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

The Council met at Government House on Friday, the 1st February 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble Maháráját Dhíraj Mahtab Chand Bahádur, Maháráját of Burdwan.
The Hon'ble H. B. Riddell.
The Hon'ble E. L. Brandreth.
The Hon'ble C. P. Hobhouse.
The Hon'ble D. Cowie.

ESCAPED CONVICTS' BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill for the more effectual punishment of persons resisting lawful apprehension and for other purposes, be taken into consideration. He said that the Committee had a good deal amplified the Bill, but the changes were only extensions of its principle. MR. MAINE would repeat the history of the proposal. Special laws and local laws were defined in Sections 41 and 42 of the Penal Code, and such special and local laws were expressly saved by an earlier Section. Section 40 defined the word offence as follows :—

"The word 'offence' denotes a thing made punishable by this Code."

Hence it appeared that the offences mentioned in the Code were always offences against the provisions of the Code itself, and not against the provisions of any special or local law. The inconveniences of this limited definition did not appear to have at first attracted notice; but at length the results

of its application to Sections 224 and 225 became serious. MR. MAINE would read the important parts of those Sections :—

"Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

"Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

It followed from the combination of the limited definition of 'offence' with the use of the word 'offence' in these Sections, that, when a man had committed one of those offences which, if judged by their possible consequences, are among the most serious of which any one can be guilty—offences, namely, against the Railway Act—he might with impunity resist apprehension, or escape from custody, and nobody assisting him could be punished. A Bill to make such resistance or escape punishable was accordingly passed by the Bengal Local Council, and simultaneously applications came to the Government of India from several Local Governments for a measure to the same effect. The difference between the Bengal Act and the Bill submitted to the Council was one only of form. The Bill introduced by MR. MAINE was referred by the Council to a Select Committee, which had the advantage of the presence of His Hon'ble friends Mr. Shaw Stewart and Mr. Hobhouse, and, incidentally, of Mr. Brandreth, all of whom had considerable experience in administering the Penal Code and the special Criminal Law of India. The Hon'ble Mr. Riddell, who had had much to do with one of the most important special laws of British India, the Post Office Act, was also a Member. By this Committee, the Penal Code was subjected to very close examination and scrutiny, and it was discovered that the consequences of the limited nature of the definition penetrated much further than was supposed. There were found to be many acts injurious to society, which might be committed in India with impunity, because the general description of those acts, given in the Code, embodied the word 'offence' and, as had been stated, 'offence' within the meaning of the Penal Code did not embrace offences against special and local laws. For example, if an offence were committed against the Railway and the Post Office Acts, the giving false information about it, the taking a gift to screen the offender, and the offering a gift in con-

sideration of screening him, were not punishable acts. The first expedient which suggested itself to the Committee was simply to amend the definition of 'offence,' so as to make it embrace offences against special and local laws. No difficulty would have arisen from this course so far as special laws were concerned, but the local laws of India were extremely numerous, and some of the offences made penal by them were of the pettiest description; for example, it was a penal act, and very properly, in Bengal, to drive an elephant on the wrong side of the road, and in Calcutta it was an offence in a coachman to drive after dusk without lights. The Committee felt that it could not seriously propose to the Council such legislation as would make it penal to "harbour" the delinquent coachman. Now, if the Committee had embodied in the Bill references to all the local laws in existence throughout India, the Bill would have expanded into a Code. The solution of the difficulty which they had adopted was no doubt arbitrary, but MR. MAINE thought the Council would agree with him in thinking it as good as could be devised under the circumstances. There were certain acts which the Committee thought ought to be punishable, however petty was the offence against special or local laws upon which the general description of those acts in the Code hinged. There were certain other acts which they considered ought only to be punishable when the offence against special or local law to which they related was of some magnitude, and, as a guarantee for the magnitude of the offence, it was proposed that it should be one which, under special or local law, should be punishable with a minimum of six months' imprisonment. MR. MAINE would read the two lists. The first ran thus :—

187. Omission or neglect to assist a public servant.

194, 195. Giving or fabricating false evidence with intent to procure a conviction.

203. Giving false information respecting an offence committed.

211. Making, with intent to injure, a false charge of an offence.

213. Taking a gift, &c., to screen an offender.

214. Offering a gift or restoration of property in consideration of screening an offender.

221, 222. Intentional omission to apprehend on the part of a public servant bound to apprehend.

223. Escape from confinement negligently suffered by a public servant.

327. Voluntarily causing hurt to extort property, or to constrain to an illegal act.

328. Causing hurt by means of poison, &c., with intent to commit an offence.

329. Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

330, 331. Voluntarily causing hurt or grievous hurt to extort confession or to compel restoration of property.

347. Wrongful confinement for the purpose of extorting property or constraining to an illegal act.

348. Wrongful confinement for the purpose of extorting confession or compelling restoration of property.

388. Extortion by threat of accusation of an offence punishable by death or transportation, &c.

389. Putting a person in fear of accusation of an offence in order to commit extortion.

445. House-breaking.

The numbers referred to the Sections of the Penal Code. The second list ran thus:—

141. Unlawful assembly.

176. Omission to give notice or information to a public servant by a person legally bound to give notice or information.

177. Furnishing false information.

201. Causing disappearance of evidence of an offence committed.

202. Intentional omission to give information of an offence by a person bound to inform.

212. Harbouring an offender.

216. Harbouring an offender who has escaped from custody, or whose apprehension has been ordered.

441. Criminal trespass.

Another and a very obvious improvement proposed by the Committee, was the application of Section 222 of the Code to all persons lawfully committed to custody. This would meet the case put by the Government of Bombay, where a keeper of a Lunatic Asylum allowed the escape of a lunatic under a criminal accusation. Perhaps the only doubtful amendment suggested, was the provision of a punishment for persons escaping from custody to which they had been committed for failure to give security under Chapter XIX of the Code of Criminal Procedure. When this Section was first proposed to the Committee, MR. MAINE was much disposed to object to any extension of the stringency of the provisions of Chapter XIX, on the ground that, looking at the question from an English point of view, the offence at which that Chapter was aimed was the offence of having neither money nor friends. To this it was answered, that such was really the offence, for although the not having money might not amount, even in India, to a criminal omission, yet the having no friends to give security did, under the system of caste and brotherhood which prevailed in the country, raise some presumption of misconduct. MR. MAINE was further informed that the High Court had, by a circular order, directed that these

Sections were not to be capriciously applied, but to be confined to cases in which there had been a previous conviction, or an overt act of misconduct. Knowing this, therefore—knowing that officers charged with the administration of districts highly valued this chapter, as being absolutely necessary for the peace and comfort of the population, and admitting at the same time that, whatever were the policy of the law, persons imprisoned under its provisions ought not to be allowed to break jail with impunity—MR. MAINE had finally withdrawn his opposition to the Section. The only further observation he had to make was, that the enquiry and discussion had rather increased than diminished his respect for the framers of the Penal Code. At the first blush, it seemed as if they had made a mere mistake; but more careful consideration showed that they had good reason for limiting the definition of 'offence.' Probably, as respected all special and local laws passed before the enactment of the Code, they contemplated some such legislation as the present. As regarded all special or local laws passed subsequently to the Code, the fault lay in those laws, and not in the Code itself. The proper form of drafting such enactments was to insert a Section such as appeared in the recently passed Gambling Act, providing that offences against the Act should, if that was the intention, be deemed to be offences against the Code.

The Hon'ble MR. HOBHOUSE said that, as he was principally responsible for the introduction of Section 3 of the Bill, he thought it necessary to give some explanation of the reasons which had induced him to consider such a Section necessary. Under Chapter XIX of the Code of Criminal Procedure, when a person was proved by habit or repute to be a person of bad livelihood, or to be a notorious robber, dacoit, or receiver of stolen property knowing it to be stolen, or when he had no ostensible means of livelihood, and yet lived at a considerable expense, he was called upon to give security for his good behaviour for a period which might extend to three years. He believed that such persons, as was well known to every District Officer, were about the worst characters in the district. They were the leaders of the gangs of dacoits and the receivers of property stolen by dacoity; while they were present in the district such things would go on, and in their absence they would be checked. As the law stood, such persons, who are not only the leaders of dacoities, but were usually persons who had been previously convicted, might with impunity escape from legal custody and go through the district and continue their unlawful practices. It seemed to him, therefore, that if any class of persons might appropriately be punished under Section 224 of the Penal Code for escaping or attempting to escape from lawful confinement, the persons whom he had described should be punished. With that intent he had proposed Section 3 of the Bill.

He would also offer a few remarks on Section 2, which was introduced at the suggestion of the Hon'ble Mr. Shaw Stewart, who was not present in Council that day. It was intended, as the Hon'ble Mr. Maine had stated, to meet the case of persons who were ordinarily styled criminal lunatics. The procedure under which such persons were placed in custody was this. When the Magistrate or Sessions Judge had reason to believe that any person charged with an offence was of unsound mind, he was committed to custody until such time as his state of mind might be ascertained, and until he was brought to trial again, and if at such time the person was still insane, he was sent to one of the lunatic asylums of the province. Such persons were usually charged with offences of a most heinous nature. In either view—that is, if they had committed offences in a sane state and had assumed insanity to escape the consequence of their offences, or if they had committed the offences under the effects of insanity—they should not be allowed to go at large to do injury. Under the present law such persons were committed for safe custody, but if any person—say a Police Officer—permitted them to escape, he was not punishable. The insane person being in lawful custody, the Police Officer should be responsible, and should not be at liberty to let him go. If a public officer was punishable for allowing any person who was an offender to escape he was also rightly punishable for letting any person escape who was placed in his lawful custody, the essence of the Police Officer's offence being that the person he permitted to escape was in his custody.

The Motion was put and agreed to.

The Mon'ble MR. MAINE, with the permission of His Excellency, then moved the following amendments:—

That the words "and for other purposes" be added to the title substituted by the Select Committee; and that the words "whether with or without fine" be added at the end of Section 1.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended by the Select Committee, with the additional amendments now adopted, be passed.

The Motion was put and agreed to.

INDIAN PENAL CODE EXTENSION (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to extend the Indian Penal Code to the Straits' Settlement,

be taken into consideration. He said that the only alterations which the Committee had made in the Bill were those that were necessary in order that it might follow suit with the Bill which the Council had just passed into law. MR. MAINE would have submitted the report without remark, if he had not thought he ought to say that on a former occasion he had somewhat exaggerated the reluctance of the Straits' Settlement to adopt this great Chapter of Indian legislation. On carefully examining the older papers he found that, ever since the Penal Code was passed, the Government of the Settlement had been pressing for its extension to that community. It was rather the Government of India than the Straits' Settlement which appeared to have postponed the extension, partly, no doubt, because all questions connected with the Straits were put off in view of their expected separation; but partly because of the objections entertained by one single Judge. As for the community, the Governor of the Straits had more than once made the very sensible remark that all communities, and especially the community of the Straits, were apt to care very little about the criminal law under which they lived. This appeared to MR. MAINE to be true. What communities cared for, and especially European communities, was evidence and procedure; or in other words, the modes in which convictions were arrived at, not the technical definitions of crimes, nor the punishments allotted to them, unless they were cruel and barbarous. The truth was that the great majority of mankind did not commit crimes at all, or if they did, they committed them under the influence of impulse or in the expectation that they would not be found out. The great opponent of the extension appeared to have been a former Recorder of Singapore, who said that he "deprecated any change in the existing law, which was found to work well, and was not productive of inconvenience or expense from uncertainty, having the settled decisions in England to follow," whereas the introduction of the Indian Penal Code, "so novel in its phraseology and form, and embracing so extensive a subject," would lead to conflicting decisions by different tribunals, thus engendering doubt and uncertainty in the administration of the law, the removal of which would require "many years, and many inconvenient and expensive proceedings." It would be difficult, MR. MAINE thought, to cite a prediction which had been more signally falsified. He did not believe that there was any enactment of an English legislature covering so large a space, covering indeed the whole of one great branch of jurisprudence, which had given occasion for so few doubts, and had produced so few conflicting decisions as the Indian Penal Code. He wished as much could be said of English Acts of Parliament approaching the Code in magni-

tude. One recent tribute to the merits of the Code might be mentioned. A Commission was lately appointed in England to investigate the law of capital punishment, and among other things they had to deal with the legal definitions of 'murder' and 'manslaughter.' A great number of gentlemen especially versed in Criminal Law were called as witnesses. Some of these had evidently never read the Code; but it was remarkable that those who had done so warmly urged the expediency of altogether suppressing the Common Law definitions and substituting those of the Indian Penal Code. The opinion was the more striking because the definitions of murder and homicide in the Code did not appear to MR. MAINE to be by any means the happiest examples of technical description exhibited by that body of law. The truth was that the first serious blemish which had disclosed itself in the Code was that which the Council had remedied by the Bill just passed into law.

The Hon'ble MR. BRANDRETH wished to state a few points for the consideration of the Hon'ble Mr. Maine before he asked them to pass the Bill. By Section 1 of the Penal Code, the Straits' Settlement was specially excepted from the operation of the Code. What was the reason he (MR. BRANDRETH) was enabled to gather from the published proceedings of the Council that passed the Code. It was in consequence of the mere probability that the Straits would not remain much longer under the control of the Government of India. From the papers laid before the Select Committee on the present Bill, of which Committee he was a member, if he remembered rightly, for he had not seen the papers for some time, the Secretary of State, on the same grounds, entirely objected to the extension of the Code to the Straits. Now, he understood that the Straits would be separated from India from the 1st of April next, and that a separate legislative assembly would be there constituted. He did not think it was desirable that they should anticipate the action of the Straits' legislature with regard to that Bill. The settlement had already waited five years, and if such a legislature was on the eve of being constituted, why should the Council take work out of their hands which they were more competent to do? Besides, he did not see how the Penal Code could be satisfactorily worked without a corresponding Criminal Procedure Code. He would cite, in support of this opinion, that when it was found that the Procedure Code for India could not be enacted in time to admit of sufficient opportunity for its study and for the preparation of the translations of it into various languages, an amending Act was passed, by which the coming into operation of the Penal Code was postponed from the 1st May 1861 to the 1st January 1862. In the opinion of the Council which passed the Code, it was thought impossible—at all events difficult

and perplexing—to work the Code with the old system of procedure. No doubt there were good reasons for an opinion in which the then members of the Council were unanimous. Those reasons doubtless applied with equal force to the Straits' Settlement. They had an example of the interpretation to which the Code might be liable, in the Bill which had just been passed. The Criminal Procedure of the Straits no doubt enabled the Courts to try all crimes and misdemeanors punishable under the existing law: but was it quite clear that that procedure would be equally applicable to offences under the Penal Code? Would section 188 of the Code be of any effect without a Procedure Code? It referred particularly to the prevention of disturbances amongst religious bodies. That Section would probably be of great importance in the Straits, as there were a great number of religious sects in that province. Even, however, if other difficulties were got over, and the Courts should succeed in convicting offenders under the Code, how were the sentences to be carried into effect without the Procedure Code? The fine and imprisonment in default of payment of fine were made part of the punishment in every part of the Code; but they would probably be an entirely new feature in the Criminal Law of the Straits. When the Courts awarded fines, how would they recover them without a Procedure Code? Again, he would ask whether it was desirable that the Courts of the lowest grades should have the same jurisdiction as Courts of the highest grade as to fine and the punishment in lieu of fine? Unless a procedure were laid down, he did not see how that could be prevented. The Bill, as it was first drafted, provided for the immediate introduction of the Code into the Straits. That would have left no time for the study by the officers in the Settlement of the provisions of the Code, or for its translation into the various languages prevalent there. The amendment made in the Bill in this respect was therefore no doubt important. But he was not sure whether the amendment, though the only one that could be proposed, was not open on other grounds to considerable objection; whether it would not render the Bill a piece of futile legislation not worthy the character of the Council. It was declared that the Code was good for the Straits, but the duty of providing rules and the procedure system by which alone the Code could be brought into operation was left unperformed. In requiring that the Governor of the Straits' Settlement should appoint the day for the Code to come into operation, were they not wholly laying the reponsibility and the risk on the Governor? Were they not investing him with legislative authority in this matter? Long before the Governor would be able to introduce the Code, the legislature of the Straits' Settlement would be constituted; and surely it was to that legislature, and not to the

Governor, that such an important matter should be left. He therefore submitted that, under all the circumstances, it would be better to let the legislature of the Straits' Settlement bring in their own Bill for the introduction of the Penal Code in that Settlement.

The Hon'ble MR. MAINE said that he had some difficulty in dealing with his Hon'ble friend's objections, which, however, should be addressed to the Council, and not to himself. He found that the Report of the Committee distinctly recommended the passing of the Bill, and one of the signatures to that report was 'E. L. Brandreth.' The best answer to his Hon'ble friend was contained in two letters from the Straits' Government. The first of them, dated in April last, stated that "no argument has ever been advanced in favour of the exclusion of the Straits from the benefit of the reforms in Civil and Criminal law that have been effected during the past few years, whilst there are some laws actually in force in the Settlement which are rendered to some extent inoperative owing to the penalties for their violation being inflicted under the Code. The present would be a good opportunity for placing the Straits, as regarded its Criminal law, on the same footing as the rest of India; since, in introducing the reforms, the Settlement would have the benefit of the services of an able lawyer, Sir Benson Maxwell, who is in favour of the measure, and who is possessed of much local knowledge and experience." This letter was, as soon as the severance of the Straits became imminent, followed by another equally urgent, begging that the extension should take place before the Straits' Settlement became an independent Government. Now why did the Governor wish that the extension should be effected by this Council rather than by the legislature which, no doubt, would be attached to the new system of the Straits? Clearly because he thought that this Council was a legislature better fitted for the work. The best proof that he was right lay in the additions to the Code which, through its superior experience, the Council had to-day been enabled to make. Indeed, it was not at all surprising that the Governor of the Straits should be unwilling that its infant legislature should begin with discussing the Penal Code to which the members of that legislature would probably be strange. The supposed objection of the Secretary of State, to which his Hon'ble friend had adverted, did not come to much. All the Secretary of State did was to acquiesce in the decisions of the Government of India, which, as MR. MAINE had explained, had really amounted to evasions of the question. The near prospect of the separation of the Straits had no doubt produced an inclination to have as little to do as possible with difficult points arising in connec-

tion with that community. Passing from his Hon'ble friend's general to his special objections, MR. MAINE could not see that the difference of criminal procedure in the Straits was an insuperable obstacle to the introduction of a body of substantive Criminal law. The criminal procedure of the Straits was, he believed, very much the same as the procedure in force in the Presidency towns, and the Indian Penal Code had been introduced into the Presidency towns without the smallest difficulty. Every argument against the extension of the Code to the Straits in the absence of a Code of Criminal Procedure applied to its extension to Calcutta, Madras and Bombay. MR. MAINE had examined the Penal Code, and he could not find a single provision which might not be worked under any conceivable system of Criminal Procedure. Indeed MR. MAINE could only understand his Hon'ble friend's argument by supposing him to believe that in the Straits there was no criminal procedure of any kind. For that matter, even the chance of there being some small inconsistency between the Code and the procedure in the Straits had been provided against; for the Bill was not to come into operation until the Governor of the Straits introduced it, and his new legislature would have ample time to effect small improvements in procedure, a task to which it would probably be quite equal, though it might not at first be in a position to discuss such a body of law as the Penal Code.

The Hon'ble MR. HOBHOUSE quite agreed with the Hon'ble Mr. Maine in all that he had said as to the wisdom of introducing into the Straits the Penal Code for which they asked. MR. HOBHOUSE would take up the only two substantial objections that the Hon'ble Mr. Brandreth had raised, as to application of the Penal Code to the Straits, and it seemed to him quite clear, and the wording of the Section quoted would bear out his observation, that even if there was no procedure at all, if a Magistrate were to issue certain orders and if those orders were disobeyed, the persons disobeying them would be punishable under that Section. The Section ran thus:—

"Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction" . . . .

First, there must be a servant authorized to promulgate an order. Then the Section goes on to say—

"Whoever . . . . . disobeys such direction, shall, if such disobedience causes or tends to cause obstruction," &c.

Therefore, if there was any public officer in the Straits competent to pass an order, any person knowing of that order, who deliberately violated it, would be punishable.

The other objection was an objection on the subject of fines. He was not sure that he quite understood the objection, but as he apprehended it, it was this. If a fine was imposed, how was it to be levied? He could not but suppose that, in the Straits, fines had been imposed, and that there was a power to enforce their payment; for otherwise the fines would not be imposed. Why there should be any difficulty in levying fines under the Penal Code he could not see. He thought that fines imposed under the Code could be levied under any power that now existed for levying fines in the Straits.

The Hon'ble MR. BRANDRETH remarked that Section 61 of the Code of Criminal Procedure applied to the levying of fines. Without that Section he did not understand how they could be levied.

The Hon'ble MR. MAINE said that, if there were an inexorable connection between the Penal Code and the Code of Criminal Procedure, there would be something in his Hon'ble friend's argument. But the point taken by his Hon'ble friend Mr. Hobhouse and himself was, that the Penal Code would fit in with any sort of Criminal Procedure, and that some procedure in the Straits there certainly must be.

The Motion was put and agreed to.

The Hon'ble MR. MAINE, with the permission of His Excellency, then moved the following amendment:—

That the words "whether with or without fine" be added to Section 2.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill as amended by the Select Committee, with the additional amendment now adopted be passed.

The Motion was put and agreed to.

ORIENTAL GAS COMPANY EXTENSION BILL.

His Honour the LIEUTENANT-GOVERNOR, in moving for leave to introduce a Bill to extend the provisions of Act No. V of 1857 (*to confer certain powers on the Oriental Gas Company, Limited*) to certain places in British India, said

that the Oriental Gas Company was incorporated under Act of Parliament, and had received a certificate of registration under the Limited Joint Stock Companies' Act of 1857, for the purpose of introducing gas-works into different parts of India; and in 1857, an Act of the Indian legislature was passed, giving to the Company the necessary powers for introducing gas-works and supplying the town of Calcutta and its environs with gas, and also to enable them to apply its provisions in other places to which the Act should be extended "by a law to be passed for that purpose." That amounted to no extension at all, for in every instance an Act was to be passed before the extension could take effect. The Gas Company had extended their operations almost through the whole of Calcutta, and also a portion of the suburbs, and they were now desirous to establish gas-works in Howrah; but they had been advised by the Advocate General that the word "environs" did not include Howrah. It was primarily for the purpose of extending their operations to Howrah that they desired the Act, and they also took the opportunity of asking that they should have the power to establish themselves in any other place in British India to which the Local Government might admit them. If the Act related to Bengal alone, it would have been dealt with in the Bengal Council, but as the Company proposed to operate in other parts of India, he asked for leave to introduce a Bill to enable them to exercise their powers in any place with the previous sanction of the Local Government.

The Motion was put and agreed to.

ALTERATION OF DISTRICTS (PANJÁB) BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to empower the Lieutenant-Governor of the Panjáb to create new, and to alter the limits of existing, districts in the territories under his government, be taken into consideration. He said that the Committee had in effect proposed the change which he had announced as desirable when the Bill was introduced. He had then admitted that the Bill went too far, and that it might be, from a Financial point of view, unsafe to permit the Local Government to create new districts. The Committee accordingly recommended that the words giving this authority should be omitted. The Governor General's power to create new districts under Act XXI of 1836 was expressly reserved by the Bill.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

COMPTOIR D'ESCOMPTE BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to make further provision for suits by and against the Comptoir D'Escompte of Paris.

PRESIDENCY JAILS' BILL.

The Hon'ble MR. MAINE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of the High Courts at the Presidency Towns.

Leave was granted.

MOFUSSIL SMALL CAUSE COURTS REFERENCES' BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to empower Courts of Small Causes in the Mofussil to refer for decision questions arising in the execution of decrees.

PENALTY FOR PURCHASING SOLDIERS' NECESSARIES BILL.

The Hon'ble COLONEL DURAND moved that the Report of the Select Committee on the Bill to reduce the pecuniary penalty for purchasing from Soldiers arms, ammunition, clothes and other articles, be taken into consideration. The Committee have no changes to suggest, and recommended that the Bill should be passed.

The Motion was put and agreed to.

The Hon'ble COLONEL DURAND also moved that the Bill be passed.

The Motion was put and agreed to.

HORSE-RACING BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to legalize horse-racing in India, be taken into consideration. He said that this Bill had stood in his name in the list of business for last Friday. But he had postponed it in consequence of some remarks in a quarter in which he was always glad to see criticisms of their proceedings, a Native newspaper. The writer complained that there was great want of impartiality in putting down many forms of gambling by one enactment, while one form of gambling—horse-racing—was legalized by another. No doubt there was here the same misapprehension which he had noticed last week. The Hon'ble Mr. Riddell's Bill had

not been directed against gaming in general, but against gaming in public gambling-houses, and in the public streets. MR. MAINE, was, however, convinced that the mistake was partially caused by the title of the present Bill. Much importance was not attached to such titles, but certainly the Bill was somewhat misdescribed as a Bill to legalize horse-racing, and MR. MAINE would presently propose to call the Bill an Act to amend the law relating to horse-racing in India. The fact was, the Bill did not touch the gambling element in horse-racing, the betting or wagering on the horses. This would remain on the same basis as before. All it provided was that a person should no longer be permitted to evade a promise to subscribe to a prize or stakes. Such subscriptions, MR. MAINE need scarcely say, were often given or promised by persons who never went near the race, and who might even have no very good opinion of horse-racing. The effect of the Bill would merely be to assimilate the law in India to the law in England, and as horse-racing was in the main an European amusement, the assimilation was *primâ facie* desirable. On this point MR. MAINE would make one further remark, though in making it, he approached a subject on which he certainly could not speak with any special authority. Nobody could read the older English Statutes without remarking the emphatic language in which they spoke of the usefulness of horse-racing in improving the breed of horses. Few persons were so unobservant as not to perceive that, at the present moment, a different tone prevailed, and racing was said to produce a special horse adapted to one special purpose, and with little usefulness beyond. The reason appeared to be that, when those Statutes were passed, England was, as regarded horses an importing country. It drew its horses from all parts of the world, and it seems to have been felt that some greater stimulus towards the introduction of the best blood was required than private tastes and necessities furnished, and that something like a public competition was required between the breeds introduced. If this were true, it might be fairly reasoned that India was at the present moment much in the same condition, as regarded horses, as England was when the law of horse-racing was fixed. MR. MAINE had certainly been speaking on matters beyond the sphere of his own knowledge, but he might cite a dictum of the immediate predecessor of His Excellency the Commander-in-Chief, Lord Strathnairn who had pronounced that the best horse for India had yet to be discovered, and that it would probably be the result of a fusion of breeds.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF said that perhaps he might claim to have some small share of that special knowledge which his friend the Hon'ble Mr. Maine had disclaimed. It had been one of the chief duties of

his office for some years past, to watch the production, breeding and importation of horses for the service of the State. The production of horses here had been by no means on a satisfactory footing. In Northern India breeding was carried on at great expense, whilst in Southern India, the State paid heavy sums for the importation of horses for military purposes. There had been serious complaints on all sides that the horses provided for the State were not fit for the duty. The Hon'ble Mr. Maine had stated the argument very correctly, and had explained the manner in which horse-racing tended to encourage importation as well as the improvement of the breed in this country. We relied to a great extent on importation, and the Council knew that, through the mistaken policy of the Turkish Government, it had happened that the importation of horses from Arabia had been prohibited within the last few years; but importation from Australia and the Cape was going on, and the horses from the former country were of much better quality and larger bone than formerly and of fairly moderate price. The Council ought to consider carefully any measure that would help the Government of India to improve the breeds of horses in the country. He ventured to state that if they did not throw cold water on horse-racing, but assisted it by excluding it from the penal clauses of the Act of 1848, they would do something towards promoting the production and furnishing of good horses in India, whether by importation or by the Stud. When it was considered what high prices were given for horses imported from Arabia, it would be apparent that no person could afford to import such horses except for purposes such as horse-racing. It could not suit the convenience of private individuals to import Arab horses fit for Stud purposes at the prices at which they were now imported, merely for the purpose of riding or driving. Similar remarks applied to importations from the colonies. He would therefore give his full support to the Bill. He would take that opportunity of stating that he differed from one of the conclusions arrived at by the Supreme Government last year. He thought that it would be good and politic if still more encouragement were given by Government to horse-racing. Following the argument and the analogy of his Hon'ble friend, Government might appropriately give Plates for the purpose. Such Plates, like Queen's Plates in England, might be given for entire horses, mares and geldings from Australia and for entire horses from Arabia, and also for horses *bonâ fide* bred in India. By such means, not only would the Government be a gainer in a military point of view, but they would also be signally benefiting the community at large. The Bombay Government had instituted prizes for the encouragement

of the breeding of horses. At different parts of the country, fairs were held in which horses of all descriptions were brought for sale; but they were of a very poor description, and particularly so in Southern India; and unless horses from other countries were largely imported, he feared that little or no improvement in the breed would take place. He thought that if prizes were given for horses *bonâ fide* imported from other countries, as also for the produce of such imported horses, it would tend greatly to encourage importation and the improvement of the breed, and such a measure would be a good corollary to his Hon'ble friend's Bill. He said this from purely disinterested motives, for he himself never had a taste for horse-racing; but at the same time, in the exercise of his office, he could not but feel greatly interested in the improvement of the Indian cavalry horse, and he thought that the Bill and the measure he had referred to would tend to promote so desirable a result.

The Motion was put and agreed to.

The Hon'ble MR. MAINE, with the permission of His Excellency, then moved as an amendment that the following be substituted for the present title of the Bill:—

"A Bill to amend the law relating to Horse-racing in India."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

SARÁÍS BILL.

The Hon'ble MR. RIDDELL asked permission to postpone his motion for leave to introduce a Bill for the management of *Saráís*.

Leave was granted.

The Council adjourned till the 8th February, 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

CALCUTTA,
The 1st February 1867.

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