control and direction of the Commanding Officer of a Cantonment. This appeared to be a contravention of that provision of Act V of 1861 which gave such control and direction to the Magistrate of the District. The Bill preserved intact all the powers of the Commanding Officer in respect of Military matters; but as in respect of civil judicial matters, the Commanding Officer

would have no control or authority over the Cantonment Magistrate, so in purely civil matters he should have no power over the Police. Since the introduction of the new Constabulary under Act V, 1861, into the large Cantonments in the Punjab, the Commanding Officers had exercised no authority over such Constabulary, and he (Mr. Roberts) recommended that the uniform system provided for by Act V, 1861, and as already in practice wherever the new Police had been introduced, both in the Punjab, and, he believed, in the North-Western Provinces, should be maintained.

The Hon'ble MR. HARINGTON said the Section to which the present motion related had given rise to more discussion and to greater differences of opinion than all the other Sections of the Bill put together. Many reasons had been urged, both in favour of the Section as it had been settled by the Select Committee, and in support of the objectons taken to that part of the Section which it was now proposed to omit. He had carefully considered the arguments which had been brought forward on both sides of the question, and the conclusion at which he had arrived was that the arguments in favour of the Section as it stood, greatly preponderated. In coming to this conclusion, he had allowed great weight to the fact that the Section, as framed, would maintain in some degree the existing laws in the Presidencies of Bengal, Madras, and Bombay, whereas the Section, if altered as proposed, would have the effect of entirely abrogating those laws. It appeared to him that in moving the present amendment, Mr. Roberts could not have sufficiently adverted to the large powers which the existing laws of the three Presidencies conferred on Commanding Officers in respect to the Police employed in Military Cantonments and Bazars. Regulation III of 1809 of the Bengal Code commenced by saying "under the existing Regulations, the charge of the Police in the Cantonments and Military Bazars is vested in the Magistrates and their Officers. This arrangement having however, in some instances, been attended with inconvenience, the following rules have accordingly been passed for the more effectual support of the Police in places of that description." The rules which followed vested the support of the Police and the maintenance of the peace within the limits of the Cantonments and Military Bazars in the Officers Commanding the Troops quartered at such places. Section 3, Regulation VII of 1832 of the Madras Code said, "Police authority and the maintenance of the peace shall be vested in the Officer Commanding at all Stations which shall be designated as Military Bazar Stations," and Section 23, Regulation XXII of 1827 of the Bombay Code, provided "that the Superintendent of Bazars should, under the immediate authority of the Commanding Officer, perform the duties assigned to him in the Regulation, and that the Superintendent should have charge of such establishment for maintaining order and

convenience within the limits of the Cantonment and enforcing rules established for that purpose by the Commanding Officer, subject always to the control of Government as might be placed at his disposal." It was worthy of remark that the Regulations which he had just quoted were not passed by the same Legislature or at one time. They were passed by different Legislatures at different periods. They must assume that the Legislatures which passed these Regulations were fully satisfied, at the time they passed them, of their necessity and propriety. Furthermore, it was to be observed that the preamble to the Bengal Regulation showed that the system of making the Police of Military Cantonments and Bazars entirely independent of the Commanding Officer had already been tried in Bengal, and had been obandoned in consequence of the inconvenience with which the arrangement had been attended. Prior to the passing of Regulation III of 1809 of the Bengal Code, the charge of the Police in Military Cantonments and Bazars in Bengal was vested in the Magistrates who were at that time at the head of the police of their respective Districts; but they were told in the extract from the Regulation which he had read, that it had been found necessary to resort to the aid of the Commanding Officers for the more effectual support of the Police and the maintenance of the peace in Military Cantonments and Bazars. The Madras and Bombay Governments, taking warning from what had occurred in Bengal, had, in the laws passed by them some years subsequently, followed the course of the Bengal legislation, which transferred the charge of the Police in Military Cantonments and Bazars from the Magistrate to the Commanding Officer. With these facts before them, it seemed to him that they would not be justified in repealing the existing law, and in entirely ousting the jurisdiction of the Commanding Officers in repect of the Police employed in Military Cantonments, unless it could be shown that the necessity which had led to the enactment of the Regulations to which he had referred, and which were still in force, anything contained in Act V of 1861 notwithstanding, had ceased to exist, or that the powers conferred by those Regulations on Commanding Officers of Military Cantonments had been abused, or that Commanding Officers were no longer fit to be entrusted with such powers, or that practical inconvenience had been found to result from the operation of the laws which vested Commanding Officers with them. He submitted that Mr. Roberts had not established the necessity for the change of the present law which was now proposed by him on any of these grounds. Looking to the position of Commanding Officers in Military Cantonments, to the duties which devolved upon them, and to the number and various classes of persons over whom their authority extended, it seemed to him impossible to ignore the existence of those Officers in the Police arrangements of Military Cantonments, or to make the Police entirely independent of the Com-

manding Officer, and to declare that he should have nothing to do with the Force. Whatever they might do in the way of legislation, they could not divest the Commanding Officer of all responsibility in respect to the maintenance of the peace in the Cantonments under his command. If the present motion should be adopted, and a disturbance having occurred in a Cantonment, the Commanding Officer should abstain from interfering for its suppression on the ground that he had nothing to do with the Police, and that he had no power to exercise any direction or control in respect to that Force, he apprehended that the excuse would not be admitted either by the Commander-in-Chief or by the Government; but it appeared to him that it would be very unfair to Commanding Officers to leave them subject to responsibility, and, at the same time, to deprive them of the means of fulfilling the obligations which their position and the nature of their duties imposed upon them. For these reasons he should oppose the motion and vote for the Section as it stood.

The Hon'ble SIR C. TREVELYAN said that there were strong reasons for confining the exercise of Police powers to the Constabulary. The local Superintendent of Police would necessarily have made matters his peculiar business, while a Commanding Officer was appointed with reference to qualifications entirely different. A Military Officer might be qualified for such duties, but it would be an accident whether he were so or not, and it would not be right to impose such responsibility upon him. The laws cited by Mr. Harington had been passed before the present highly organized Constabulary Force was established, and might now be considered obsolete. The Section, as it stood, would tend to a conflict of authority between two Departments of the Public Service, and to the introduction of a double administration. At Madras, as well as in the Punjab, the Cantonment Police formed part of the undivided charge of the District Superintendent of Police, and the arrangement worked very well. At home the same practice was universal, and even at Aldershott and the Curragh, where there were large assemblages of troops of all arms on the Indian principle, the Military Officers confined themselves to their own duties, and the Police was managed by detachments from the Surrey Police and the Irish Constabulary. The principle of preserving the distinction between the Civil Police and the Military Force was a very important one, and ought not to be lightly departed from. He (Sir C. Trevelyan) had stated what was the opinion of the Government of Madras when the new Constabulary was first established, and what had been the subsequent practice. The Hon'ble Mr. Harington had said that the present Government of Madras had intimated by telegraph its approval of this clause of the Bill, but on examining the telegram, it would be seen that the question upon which the Government of Madras gave its

opinion was, whether the Cantonment Police should be managed by the District Superintendent or the Cantonment Magistrate, and had nothing to do with the Commanding Officer.

The Hon'ble Sir ROBERT NAPIER said that three arguments had been brought forward against the original section of the Bill which placed the Police Officer in Cantonments under the general control of the Commanding Officer. *First.*—The Hon'ble Mr. Roberts considered that the Police Officer should be independent of the Commanding Officer, because a similar system had worked well in certain Cantonments in the Punjab. *Secondly.*—The Hon'ble Sir C. Trevelyan thought that there would be a conflict of authority, because Commanding Officers would interfere with the details of the Police, and that they would know nothing about them. *Thirdly.*—The same Honorable Member was of opinion that the complete separation of the Civil Police from Military Authority was most successful in England and Ireland. He could not admit the sufficiency of these arguments. He could not admit that a system which had worked well in general use should be changed because a different one had succeeded in a few stations in the Punjab. No doubt the independence of the Police Officer might have worked well under special circumstances at a few stations, but according to his own experience, whenever there had been any difficulty, it had arisen from the Police Officer endeavouring to disregard the authority of the Commandng Officer. There was the example of two Officers in Cantonments similarly situated to the Police Officer. The Executive Engineer carried on his work in Cantonments, under a complicated set of departmental rules, and under several departmental masters, but in strict subordination to the Commanding Officer. In like manner of Commissariat Officer was guided by his departmental rules, and subordinate to his departmental superiors and yet he conducted hs duty under the general direction and control of the Commanding Officer, without any difficulty. With regard to the objection of his Hon'ble friend, Sir C. Trevelyan, that Commanding Officers would know nothing of Police duties, he thought that could hardly be admitted for the future, because there were a great many Officers now serving in the Police ; but, so far from thinking it an advantage, he thought it not at all necessary, that the Commanding Officers should know, or interfere with, the details of the Police duties. All that was required was that the Police Officer should conduct his duties in general subordination to the Commanding Officer, but according to his own special regulations. The situations of bodies of Troops in England and India were totally different. In India, the troops were not placed in the midst of large civil populations as in

England; and, however perfect his Hon'ble friend might consider the Indian Police it could hardly be compared with that of England or Ireland. The Cantonment of India was a standing camp, and the long military experience of England had shown that, with a detached military body, whether contained in a ship of war at sea, or a camp, on land, the Military Commander must have the complete and supreme authority. On this ground he supported the original section of the Bill.

The Hon'ble MR. ROBERTS thought that the Hon'ble Mr. Harington's arguments were based upon a wrong assumption, and without due advertence to the force of Act V. 1861. Mr. Harington assumed that the Police described in the old Cantonment Regulations of 1803, 1810, and 1832 would be continued, but whereever Act V. 1861 was introduced, the new Constabulary entirely superseded and set aside the Bazaar Police mentioned in the old Regulations. Those Regulations were becoming obsolete. He (Mr. Roberts) had consulted two General Officers, one of whom was in command of a Brigade, and they were both of opinion that the Commanding Officers need not, and should not, have anything to do with the Civil Constabulary. He had also consulted the Inspector-General of Police in the North Western Provinces and in the Punjab. Both were opposed to the Section as stood. He would read from the letter from the Inspector-General of Police in the Punjab, which was among the printed papers, and which referred to the Bill as it was first framed, a description of the manner in which the new Police had been introduced into Cantonments and how it acted:—

I would therefore suggest in modification of Section VI that the Police in Cantonments should be under the control and supervision of District Superintendents, but that the actual head of the Cantonment Police (a European Inspector) should be subordinate to the Cantonment Magistrate in the same manner that District Superintendents are subordinate to the Magistrate of the District. This would not encroach in any way on the authority of either Commanding Officer or Cantonment Magistrate, for the Police would be subordinate to the Magistrate in every point contemplated in the Act, save departmental supervison. What I have now proposed has been tested, and we have already had practical proof of its working. Since the introduction of the new Police, the system above advocated has been carried out in the Cantonments of Delhi, Umballa, Jullunder, Sealkote, and Mecan Meer, and I am not aware of a single instance where authority was found to clash, or a difficulty to arise in working it.

The writer of that letter was himself a military man. It would obviously be for the interest and advantage of the Police to carry the Commanding Officer with them and they would be bound to pay him every respect and attention, but according to the principle of Act V 1861, they should not be under his control and direction.

The Hon'ble MR. HARINGTON said the construction which Sir Charles Trevelyan had placed on the telegram received from the Government of Madras did not seem to be altogether correct. The question upon which the Government of Madras had directly expressed their opinion was as to whether the administration of the Police in Military Cantonments should be vested in the Cantonment Magistrate or in the District Superintendent of Police under (in either case) the general direction and control of the Commanding Officer of the Cantonments. For the reason mentioned in their telegram the Government of Madras gave the preference to the District Superintendent of Police. The telegram said the Madras Government were strongly in favour of the alternative Section (that was the Section as it now stood) being substituted for the Section in the Bill as published The Madras Government made no objection to that part of the Section which gave the Commanding Officer of a Military Cantonment a general direction and control over the administration of the Police in the Cantonment, and it might therefore fairly be assumed that they approved of the entire Section as it stood.

The Motion was put and negatived.

The Hon'ble MR. ROBERTS then moved that Clause 7 of Section XIX and Section XXV and the concluding words " or Section XXV " of Section XXVII be omitted. He said he had deemed it his duty to object to the introduction of the Clause and Section mentioned, which provided specially for the inspection and control of houses of ill-fame, and for the prevention of the spread of venereal disease, not only in Military Cantonments, but whenever it might be deemed necessary for the protection of the health of the Troops beyond those limits. The prevalence of this disease among our soldiers was truly deplorable. It had assumed such a magnitude as to compromise both the morale and the physique of the Army. Most assuredly the time had arrived when is behoved them no longer to shut their eyes to the evil, but to grapple with it; at the same time he respectfully submitted that the mode proposed was not the right way of dealing with it. The medical surveillance of public women in Cantonments and the compulsory treatment of such as were found to be diseased had been in practice in India with varied success for the last 70 years. It had from time to time been abandoned, either on account of the very partial success obtained, or from the moral objections which existed to the measure. It had again been resumed; was in operation in various places; and now for the first time a British Legislature was asked to sanction the measure. It could, under any circumstances, be carried out only partially in this Country; but whether wholly or partially enforced, it was so questionable whether the

end would justify the means, and also whether immunity from this disease might not be purchased by a general loosening of moral principle and an increase of profligacy, that he did not think the measure should be allowed. It must be admitted that the similar measures which had been adopted by various nations on the Continent of Europe had been eminently successful. He believe it to be a fact that not only the French, and Belgian, and Prussian Armies, but the French, and Belgian, and Prussian nations also,—for the repressive measures were not confined to garrison towns and camps, but were general throughout those countries,—were almost exempt from these terrible diseases. Still he thought it a question whether those nations had gained much by this exemption, and whether it was not accompanied with great immorality. These measures had been long in operation, and must have had effect upon the physical, social, and moral condition of the people. He had not succeeded in obtaining any full statistics, still there were some in reach which he would read to the Council. In a comparative table of the percentage of deaths to population in twenty of the kingdoms of Europe (Annals of British Legislation for October 1862 and September 1863), Scotland, in which, of course, no such measures were in force, stood first, and had the lowest death rate; Denmark was 2nd; Norway 3rd; England 4th; France, which has the protective system under consideration, 7th. Belgium, also protective, was 10th, and Prussia 15th. Then the marriage rate and the birth rate were higher in England than in France, and as bearing more particularly upon morals, it appeared that while the proportion of illegitimate to legitimate births was 4 per cent. in London, it was 32 per cent. in Paris. Such facts did not evince a physical, or social, or moral condition which should encourage them to adopt the measures which prevailed on the Continent. Moreover, he had to remark that although the disease which it was wished to check prevailed as much among the Troops at home, and more among the household Brigade in London than anywhere else, it had never been proposed to deal with the evil in this manner in England, and the proposition, it made, would not be tolerated for a moment. He would now consider the measure itself, and whether it was possible to carry it out generally in this country. In order to enforce the measure, it was necessary to ascertain who the public women were with whom the soldiers associated. This was easy enough in Cantonments, for numbers of these women were allowed to live, unfortunately, in almost every Cantonment, sometimes in the regimental bazaars, when they were considered to belong to particular regiments, and sometimes in the sudder bazaar. But how would it be possible to enforce the measure where there were garrisons as at Calcutta, Madras, and Bombay, or where there were Cantonments in proximity to large cities like Benares, Agra, Delhi, Lahore, Peshawar, Poona, &c? Either the whole of the public women in these places must be subjected to surveillance and inspection, and that was almost impossible, or through the Police and by other means, which would

increase the objections to the measure, it would be necessary to find out who the women were with whom the soldiers consorted and to register them. In any case there would be a recognition of them and of their profession which had not heretofore been sanctioned. The women would consider themselves and would call themselves licensed by, and the servants of, the Government, and the soldiers would think so too. It was useless to say that the latter knew better, and had been taught better. As a body they were ignorant, uneducated, and unreflecting. If they reasoned at all, they would say, "Why is not temptation put out of our way?" "If Government and our officers wish to discountenance in morality, why are these persons allowed to reside in Cantonments so as to offer continual temptation?" It was sad to think that the hundreds of young soldiers and officers who annually came out to this country should, on joining their regiments, find that such persons were allowed to live in Cantonments or close to Cantonments. In the enforcement of the proposed measure, the Civil and Military Officers who would have to find out and register the women would be placed in a very false and often trying position. As to the duty that would devolve upon the Medical Officers, it would not only be false and trying, but humiliating, and possibly demoralizing. If it were possible to check venereal disease by any means which were not open to all these grave objections; if it were possible to do so without lowering moral principle and without the risk, nay almost the certainty, of an increase of profligacy, he (Mr. Roberts) would offer no opposition. But after a mature and anxious consideration of the subject, he concurred with Sir Bartle Frere. He did not believe in the efficiency of Lock Hospitals as established and worked in this country, or in any exceptional measures. He also agreed with Sir William Mansfield that we must in this matter of venereal disease, as in all other reforms which are desirable, depend on morals and education. Both of those high authorities advocated permission to a larger proportion of our soldiers to marry. Indeed, Sir William Mansfield said there should be no limit. Marriage was the remedy which God himself had provided, and no considerations of expense or inconvenience should deter the Government from allowing a larger number of soldiers to marry. And it would not be sufficient to remove the present restriction. It would be necessary to afford greater facilities and even help to the men to get wives. The accommodation for the married soldiers must be improved and better provision made for his family. Measures should also be adopted for the education and improvement and amusement of the soldiers. He was aware that all these subjects had received and were still receiving the attention of Government, but much time had passed, and very little had been done in these respects. Finally, he would urge the Council to expunge from this Bill the provisions to which he had objected, ere it was brought on the Statute Book of the Country

The Hon'ble Mr. Ellis said "with all respect for the feelings which have influenced my hon'ble friend Mr. Roberts in moving that Clause 7 of Section XIX should be omitted from the Bill, I cannot agree to the force of the reasons which he has given for his objection. There seems to me a wide difference between recognizing the existence of an evil and approving or encouraging the evil itself. I am persuaded that with the experience of the past before them, it will be quite possible for the Government to frame rules for the prevention of the spread of venereal disease which will be found unobjectionable in themselves, and which will not be liable to be misunderstood and misinterpreted. One thing is very certain, that the present policy of practically ignoring this evil—ignoring it by taking no measures for its prevention or reduction—has been anything but successful. Vice accompanied by most lamentable results has been on the increase, and morality has certainly not been a gainer. On the other hand, we know that where well-considered measures of repression have been taken, not only have the diseases been so reduced as almost to have disappeared, but the numbers of those who minister to vice have been much diminished, temptation removed, and the moral tone of the soldiers improved. Of the magnitude of the evil which it is sought to remedy, there can be no doubt, and the facts connected with this subject have been clearly set forth in an able paper by the President of the Sanitary Commission, which has been recently circulated among the Members of this Council. These facts must, I think, create a feeling of most painful surprize among those who have not previously directed their attention to this subject. From Mr. Strachey's paper it appears that one-third of the British Army passes through the hospitals in one year on account of these diseases only, and it has also been ascertained that a very large proportion of the invaliding which occurs every year owes its origin to these diseases, which also indirectly aggravate the mortality from other diseases. In the same paper Mr. Strachey has brought together facts and figures which must, I think, convince all who are not strongly prejudiced, that great as is this evil, it is capable of prevention and reduction. It has been most clearly shown that, with carefully conceived measures of prevention, these diseases can be extraordinarily reduced; for in one instance quoted, in a *corp d' armée* consisting of 35,000 Belgian soldiers subject to a proper discipline in these matters, there were only 11 men laid up with these diseases. The success of preventive measures is not limited to isolated cases, such as that just mentioned, but is invariably the same in the great continental camps and armies of France and Prussia. The same results have been obtained in the British Army, and the experiments made at Malta and Cephalonia are most decisive. In India, although there has never been the same continuous application of preventive measures—although a system of prevention has not hitherto been recognized by law, and has therefore been deficient in much important auxiliary aid, and although the measures themselves have not always been judicious—enough has

been ascertained, as in the Military Stations of Secunderabad, Wellington, and Trichinopoly, and at Meean Meer, Muttra, and Hazareebagh, to establish the well-ascertained fact that, wherever prevention is systematically enforced by Police and sanitary measures, disease decreases, and that whenever these measures are relaxed, it increases in a most formidable manner. There are many difficulties, varying with the various localities, in devising these preventive measures; but there is a great preponderence of medical and military authority, that such measures are urgently required, and that they can be made thoroughly effectual. No expense is spared in devising means to improve the health and condition of our Army, and wisely much is anticipated from affording the soldiers when off duty, means of industrial employment, education, and manly amusement. An increase in the marriages of soldiers is also being attempted and will no doubt lead to a great improvement in their morals. These measures are of the utmost importance, but they do not, and will not, except remotely and slowly, affect the object aimed at by the rule to which objection is raised. We have to combat an evil of appalling magnitude, ever present and daily diminishing the efficiency of our Army. We have well-tried weapons with which to meet and overpower this evil, and I think the Government which longer neglects to make use of these will incur a grave responsibility. It has been objected that the Legislature of England has kept silence on this subject, and that we should not anticipate in this country legislative action at home. The evil at home resulting from these diseases has now become so well known and is so serious that I think we shall only be anticipating for a short time similar measures in England. But however this may be, I think we should be unwise to delay passing a measure in itself good and useful because we have not an English precedent. We have in India, anticipated many of the improvements essential to the health, comfort, and morality of the British soldiers, and I shall, I confess, rejoice at our taking also the lead in the important improvement contained in this Bill. I trust I may be allowed to quote once more from Mr. Strachey's valuable paper, an opinion which has in this matter a peculiar value and significance. It is that of the late Mr. Thomason, Lieutenant-Governor of the North West, who was as remarkable for his moral virtues as he was distinguished for his thorough acquaintance with this country and for his great administrative ability. In his opinion, it was not only the duty of the Government to deal with this great evil both inside and outside our cantonments, but that probably in no other country could measures of repression be carried out more easily, and more effectually, and with less danger of abuse. I think this opinion should have great weight, and should go far to re-assure those who think this portion of the Bill before the Council open to moral obections, or who doubt that it is practically possible to reduce the amount of these diseases among our soldiers."

The Hon'ble Sir C. TREVELYAN was not surprised at the scruples of the Hon'ble Mr. Roberts. The question was one of the most difficult of those which occupied the debateable ground between divine and human law; but having been accustomed to the discussion of the subject for many years in public and in private, and having co-operated with General Sir Patrick Grant in the measures taken in the Cantonments at Secunderabad, Trichinopoly, and Wellington, in the sense of the section in question, he (Sir C. Trevelyan) had no misgiving. There appeared to be no fixed rule or principle in the matter, but the question had to be determined, like any other, on a consideration of the balance of practical good or evil to the public. In England all that public opinion would bear was, that a voluntary asylum should be afforded to unhappy women who had lapsed from virtue, under the shelter of which they might recover their place in society. In India such was the low state of morals, that prostitution was an hereditary profession, the members of which by no means felt degraded, but had their own *esprit de corps* and point of honor. This was implied by the name by which they were known. *Kusb* was a profession, and *Kusbee* was a professional person. But the decisive consideration was that 70,000 of the youth of England were employed in this country, and whether as soldiers subject to discipline; as young men at the age most liable to temptation; or as a large body of the most uninstructed portion of our fellow-countrymen in this distant land, their claim for protection and active assistance was overwhelming. The absolute necessity for taking some steps in their behalf would be seen from the following two paragraphs of the letter from the President of the Sanitary Commission:—

"We may thus consider that at least one-third of the whole European army passes through the hospitals in the course of the year on account of these diseases alone. At many stations the proportion is much higher, amounting to fifty, sixty, and sometimes even to seventy per cent. of the force. It may be assumed on any day in the year that a number of men equal to the ordinary effective strength of a regiment are disabled from this cause. The average length of time during which each man remains in hospital under treatment is at least three weeks. The reports of the Royal Commissioners for enquiring into the sanitary state of the army in India, states that the annual cost of each soldier in India is £ 100. Assuming this to be correct, the direct money loss caused to the State at the present time by these diseases, is not less than £75,000 a year. The indirect loss cannot be estimated, but it must be extremely large. The figures that have been given above by no means represent the full amount of disease attributable to these causes. All the highest authorities agree in declaring that venereal diseases are the origin of a very large proportion of the invaliding which occurs every year, and that the mortality from other diseases is most seriously aggravated by them. Dr. Duncan Macpherson,

Inspector General of Hospitals in Madras, who has made this subject a matter of special study, has placed his belief upon record in the following words:— 'As to the type of the malady, so destructive has it become that few who imbibe 'it can hold on to the Service beyond five or six years from the date of inoculation. * * * The prevailing diseases are everywhere syphilitic, and fully two-thirds 'of those who imbibe the disease are invalided within five years, and are sent out of 'the Service with a loathsome poison circulating 'in their veins which passes down to their posterity.'* In another Report Dr. Macpherson states 'that he had become assured, after close inquiry, that the great majority 'of the European invalids of Her Majesty's Service in the Madras Presidency 'have their constitutions more or less impaired by syphilis.' There can be no question that the highest medical authorities hold the same opinion in Bengal.''

* Minutes of Evidence taken before the Commissioners appointed to enquire into the sanitary state of the Army in India, Vol. I, Page 34.

Other parts of the same report showed by the example, not only of the Continent of Europe, but of various military cantonments in India, how much might be done to stay this plague, which reproduced itself in the next generation in the shape of scrofula, cancer, and malformations of various kinds. The matter would not be dealt with as heretofore in a desultory manner, measures having been taken up or abandoned according to the varying views of different Commanding Officers; but it would be treated according to a comprehensive well-considered plan, under the superintendence of a Commission, which had already established a just claim to the public confidence; and if the Commission went on as it had begun, great public benefits must result from its exertions. No doubt, there were only two effectual remedies for the vice which occasioned this disease, *i.e.*, religion and marriage, and nothing that could be done to encourage religious principle in the soldiers, and to induce them to marry should be omitted. But after all that was possible had been done in this direction, much would be left undone. Where were wives to be found for successive relays of 70,000 men? Marriage was a blessed institution, but its very essence depended upon its being voluntary, and most young Englishmen preferred to retain their liberty, during the early active period of life, until they were able to support a family. Something might be done by providing occupation for the men in the Gymnasium and the reading-room; but the main thing of all was to give them an object in life. All men were not religious, but all were more or less influenced by the desire to prosper in this life. Many improvements had of late years been made in this respect as regarded the higher classes of Civil and Military Servants, and what was wanted for the Soldier was to bring to bear upon him, in a regulated and certain manner, the same prevailing motive of bettering his condition. This would teach him the value of character, would

nduce habits of self-respect, and, if anything could, would keep him from discreditable vices.

The motion was put and negatived.

The Hon'ble MR. MAINE then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON presented the Report of the Select Committee on the Bill to provide for the solemnization of marriages in India of persons professing the Christian Religion.

ADMINISTRATION OF JHANSIE AND OTHER DISTRICTS (N. W. P.) BILL.

The Hon'ble MR. HARINGTON in moving for leave to introduce a Bill relating to the administration of certain Districts under the Government of the Lieutenant-Governor of the North-Western Provinces said, in the early part of the year 1862, the late Lieutenant-Governor of the North-Western Provinces issued of his own authority a set of Rules for the administration of Civil justice in the Districts of Jhansie, Jaloun, and Lullutpore, which formed part of the Territories under his Government, and for the superintendence in those Districts of the settlement and realization of the Public Revenue and of matters relating to Rent. The Rules so issued, in so far as they related to the administration of Civil justice, were afterwards extended, by an order of the Lieutenant-Governor, to the Provinces of Kumaon and Gurhwal. The Lieutenant-Governor would seem to have supposed that because the Districts and Provinces named were what was called Non-Regulation, that was, were not subject to the general Regulations, he was vested, in their administration, not only with the powers of the Executive Government, but also with the power of making Laws, anything in the Indian Councils Act, 1861, notwithstanding. This was obviously a mistake and the unauthorized issue of the Rules in question having been brought to notice, it was highly desirable that immediate measures should be taken to correct the mistake, both in order that the Civil administration of the Districts and Provinces to which the Rules issued by the Lieutenant-Governor applied, might be placed on a legal footing, and also to prevent the validity of the decisions and orders passed, or proceedings held under the Rules from being called in question solely by reason of the Rules not having been made in the manner provided in the Indian Councils Act. These two objects

would be accomplished by the Bill which he had asked for leave to introduce. He had looked at the Rules issued by the Lieutenant-Governor, and though the Rules relating to the administration of Civil justice would not, in his opinion, bear comparison with the Code of Civil Procedure, which was now in force in the greater part of the British Territories in India, and though he could not understand why the Lieutenant-Governor, having power to extend that Code to the Districts and Provinces mentioned in the present Bill, should have preferred to give them a Code prepared by himself, still there was no reason to suppose that, in the cases which had been disposed of under the Lieutenant-Governor's Rules, any substantial injustice had been done, and it would be very unjust to the successful parties in those cases to allow the validity of the decisions and orders passed and of the proceedings held in them to be called in question and to be set aside, simply because in issuing the Rules the Lieutenant-Governor had acted *ultra vires*. The Bill proposed to substitute the Code of Civil Procedure with a slight modification, and the general law of limitation contained in Act XIV of 1859, in the Districts and Provinces to which the Rules issued by the late Lieutenant-Governor extended, for the procedure and limitation prescribed by those Rules, but to give validity to the Rules so far as they related to other matters. The Bill declared that "no decision, order, or proceeding of any Court or Officer under any of the Rules made and extended by the Lieutenant-Governor should be held to be invalid only by reason of such order or decision having been passed, or of such proceeding having been held before the passing of this Act." The introduction of the present Bill seemed to afford a suitable opportunity for removing doubts which had long existed as to the legal position of another tract of country under the Government of the North-Western Provinces, and for placing the administration of this tract on a proper and legal footing. The tract of country alluded to was situated in the Dehra Dhoon, and was called Jounsar Bawur. It was very wild and backward, and, generally, its condition would seem very similar to the tract of country described in the Schedule annexed to Act XIV of 1861. It was now proposed to bring the tract in question under the same system of administration as had been introduced, under the authority of the Act just mentioned, in the Pergunnahs to which that Act applied, and to extend to it the Rules in force in those Pergunnahs. It had been deemed proper, however, to add a proviso that nothing in the Act or in Act XIV of 1861, should be held to exclude the particular tracts of country referred to in the present Bill or in Act XIV of 1861, from the operation of the Indian Penal Code. He had been informed that some doubt existed on this point as regarded the country described in Act XIV of 1861, which it was desirable to remove.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON having applied to His Excellency the Pesident to suspend the Rules for the conduct of business.

The President declared the Rules suspended.

The Hon'ble MR. HARINGTON then introduced the Bill and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill relating to the administration of certain Districts under the Government of the Lieutenant-Governor of the North-Western Provinces—The Hon'ble Messrs. Harington, Maine, Roberts, and Anderson.

The Council adjourned.

CALCUTTA,
The 30th March 1864.

C. BOULNOIS,
Offg. Depy. Secy. to Govt. of India,
Home Dept.

S. C. P. I. No. 77 L. D.—28-7-64.—50.