

Friday, March 15, 1867

**COUNCIL OF GOVERNOR GENERAL
OF
INDIA**

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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 15th March 1867.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honour the Lieutenant-Governor of Bengal, K. C. S. I.

His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.

The Hon'ble H. Sumner Maine.

The Hon'ble H. B. Riddell.

The Hon'ble E. L. Brandreth.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble C. P. Hobhouse.

The Hon'ble J. Skinner.

The Hon'ble D. Cowie.

EXEMPTION OF VILLAGES (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART asked leave to postpone the presentation of the Report of the Select Committee on the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency.

Leave was granted.

REGISTRATION OF BOOKS' BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to provide for the preservation of copies of books published in British India, and for the registration of such publications.

STAMP DUTIES BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to amend the law relating to Stamp Duties.

INDIAN SUCCESSION ACT, 1865, EXTENSION (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE said he must ask leave to withdraw the motion which stood in his name, that the Report of the Select Committee on the

Bill to extend the Indian Succession Act to the Straits' Settlement be taken into consideration. He was very sorry to do so, as he thought it would have been a gracious act of this Council, at the moment when the Straits' Settlement was about to be disannexed from India, to extend to that community, which lived under a modified form of English law, the best and most scientific simplification of that law which had been applied to any part of the empire. His Excellency, at MR. MAINE's suggestion, had telegraphed to the Secretary of State to know at what date the Straits' Settlement would be constituted a separate community. An answer had been received that the date would be the 1st of April next. But in the number of the *London Gazette* for February 5th which had been received by the last mail, MR. MAINE read an announcement, dated February 4th, that Her Majesty had been pleased to provide for the separate government of the Straits. It was possible that that announcement might not be inconsistent with the telegram that had been received. But until the actual Order in Council had been read, they could not be certain that the Straits had not been disannexed on February 4th, and hence, as all action *ultra vires* on the part of the Council was to be avoided, he could not ask them to pass the Bill. MR. MAINE begged to add that the extension of the Indian Penal Code to the Settlement had received the assent of the Governor General on February the 1st.

Leave was granted.

SARÁIS AND PURAOS BILL.

The Hon'ble MR. RIDDELL moved that the Report of the Select Committee on the Bill for the regulation of public Saráis and Puraos be taken into consideration. He said the Select Committee had made no alteration of importance in the Bill, and he would not therefore trouble the Council with any remarks on the few changes that had been made. He wished, however, to mention that the Lieutenant-Governor of the North-Western Provinces had expressed his satisfaction with the Bill, and stated that it would meet the requirements of those Provinces, as the chief object of the introduction of the Bill was to enforce the responsibility of *Bhatiáráds* to report all deaths of persons occurring in Saráis and Puraos, many of which were supposed to be caused by means of poison.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

DISTRIBUTION OF BUSINESS PANJAB COURTS' BILL.

The Hon'ble MR. BRANDRETH introduced the Bill to enable Deputy Commissioners in the Panjáb to distribute the business in subordinate Courts, and moved that it be referred to a Select Committee with instructions to report in a week. He believed he had said all that was necessary as to the object of this Bill on the occasion of asking for leave to introduce it. If his present motion were carried, he intended asking the Select Committee to make enquiries from the Governments of other Provinces, in which the limits of the jurisdiction of the subordinate Courts might have been determined with reference to revenue considerations, and not with regard to the number of Civil suits to be heard, as to whether power should be given to extend the Bill to those Provinces. He might add that he had received a telegram from the Registrar of the Chief Court of the Panjáb, stating that the Chief Court approved of the Bill.

The Motion was put and agreed to.

SPECIAL APPEALS (PANJAB) BILL.

The Hon'ble MR. BRANDRETH asked leave to postpone the introduction of the Bill to amend the law relating to Special Appeals in the Panjáb. He said that he found that the Bill required further consideration before he could submit it for the approval of the Council.

Leave was granted.

MURDEROUS OUTRAGES (PANJAB) BILL.

The Hon'ble MR. BRANDRETH also moved that the consideration of the Bill for the suppression of murderous outrages in certain districts of the Panjáb be resumed.

The Motion was put and agreed to.

The Hon'ble MR. MAINE, in continuing the adjourned debate, would move an amendment which was not of great importance, but which would afford him an opportunity of describing the character of the measure. It did not appear to have attracted much attention, but MR. MAINE hoped that whatever opinion had been formed on it was not reflected in the only criticism he had read. It had been described in this criticism as an illustration of the extreme readiness of the Indian Government to license lawlessness. If the precisely opposite character had been attributed to it, and it had been called a signal example of the tenderness of this Government for law and legality, the description would have been more correct. Who were the persons to be

tried under the special procedure? They were persons who, under the influence of frenzy, but of perfectly controllable frenzy, either because they had made a vow, or supposed themselves to be discharging a duty, murdered others whom they had never seen before, without the smallest shadow of provocation. These murderers appeared not even to deserve that semblance of respect which was sometimes given great crime. An Hon'ble friend of his, who had served in the Panjáb, had repeated to MR. MAINE a conversation with an assassin who had been convicted of one of these fanatical outrages. He was asked why, calling himself a man, he had stabbed his victim in the back, and why he had not given him a chance of resistance. The answer was that that would never have done, because, in that case, he might have been killed himself, whereas his object was to kill and not to be killed. As, however, he had succeeded, he was perfectly willing that the Government should hang him. MR. MAINE would take upon himself to say that, if this sort of outrage had been committed in the most civilised portions of the world—let us say in the cities of London or Paris—and particularly if there were any reason to believe that the act was done upon a system, the murderer would have run much risk of being torn in pieces by the mob. If it had been perpetrated in places distantly resembling the Indus frontier, as, for example, the more westerly States of America, the life of the assassin would not be worth five minutes' purchase. If it had been committed in any Asiatic country—and he would not take a country under an Asiatic Government, but such a Government as that of the Dutch in Java or of the English in Borneo—if it were the case (to take the nearest counterpart) of a Malay running amuck—the murderer would have been shot down by the first man with firearms in his hand who met him. These were the persons whom, under the present measure, it was proposed to try by a procedure differing in no essential respect from that of the ordinary law, except in the excision of the appeal. The appeal was perfectly useless, inasmuch as the evidence was always of the clearest character, and, indeed, the murderer himself always took care to supply the clearest evidence, for he never tried to escape, and, as in the case put by MR. MAINE, was perfectly prepared to be hanged. It was quite wonderful that people should not be able to throw themselves sufficiently out of surrounding circumstances to see that the measure was a striking example of the desire of the Indian Government to impose legal order on its officers under the most trying conditions. As to the discussion which had taken place last week, it was to be observed that it had turned entirely on words. In the papers sent up from the Panjáb Government, the simple term *Gházis* was used for these assassins. If it had been employed, there would never have been a moment's doubt as to the class intended, and the word used would have been as clear as the term *Moplah* used in the series of Acts which

were passed to put down analogous crimes in Malabar. But this word *Ghāzī* had been discarded for a reason which MR. MAINE would venture to call not discreditable to that Council. While it was well understood that all respectable Muhammadan subjects of Her Majesty disclaimed sympathy with these murderers, it was felt that the word *Ghāzī* had not yet quite lost its honorific sense in their religious language, and that its employment as the designation of a class of criminals might be deemed offensive. The sole-difficulty, therefore, had been created by the necessity of finding an equivalent for this term *Ghāzī*. The Select Committee had substituted the expression "political or religious fanatic, who murdered persons whose religion differed from that of the offender." The Lieutenant-Governor objected to the last part of the definition on the ground that it was undesirable, where it could possibly be avoided, to base legislation on differences of religious opinion. MR. MAINE had himself objected to the phrase "political fanatic," partly because he was not sure what it meant, and partly because, if he was, he hoped all the Council were political fanatics. He would have himself preferred to retain the word "religious," but now that its omission had been carried, MR. MAINE did not think that the application of the Bill was altered. The primary and etymological meaning of "fanatic" was religious fanatic, and though the word was used in other senses, as, for example, in such expressions as fanatic in politics, or fanatic in art, MR. MAINE held that the employment was abusive, and only amounted to a metaphorical or analogical extension of the meaning of the word. Hence MR. MAINE thought that there must be some ingredient of religion in the frenzy of an assassin who was brought under this measure. As regarded his amendment, its object was this. In his opinion the appeal was quite idle, only necessitating the carriage of a mass of papers over some hundreds of miles of impracticable country, and thus causing a delay which was fatal to the prompt example which it was necessary to make for the sake of deterring future crime, and of affording security for life and limb to the officers employed on the border. But though the appeal would have been a useless addition to the careful procedure of this Bill the judgment of the Chief Court in deciding the appeal might not have been without value. The guidance which such judgment might have given to officers on the frontier, MR. MAINE proposed to give by circular orders.

MR. MAINE then moved the following amendment:—

"With the previous consent of the said Lieutenant-Governor, but not otherwise, the said Chief Court may from time to time make and issue circular orders for the guidance of officers in cases under this Act, provided that such orders are consistent with the provisions herein contained. All such orders shall be published in the official *Gazette*, and shall be obeyed by the officers aforesaid."

The Hon'ble SIE HENRY DURAND regretted that the objection which he originally raised to the use of the word "*Ghāzi*" had unfortunately caused so much trouble to the Council in connection with this Bill, but he was still of opinion that the word could not have been correctly used, and was not strictly applicable to the generality of the cases to which this Bill was intended to be applied. With regard to the frontier districts we might be said to be in a chronic state of armed truce, a watchful truce with hostility ever impending; and maintained towards frontier tribes notorious for the blood-feuds which raged among themselves. The crimes which sometimes took place, aimed solely at our officers, were really but another form, another exhibition of that spirit of fanatical vengeance which prevailed among the tribes inhabiting the border, and broke out frequently against ourselves. He need hardly, in addressing His Excellency the Viceroy, who knew the frontier districts so well, and who knew the bad feeling among those tribes, mention how difficult our officers found it to control them and prevent these outrages occurring among them. The very same class of offences which took place between man and man, of tribe and tribe, took place with respect to our own officers. Where a tribe would not, in a body, go against another tribe, or where political influences checked them, you would constantly find that individuals of that tribe, in working out the blood-feud existing between the tribes, would attack individuals of the other tribe against whom they had these feelings of vengeance; and it was really only the same thing which occurred in their attacks upon our officers. He therefore thought that "*Ghāzi*" was a dangerous and incorrect word to use, inasmuch as the outrage in many cases was not attributable to religious feelings. He looked on it, that when the assassination of a British officer took place in that way, it was often from the same motive that impelled a considerable body of a tribe to make a raid into our territories, kill men, plunder cattle, and carry off women and children. In one case it was by a band; in the other it was by a single assassin or two. But in either case it was the same spirit of fanatical vengeance that led to the perpetration of the crime. The word "*Ghāzi*" was primarily a strictly religious honorific term, in the same way as we applied the term "Crusader;" he therefore originally proposed to substitute the word "fanatic," or "fanatical assassin;" but without narrowing down to a mere religious sense the meaning of the word fanatic, as he thought the Hon'ble Mr. Maine wished to narrow it; for, for the reasons he had given, he did not think that the persons who committed those outrages were actuated by purely religious motives; and although he did not quite agree with the words used by the Select Committee, still he thought them not objectionable, inasmuch as they, to a certain extent, defined the word "fanatic," and gave it a certain scope by the use of the words political or religious applicable to the class of offences which were aimed at by the provisions of the Bill.

His Excellency the COMMANDER-IN-CHIEF would offer a few remarks on the Bill, more especially suggested by what had fallen from the Hon'ble Mr. Maine and Sir Henry Durand. It must be obvious that the motives by which the Government of India had been actuated had been properly described by the Hon'ble Mr. Maine. With regard to the nice distinction of terms drawn by Sir Henry Durand, HIS EXCELLENCY would submit that, perhaps, it was at present not important to press the analysis further, but he could not altogether agree with those remarks. In the first place, the idea of this Bill did not spring from the contemplation of acts solely caused by religious motives, but from the nature of the acts committed against our officers when performing a difficult duty on the frontier. He, in common with His Excellency the Viceroy, had had opportunities of particularly observing the effect of those acts, not only on the officers entrusted with the duty of keeping the peace, but also on the population of Pesháwur, and the tribes surrounding that valley. Whilst he agreed with Sir Henry Durand that it might be said in truth that our relation as to those tribes was one of armed truce, HIS EXCELLENCY thought it was even something more. The position of the British Government towards the tribes in that frontier was one of armed repression ; they did not condescend to a truce, but enforced peace by putting down border crimes ; for directly serious border crime was committed, it was punished by our arms in the field. He thought that whoever had lived there and witnessed the attacks contemplated by the Bill, would agree that they were perpetrated, not by the subjects of the Queen, but by her enemies : it was by men coming from beyond the border, and in nine cases out of ten those acts were not breaches of the peace, but acts of war against the British empire. It was such cases that we were called on to meet. As observed by the Hon'ble Mr. Maine, those men, whether actuated by political fanaticism as Sir Henry Durand seemed to think, or by religious fanaticism which it was the primary intention of the Mover to check, committed acts of hostility and war towards our officers, and it was incumbent on us to meet them in the only way in which they could be met, namely, by immediately striking down the offender with some such summary punishment as was provided by the Bill. If through the care and study of the Council they were able to accomplish that object without materially altering the law, if in this manner they could be saved from the adoption and proclamation of what was called Martial law, properly always viewed with jealousy, if they were able still to maintain the form of judicial procedure, and at the same time to protect the officers of Government, they would not only be performing a duty to those officers and the population they controlled, but also doing much to maintain the peace on the frontier. Nothing was more certain than that, if we did not give our officers and our agents the means of immediately striking down such crimes as those contemplated by this Bill, our officers

would ultimately not be able to prevent their soldiers and Police, and possibly the population, from taking the law into their own hands. He did not wish to say anything offensive to the Council, but he must observe that, during all the word-splitting that had taken place respecting the provisions of the Bill, he feared Hon'ble Members had lost sight of the primary object of the Bill as sent up by the Panjáb Government. They had been so beset by the necessity of strictly adhering to law as administered in peaceable districts, far away from such conditions of existence, that they had hardly been able to imagine the real state of things on the Panjáb frontier. Hon'ble Members who had opposed the Bill could not conceive what it was to live in the midst of a population in which English gentlemen could not return from mess to their own houses without arms; where the whole cantonment, as at Pesháwur, was girdled with sentries and watched by mounted patrols. Chief Commissioners had been struck down in their own verandahs; commanding officers had been murdered in their own lines; a lady had been struck down at Kohat: such a state of things was not conceivable in a civilised country, and could only be considered to be a feature of but half-suppressed war and flagrant hostility. In ninety-nine cases out of a hundred such acts had been perpetrated by men from beyond the frontier. The attack on Major Adams was committed by a man who had been a resident of Pesháwur for four years, but it was found that he had originally belonged to a hostile tribe on the other side of the frontier. The apparent exception proved the rule. These acts were really committed by tribes in hostility with us, sometimes from political, and sometimes from religious motives, but more often perhaps from a mixture of the two, and that was the state of affairs against which the Council had to guard. He did therefore hope that the Bill would be passed.

His Excellency THE PRESIDENT said that, having taken a great interest in the subject of the Bill, he could not permit the occasion to pass without expressing an opinion founded on great experience of the people on the border and of their character, that the Bill was necessary both for the security of our officers, and the security of the people of the country themselves. Violent and barbarous, and even fanatical to a certain extent, as were those people, still their natural tendencies were to fair and open fight where they considered themselves injured, or thought they had a right to go to war; but the persons who engaged in such attempts on life as had been rightly stigmatised by his friend Sir H. Durand were truly assassins of the worst and vilest kind. There was no doubt that, while there was a certain amount of political feeling more or less mixed up with those attempts, nevertheless the great and prevailing feeling was that of religious enthusiasm, of religious passion. How often had it been proved that such men had for weeks and even

months brooded over the attempts they had eventually made? They had in some cases been incited by their religious teachers, their *Mullahs* and other religious characters about their temples and shrines; and HIS EXCELLENCY thought that hardly any case could be adduced, whether it was an instance in which a Muhammadan assassin perpetrated a deed of this kind, or whether (as was much less frequently the case) it was a Sikh, in which the main ingredient had not been religious enthusiasm. He concurred in all that had fallen from the Hon'ble Mr. Maine. HIS EXCELLENCY had considered the Bill, so far, as a means of extending the right and power of our officers to inflict summary punishment, but he thought, moreover, that it was a measure which, while it invested the Government official with powers of dealing with an assassin, nevertheless, on the other hand, threw the force of law round his jurisdiction, and required him carefully to consider, in each case in which he proposed to bring the particular individual under the scope of the law, whether his doing so was in accordance with the law. He thought that one effect of the Bill would be to give satisfaction to the loyal and well-disposed population on the border. It would give confidence and security to our country; it would prevent our own officials getting into the practice of overriding the law, a practice which might perhaps result in their despising it; but if the Bill were passed, while they were acting rigorously in fact, they would feel that they were doing so in accordance with the law of the land.

The Hon'ble MR. BRANDRETH said he was obliged to the Hon'ble Mr. Maine for the amendments he had prepared, as they had remedied a part of the objections he entertained to the amendments which had been made in the Bill on the last occasion. He (MR. BRANDRETH) still thought it would have been better if the Bill had been restricted to the two classes recommended by himself, and if the word "fanatic" had been defined in the manner recommended by the Select Committee, which was so exactly in all material points in accordance with that recommended by the Lieutenant-Governor and the Chief Court of the Panjáb. Whether the Chief Court and the Lieutenant-Governor would now hold that the definition of the word, as explained by the Hon'ble Mr. Maine, was the only definition of which it was capable, he (MR. BRANDRETH) was not prepared to say. If, in the opinion of the Chief Court and the Lieutenant-Governor, the meaning of the word "fanatic" as defined by the Hon'ble Mr. Maine was correct, and indicated a person actuated by religious motives only, any wider definition of the word would be inconsistent with the provisions of the Bill, and they might have to ask for an amendment of it; that was, in the event of their thinking that crimes committed from political motives only should also be made subject to the Bill. He (MR. BRANDRETH) could not now ask

the Council to go back from what they had already determined ; but, as the next best thing, he was glad to accept of the Hon'ble Mr. Maine's amendment.

The Hon'ble MR. MAINE said that it would be very presumptuous in him to attempt to mediate between the opinions formed by His Excellency the Viceroy, the Commander-in-Chief, and Sir H. Durand, opinions formed by practical experience. MR. MAINE could not of course say of his own knowledge whether political or religious fanaticism predominated in the motives of those murderers, though he thought that the evidence rather pointed to the religious element. He would, however, make the remark, that his Hon'ble and gallant friend Sir H. Durand seemed to consider that MR. MAINE had been arguing on matter of substance, whereas he had been arguing on matter of words. All he had said was that, in his opinion, there must be some religious ingredient in the frenzy in order that an assassin might be brought under the measure. The result would be that, if there were any class who committed these murders solely under the influence of political motives, this Council would have to legislate again. MR. MAINE would however venture to express a suspicion that, in such cases, the political and religious motives were not easily disentangled, and that fanatical murders were very rarely committed on the frontier by persons in whose frenzy there was not some degree, however small, of religious enthusiasm, however the political motive might predominate. In such a case the murderer would be triable under the Act.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART said that there were two amendments that stood in his name, which he would move separately. The first was that Section 3 of the Bill be omitted, and that the following words be inserted in lieu thereof:—

“ Every offence made punishable under this Act shall be deemed an offence within the meaning of the Indian Penal Code.”

Apology was due to the Council for his having proposed no less than three successive amendments with the same object, but he thought a few words of explanation would relieve him from any charge of inconsistency. The first amendment, proposed with the object of preventing undue severity, was based on the difference of the religious belief of the murderer and his victim, which was the fundamental principle of the Bill as originally drawn. The amendments proposed and carried by His Honour the Lieutenant-Governor made this amendment of no effect, and he (MR. SHAW STEWART) was obliged to withdraw it, substituting another by which the power of summary execution, without confirmation or appeal, was limited to actual murders ; abetments and attempts being

left to be dealt with under the ordinary procedure. The debate on this amendment was adjourned, and a few days after, an informal meeting of the Members of Council who had served on the Select Committee was held, which unfortunately he was prevented by indisposition from attending. He was however informed by his Hon'ble friend Mr. Maine that the Members present at that meeting approved of his amendment and wished it carried further, so as to exempt all abetments from the operation of this Act. To this he willingly assented, especially as he should have preferred to have framed his amendment in its present form at first, and refrained from doing so only because he perceived that his Hon'ble friend, the Mover, was averse to omit Section 3, and he was not sure of the support of the Council. For this reason he framed his amendment in a form which would, he hoped, be accepted by his Hon'ble friend, but now, being sure of support, he had altered it as suggested by the Hon'ble Mr. Maine.

He need make few remarks in favour of his amendment; he objected to abetments being tried under this Act, not solely on account of the intrinsic difficulty of the law of abetment, but also on account of the comparative inexperience of many of the officers who would have to administer it, and the absence of any check to prevent an undue exercise of the extraordinary powers that the Act would give them. He said comparative inexperience not as any reflection on the officers themselves, but referring solely to the fact that offences under this Act would frequently be tried by officers of less standing in the service than those generally entrusted in other parts of India with the power of life and death.

The difficulty in the law of abetment lay in its defining an abetment to consist in an illegal omission as well as in an illegal act. He would read a portion of the first Section of the Chapter on abetment in the Indian Penal Code, which would make his meaning clear.

“ A person abets the doing of a thing who instigates any person to do that thing.”

Any instigation was explained as follows:—

“ A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

Again—

“ A person abets the doing of a thing who engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing.”

And thirdly—

“A person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing.”

In all these three cases, an illegal omission or a wilful concealment was mentioned, and he was of opinion, and he thought his Hon'ble friends Mr. Brandreth and Mr. Hobhouse, whose judicial experience was far greater than his, would bear him out, that it was most difficult and required great knowledge of the law to know what facts a person was bound to disclose, and what omissions were illegal. Perhaps he might be permitted to mention, as an instance of this difficulty, that no person, except a public servant whose duty related to such cases, was legally bound to give information of an offence so grave as murder, even if he knew that the withholding of this information might lead to the escape of the criminal. That at least was the law of the Code of Criminal Procedure, and though he was aware it was modified in certain districts by local laws, yet the very fact of these modifications existing made it all the more difficult to say what was, and what was not, an illegal omission. But the difficulty was greatly enhanced in regard to abetments of the offences that would be punishable under this Act, for, as these fanatical murders were generally committed by foreigners residing beyond our frontier, their abettors would for the most part reside out of British India also, and in the event—which was not impossible—of a number of such persons charged as abettors being arrested and brought before our tribunals, very difficult points would arise as regarded jurisdiction, as well as whether they had violated any duty binding on them to disclose facts or prevent the commission of an offence. For this reason, he trusted the Council would concur in the propriety of the amendment, and exclude all abetments from the operation of this Bill. The words which he proposed to substitute would have the effect of making all abetments or concealments of offences against this Act equally penal, under the Indian Penal Code, as abetments or concealments of ordinary offences and triable by the Code of Criminal Procedure.

The Hon'ble MR. BRANDRETH said that, if he thought that abetment of the crime contemplated would be of frequent occurrence, he should have strongly objected to the amendment. A person who instigated an offence, who planned and designed the execution and furnished the means of perpetrating it, might be more deserving of punishment than the person actually committing the offence. Suppose a case of abetment of that sort were actually made out? the officer who tried the case would probably not hesitate to set aside the proposed amendment, as other officers in similar cases had set aside the Criminal Pro-

cedure Code. Such an officer might justly argue that the amendment was altogether inapplicable to the case he had to deal with, and would reasonably expect that his act would be justified by the Government of India and the Secretary of State. But as he (MR. BRANDRETH) thought abetment would be of very infrequent occurrence, he did not wish to oppose the amendment, if it was quite certain that, instead of that taking place which the Hon'ble Mr. Shaw Stewart expected, the amendment would not have the effect of bringing every kind of concealment as well as abetment under the procedure provided by this Bill.

The Hon'ble MR. RIDDELL hoped he would be allowed to protest against the remarks of His Excellency the Commander-in-Chief. The discussion which he presumed was intended to be alluded to was, whether the term "fanatic" should be used alone, or in conjunction with the words "political and religious." He thought, from what they had heard from His Excellency the Viceroy and the Hon'ble Mr. Maine, that the Council would be satisfied that there was great doubt as to the meaning of the word. He (MR. RIDDELL) thought that it would turn out that the term "fanatic" did not include the very class of persons intended to be brought within the operation of the Bill. If the Hon'ble Mr. Maine was correct and some religious motive must be proved, then no case of assassination for revenge would come under the provisions of this Bill. He (MR. RIDDELL) thought the Council would do wrong in following a barbarous nation, and permitting a summary jurisdiction in these cases instead of having a solemn formal investigation. He could not help protesting against the term word-splitting as applied to their discussions by His Excellency the Commander-in-Chief.

The Hon'ble SIR HENRY DURAND said that, with reference to the amendment, as the Hon'ble Mr. Brandreth who was in charge of the Bill made no objection, he (SIR HENRY DURAND) would only remark that he had very considerable doubt whether the Bill as amended would effect the object desired. The act of abetment would be much narrower than the application which the Hon'ble Mr. Shaw Stewart gave to it. No doubt the Hon'ble Member was perfectly correct so far as the definition under the Penal Code was concerned; but with reference to the crimes to which this Bill would apply, the act of abetment was almost the same as the act of assassination. He (SIR HENRY DURAND) had therefore considerable doubt whether the proposed amendment should be made, but as the Hon'ble Mr. Brandreth did not object, he (SIR HENRY DURAND) would not do so.

The Hon'ble MR. SHAW STEWART begged to observe, with reference to the remarks of his Hon'ble friend Sir H. Durand, that any abettor who was

present at the commission of a murderous outrage, and therefore liable to be viewed as a red-handed criminal, would be liable to be tried as a principal in the offence, under the summary procedure that this Bill provided. His (MR. SHAW STEWART's) amendment would only affect the case of persons at a distance from the scene of the offence, who might instigate or aid the offender or engage in a conspiracy with him. Such persons could not be considered in the light of red-handed criminals, and the necessity of summary procedure in regard to them was not apparent.

HIS EXCELLENCY the COMMANDER-IN-CHIEF having taken a prominent part in supporting the principle of the Bill, would not give a silent vote on the present amendment. He was disposed to accept the amendment, first, because it made the Bill entirely consistent with the idea of it, as stated by the Hon'ble Mr. Maine, and, secondly, because he was advised that, whereas the red-handed criminal should be punished and made an immediate example of for the better preservation of the peace amongst the friends of the murdered man and the population at large, still there was no such necessity in the case of a mere abettor, according to the Hon'ble Mr. Shaw Stewart's definition. Therefore, as it had been said over and over again, as this was a piece of exceptional legislation, it appeared to HIS EXCELLENCY that the Hon'ble Mr. Shaw Stewart was right in proposing his amendment; and thus preventing the exceptional legislation going any further than what was required. With regard to the Hon'ble Mr. Riddell's remarks, HIS EXCELLENCY thought that they were a little out of order, as they applied to a previous debate. Far indeed was it from HIS EXCELLENCY's wish to cast an invidious reflection on any Hon'ble Member, but he had thought it a duty to take care that Hon'ble Members should not forget the necessity under which the Bill had originated in the Panjáb and had come up to the Supreme Government. It was due, not only to the Council, but to the public at large, that the scope and idea of the Bill should be thoroughly understood according to the terms used by His Excellency the Viceroy, which far exceeded in weight anything he was able to urge.

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved that the following new Section be added to the Bill :—

"It shall be lawful for the said Lieutenant-Governor, either on his own motion or at the request of the Chief Court of the Panjáb, from time to time to withdraw any class of cases from the operation of this Act."

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART then moved that the following Section be added to the Bill :—

“This Act shall expire in ten years from the date of passing it.”

And, as suggested by His Hon'ble friend Mr. Maine, he proposed to add the words—

“Or at any earlier date that the Governor General of India in Council may order.”

This Bill proposed to legalize a course of procedure that had been adopted in many cases without the sanction of law, and which was expected to aid materially in the suppression of a class of offences which had unfortunately been somewhat common of late years in the Panjáb. If in the course of a few years the Bill succeeded in its object, and these outrages were suppressed, there could be no longer any necessity for such an exceptional law, and if unhappily it was not found to succeed in this object, he thought it right that this Council should have the opportunity of reconsidering the matter, and judging whether the Bill was advantageous or not.

The Hon'ble MR. BRANDRETH said that, considering the extraordinary powers conferred by this Bill, it would perhaps be as well that it should be subject to reconsideration ten years hence, and if not required, it would be well if the compiler of the Acts at that time should be able to leave it out of the Statute-book.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR moved the introduction of the following new Section after Section 8 :—

“The proceedings in every trial held under this Act shall be reported to the Lieutenant-Governor, without unnecessary delay, by the officer before whom such trial shall have been held.”

He said, the object of the amendment which he had proposed was to impose on the officer trying a case under this Bill the legal obligation to do that which he would most likely do without such an obligation, namely, to report his proceedings to the Government. But it seemed to him that the legislature, in trusting these large powers to comparatively young officers, should take the precaution of making it legally obligatory on those officers to report their

proceedings, in order that mistakes might be corrected, and that the necessary instructions might be issued to regulate their procedure.

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH then moved that the Bill as amended by the Select Committee, together with the amendments since adopted, be passed.

The Motion was put and agreed to.

PETTY SESSIONS (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to remove doubts as to the legality of certain sentences passed by tribunals called Petty Sessions Courts, in the North-Western Provinces, said that the Council were aware that, in those Provinces, Honorary Magistrates (generally Native gentlemen) were in the habit of sitting together and passing sentences in concert, somewhat after the fashion of the English Quarter Sessions. The practice was said to have the best effect. But as the whole system of Indian Criminal Procedure was founded on the assumption that the Court was composed of a single Judge or Magistrate, doubts had been raised by the High Court of the North-Western Provinces as to the legality of the sentences so passed. He therefore proposed to preclude these doubts and to legalize, retrospectively, sentences heretofore passed, by a short Bill which enacted that :

“ When two or more persons, authorized to exercise all or any of the powers of a Magistrate, sit together for the despatch of business in any place in the said Provinces, any summons, warrant or process or other proceeding, and any order, judgment, finding or sentence, signed by any two or more of them, shall be as valid to all intents and purposes as if it were solely signed, when the powers of one or more of them are higher than the powers of the others or other of them, by such one of them as has, or by one of such of them as have, been invested under Section 23 of the Code of Criminal Procedure with the highest of such powers, or, when their powers are equal, by any one of them.”

And that—

“ All sentences heretofore passed by any Magistrates sitting together in any such place as aforesaid, shall be deemed to be as valid as if this Act had then been passed.”

The Bill was extremely simple, and it would be unnecessary to refer it to a Select Committee. At their next meeting, therefore, he proposed, with His Excellency the President's permission, to ask the Council to pass the Bill through its remaining stages.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to enable Deputy Commissioners in the Panjáb to distribute the business in subordinate Courts—The Hon'ble Messrs. Maine, Shaw Stewart, Hobhouse and the Mover.

The Council adjourned till the 22nd March 1867.

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

CALCUTTA;
The 15th March 1867.