

Friday, February 22, 1867

**COUNCIL OF GOVERNOR GENERAL
OF
INDIA**

VOL . 6

4 JAN. - 20 DEC.

1867

P . L .

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 22nd February, 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 Maino.

The Hon'ble W. Grey.

The Hon'ble G. Noble Taylor.

The Hon'ble Colonel Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble Maharájá Dhíraj Mahtab Chand Bahádur, Maharájá of Burdwan.

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.

MURDEROUS OUTRAGES (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH moved that the Report of the Select Committee on the Bill for the suppression of murderous outrages in certain districts of the Panjáb, be taken into consideration. He said that the principal amendments which the Select Committee had made in the Bill were contained in sections 6 and 13. Section 6, which directed the appointment of assessors, had been amended in accordance with the suggestion made by His Excellency the Viceroy on the occasion of the introduction of the Bill, *viz.*, that it should not have the appearance of restricting the appointment of Europeans, whether civil or military. It was now proposed that the Commissioner should appoint such persons as he might think fit to act as assessors. Section 13, which related to the jurisdiction under the Bill, enabled the Commissioner to confer that jurisdiction on any person having the full powers of a Magistrate, in any case in which the Commissioner himself should not

be able to conduct the trial ; and that amendment had been made in accordance with suggestions made in communications received on the subject of the Bill, that the section should distinctly intimate that the authority of the Commissioner to invest Magistrates with jurisdiction under the Act should be conveyed subsequently to the commission of the outrage, and not previously. It was therefore proposed that the jurisdiction might be exercised by any Magistrate with full powers whom the Commissioner or the Lieutenant-Governor might specially invest with jurisdiction to try an offender. That jurisdiction, if it ever was to be delegated, ought to be delegated within two or three days of the commission of the outrage ; and such delay, if it helped to secure the nomination of the most competent Magistrate, would not prove unnecessary. The other amendments made by the Select Committee were of a verbal character, or of an explanatory nature, for the purpose of making the Bill more clear where it was not sufficiently so as originally introduced.

His Honour the Lieutenant-Governor, the Hon'ble Mr. Maine, and the Hon'ble Mr. Shaw Stewart had given notice of some further amendments which they intended to move. MR. BRANDRETH would, however, observe that his friend the Hon'ble Mr. Maine had previously signed the Report of the Select Committee on the Bill, which recommended that the Bill, as amended, should be passed. There seemed, therefore, some little inconsistency in his taking objections to the Bill after signing that Report. But as MR. BRANDRETH was anxious to hear the grounds on which his Hon'ble friend's amendment was based, he did not propose to press that point as an objection to the amendment. The amendments of which notice had been given would, he concluded, be read out and explained. But he would suggest that His Honour the Lieutenant-Governor's amendment should be the first to be considered, because, if carried, there would hardly be room for the Hon'ble Mr. Maine's amendment ; and the Hon'ble Mr. Shaw Stewart would in that case have materially to alter the amendment suggested by him.

He (MR. BRANDRETH) was in charge of the Bill, and was therefore supposed to have considered it the most carefully, and to be principally responsible for the correct preparation of the measure. He concluded, therefore, that it would be in accordance with the Rules of the Council that he should reply to the remarks made in proposing the amendments, before any other Hon'ble Members expressed their opinions, or came to any determination on the points at issue between him and other Hon'ble Members.

The Hon'ble MR. MAINE said that his objection was to the amendment proposed by the Lieutenant-Governor in the enacting clauses. As to the amend-

ment of the preamble, he was disposed to agree with His Honour that there were objections to recognising in words political or religious animus as the basis of legislation. His Hon'ble friend Mr. Brandreth had apparently misunderstood the very innocent remarks he had made the other day. All that MR. MAINE had quarrelled with, was the practice of a Member signing a recommendation that a Bill be passed, when in fact he did not mean to recommend it. Many Members of Council were full of occupation, and naturally attached much weight to the recommendations of the Select Committee, which would be deprived of a great part of their value, if they purported to mean that which in fact they did not mean. But of course when, as in MR. MAINE's own case, a member of the Select Committee simultaneously circulated a notice of amendment, it was quite obvious that his agreement with the Select Committee would be understood by all persons to be qualified, and consequently he was not open to remark.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR, in laying before the Council the amendments of which he had given notice, wished to say that, though, as a rule, he was averse to exceptional legislation—especially to exceptional criminal legislation—he fully recognized the necessity of such legislation in this instance, and entirely concurred in the principle of the Bill brought forward by the Hon'ble Mr. Brandreth, and in the arguments with which he supported his motion for leave to introduce it. One of the objects HIS HONOUR had in proposing these amendments was to make the Bill more effectual for the purpose for which it was intended. No one could have read the reports of the Panjáb Government, or have listened to the statement of the Hon'ble Mr. Brandreth, without being convinced of the absolute necessity of giving protection to life, and especially to the lives of European officers on the frontier, from murderous outrages, and there could hardly be any difference of opinion that it was necessary to provide summary punishment for those guilty of such crimes. As the Hon'ble Mr. Maine had observed, the effect of the Bill would simply be to give legislative sanction to a practice long in existence, and to provide a course of procedure which had really been observed by the local officers in anticipation of sanction and indemnity, which had, it must be remarked, always been given both by the Government of India and the Government at home. This last was an important fact to bear in mind, as it showed that the Government had good reason for believing that the powers proposed to be given by the Bill would be used with discretion and judgment.

HIS HONOUR'S objections to the words which he proposed to omit from the preamble—and perhaps that amendment might be considered in the first instance—were, first, that they limited the action of the Bill to murders committed from political and religious motives; and, secondly, that those words seemed to imply that a man was to be tried by a special and summary mode, not on account of the crime he had committed, but on account of his political or religious opinions. As to the word “fanatic,” it seemed to him that, as used in the original Bill, it was quite sufficient without the addition of the epithets added by the Select Committee. The term “fanatic” was specific enough to denote the particular kind of persons by whom these crimes had been committed, and to whom the provisions of the Bill were meant to apply, and while comprehensive enough to include all fanatics in the limited sense intended by the Select Committee, included none but those who committed these outrages from motives unintelligible except on the supposition of some previously existing enthusiasm, monomania, or other such cause. The words introduced by the Select Committee, instead of enlarging the meaning of the term “fanatic,” really limited it; and if the words “political and religious” were left in, the Bill would apply to persons who were undoubtedly fanatics, but whom it would be very difficult to prove to be either political or religious fanatics. It was very easy to suppose that a British officer trying a case in one of the frontier districts of the Panjáb, whilst sitting on the bench and giving judgment adverse to one party, might suddenly and without other apparent provocation be murdered on the spot by the person conceiving himself to be aggrieved; and such a case no doubt ought and was intended to be provided for by the Bill. It seemed, therefore, to HIS HONOUR that the word “fanatic” by itself was much better than if coupled with the words suggested by the Select Committee. Then as to the other words in the preamble, “whose religion differed from that of the offender,” he understood from what His Excellency the Viceroy had observed on the last occasion when the Bill was before the Council, that the Bill was intended not only for the protection of Europeans, but also of Hindú traders and others who might be the object of such attacks. With regard to that, he wished to observe that the Bill, as it stood, did not provide for the murder of a Hindú by a Hindú fanatic, of a Sikh by a Sikh, or of a Muhammadan by a Muhammadan. To take the case of the murder of a Muhammadan by a Muhammadan, the most common kind of fanatic. It was certain that some of the most trustworthy officers of Government had been Muhammadans, and he did not know any class of Government servants who had more distinguished themselves by their zeal and fidelity to Government, than some of its Muhammadan officers, and he thought that they were particularly

entitled to protection of that kind. It was perfectly natural that, where persons were actuated by religious fanaticism to commit crime, it should operate with greater intensity towards a person of the same religion, but a different sect, or towards a man who, belonging to the Muhammadan religion, was at the same time in the service of a Christian Government. That description of fanatic outrage was at least as likely to occur as any other. It seemed therefore that the words "whose religion differed from that of the offender," besides being objectionable as making religion the ground-work of special legislation, were very injurious, inasmuch as they limited the operation of the Bill. He would therefore move the omission of the words "political and religious" in lines 2 and 3, and of the words "whose religion differed from that of the offender" in lines 6 and 7, of the preamble.

The Hon'ble MR. BRANDRETH suggested that as the other amendments of which His Honour the Lieutenant-Governor had given notice were intimately connected with the amendments already moved, they should all be considered together.

The Hon'ble MR. GREY thought that it was competent to any Hon'ble Member to move his amendments separately or together at his discretion.

His Honour the LIEUTENANT-GOVERNOR would rather move the amendments separately, but was ready to submit to the decision of the Council.

The Hon'ble MR. SHAW STEWART thought the amendments should be moved separately, as the one was an amendment of the preamble, and the other of the penal clauses of the Bill.

His Excellency THE PRESIDENT having decided that the amendments regarding which His Honour the Lieutenant-Governor had already spoken should be first decided.

The Hon'ble MR. BRANDRETH said that he did not at all concur in the amendment which had been proposed. His Honour the Lieutenant-Governor had suggested that the words "political and religious" and "whose religion differed from that of the offender" should be omitted; but what the object was of doing so MR. BRANDRETH did not at all see. The question was, what did His Honour understand to be the meaning of the word "fanatic?" Did he mean a political or religious, or other fanatic? In either case MR. BRANDRETH did not think that it was desirable that the meaning should not be distinctly expressed, nor did it seem to him that the term could be accurately defined. There were

HIS HONOUR's objections to the words which he proposed to omit from the preamble—and perhaps that amendment might be considered in the first instance—were, first, that they limited the action of the Bill to murders committed from political and religious motives; and, secondly, that those words seemed to imply that a man was to be tried by a special and summary mode, not on account of the crime he had committed, but on account of his political or religious opinions. As to the word “fanatic,” it seemed to him that, as used in the original Bill, it was quite sufficient without the addition of the epithets added by the Select Committee. The term “fanatic” was specific enough to denote the particular kind of persons by whom these crimes had been committed, and to whom the provisions of the Bill were meant to apply, and while comprehensive enough to include all fanatics in the limited sense intended by the Select Committee, included none but those who committed these outrages from motives unintelligible except on the supposition of some previously existing enthusiasm, monomania, or other such cause. The words introduced by the Select Committee, instead of enlarging the meaning of the term “fanatic,” really limited it; and if the words “political and religious” were left in, the Bill would apply to persons who were undoubtedly fanatics, but whom it would be very difficult to prove to be either political or religious fanatics. It was very easy to suppose that a British officer trying a case in one of the frontier districts of the Panjáb, whilst sitting on the bench and giving judgment adverse to one party, might suddenly and without other apparent provocation be murdered on the spot by the person conceiving himself to be aggrieved; and such a case no doubt ought and was intended to be provided for by the Bill. It seemed, therefore, to HIS HONOUR that the word “fanatic” by itself was much better than if coupled with the words suggested by the Select Committee. Then as to the other words in the preamble, “whose religion differed from that of the offender,” he understood from what His Excellency the Viceroy had observed on the last occasion when the Bill was before the Council, that the Bill was intended not only for the protection of Europeans, but also of Hindú traders and others who might be the object of such attacks. With regard to that, he wished to observe that the Bill, as it stood, did not provide for the murder of a Hindú by a Hindú fanatic, of a Sikh by a Sikh, or of a Muhammadan by a Muhammadan. To take the case of the murder of a Muhammadan by a Muhammadan, the most common kind of fanatic. It was certain that some of the most trustworthy officers of Government had been Muhammadans, and he did not know any class of Government servants who had more distinguished themselves by their zeal and fidelity to Government, than some of its Muhammadan officers, and he thought that they were particularly

entitled to protection of that kind. It was perfectly natural that, where persons were actuated by religious fanaticism to commit crime, it should operate with greater intensity towards a person of the same religion, but a different sect, or towards a man who, belonging to the Muhammadan religion, was at the same time in the service of a Christian Government. That description of fanatic outrage was at least as likely to occur as any other. It seemed therefore that the words "whose religion differed from that of the offender," besides being objectionable as making religion the ground-work of special legislation, were very injurious, inasmuch as they limited the operation of the Bill. He would therefore move the omission of the words "political and religious" in lines 2 and 3, and of the words "whose religion differed from that of the offender" in lines 6 and 7, of the preamble.

The Hon'ble MR. BRANDRETH suggested that as the other amendments of which His Honour the Lieutenant-Governor had given notice were intimately connected with the amendments already moved, they should all be considered together.

The Hon'ble MR. GREY thought that it was competent to any Hon'ble Member to move his amendments separately or together at his discretion.

His Honour the LIEUTENANT-GOVERNOR would rather move the amendments separately, but was ready to submit to the decision of the Council.

The Hon'ble MR. SHAW STEWART thought the amendments should be moved separately, as the one was an amendment of the preamble, and the other of the penal clauses of the Bill.

His Excellency THE PRESIDENT having decided that the amendments regarding which His Honour the Lieutenant-Governor had already spoken should be first decided.

The Hon'ble MR. BRANDRETH said that he did not at all concur in the amendment which had been proposed. His Honour the Lieutenant-Governor had suggested that the words "political and religious" and "whose religion differed from that of the offender" should be omitted; but what the object was of doing so MR. BRANDRETH did not at all see. The question was, what did His Honour understand to be the meaning of the word "fanatic?" Did he mean a political or religious, or other fanatic? In either case MR. BRANDRETH did not think that it was desirable that the meaning should not be distinctly expressed, nor did it seem to him that the term could be accurately defined. There were

two classes whose safety he had in view : first, the servants of the Queen without reference to their religion ; secondly, persons whose religion might differ from that of the fanatic : and it was with the view of making this distinction that he wished the words " political and religious " to be added. His Honour the Lieutenant-Governor wished entirely to abolish the distinction, but it had been much insisted on, both by the Chief Court of the Panjáb and His Honour the Lieutenant-Governor of the Panjáb, in their replies to the letters addressed to them on the subject of the Bill, and it was only last night that MR. BRANDRETH had received back the copy of the Bill he had sent to the Lieutenant-Governor of the Panjáb, in the margin of which was made an amendment similar to that by the Select Committee : the words were different, but the object to be attained was the same. In regard to what His Honour the Lieutenant-Governor of Bengal had said about a Muhammadan who murdered another Muhammadan, a servant of the Government, not being triable under the Act, MR. BRANDRETH thought that His Honour had entirely misunderstood the object of the Bill. The whole object was to secure that a person who attacked another from political or religious motives should be triable under the Act. MR. BRANDRETH had a good deal to say regarding the other amendment when it should be proposed, but these were the principal objections he had to the omission of the words proposed to be omitted, as it would make the object of the Bill very indistinct.

The Hon'ble MR. HOBHOUSE had a few words to say on the subject of the amendment, and regretted that he differed from the Hon'ble Mr. Brandreth, who did not concur in the proposed amendment. MR. HOBHOUSE would explain how it was that he had signed the report, and yet now agreed to the amendment. Subsequently to the signing of the report there was an informal meeting of the Committee at which he was unable, from other business, to be present ; he did not therefore hear the arguments which had been adduced with regard to the insertion of the words " political and religious ; " had he had heard them as he now heard them, he would no doubt have agreed to the amendment. Whoever might be the person who committed the murder, he must be actuated by fanatical motives (whether political or religious was nothing to the matter) to fall within the provisions of the Bill. The question was, whether the person who committed the act was actuated by fanatical motives or not ? If he was, then he was a fanatic, and, being such, if he committed murder, he would come within the provisions of the Bill. He therefore thought the words proposed to be omitted did not seem essential.

As regarded the other amendment, namely, the omission of the words " whose religion differed from that of the offender," it so happened that it

was an amendment which he had himself proposed in Select Committee; but as the motion to omit those words was now strongly supported, he thought he was entitled to support it himself. It was not only such persons as His Honour the Lieutenant-Governor had referred to who would benefit by this Bill, but others. Take for instance the case of Lieutenant Ommanney: suppose one of his own Guide Corps had resisted the attempt to murder that officer, and had been himself murdered? The person who committed the outrage might have been a Sikh, and the person murdered of the same religion: he would not, therefore, be a person "whose religion differed from that of the offender." MR. HOBHOUSE did not therefore see why, if only a servant of Government, or a person of a different religion from that of the fanatic, were murdered, the fanatic should be punishable under the Bill; but if the person murdered were *not* a servant of Government or of a religion different from that of the offender, the fanatic should not be punishable.

His Excellency THE COMMANDER-IN-CHIEF thought that, in dealing with questions of this sort, it would be matter of regret were the Council to encumber a somewhat anomalous procedure with a too nice definition. If the amendment of His Honour the Lieutenant-Governor were not adopted, the Commissioner or other officer who had to try an offence under the Act might, with his assessors, have to enter into very refined discussions, instead of bringing the Act into operation. On every ground the Council ought to render easy the business of the Commissioner who was to try offenders under the Act, and not tie him up with a definition which might hereafter cast uncertainty on his acts, and render the proceedings actually liable to the very delay for the avoidance of which the present measure was proposed.

The Hon'ble MR. SHAW STEWART said that, with all due deference to the remarks of His Excellency the Commander-in-Chief, he considered that, in an exceptional Bill like the present, the utmost possible accuracy of definition was requisite, and, therefore, he would adhere to the recommendation by the Select Committee.

The Hon'ble Sir H. DURAND thought that one object of the amendment proposed by the Select Committee was, to restrict the operation of the Bill so as not to encroach on the ordinary Criminal Procedure, and it was with that view that the whole of the preamble was framed, because there was a natural aversion to such encroachment. If you did not put some sort of restriction, you would throw open a very wide ground for the application of the Bill, so much so, that he would almost defy any one to put any limitation to the provisions of

the Bill. That was not a Bill which, except for the absolute necessity of the case, any one would wish to see on the Statute Book at all; but admitting that necessity was a reason for having the Bill, and considering how desirable it was not to encroach on the ordinary course of justice, he did not think that the provision was open to the great objection that had been taken. The Hon'ble Mr. Brandreth had pointed out how the servants of Government were really impressed with the view that the application of such a procedure was necessary, and that the ordinary criminal law would not suffice, but that was no reason why the Bill should be made wider in its application than was necessary.

The Hon'ble MR. RIDDELL had no doubt as to the amendment, and thought that it should not be carried. If the restrictions as to religion were not retained, a definition of the term "fanatic" would be very desirable.

The Hon'ble MR. BRANDRETH explained that, with regard to the definition of the word "fanatic," His Excellency the Commander-in-Chief seemed to think that, if a loose definition were made, the offender would probably escape punishment; but he (MR. BRANDRETH) rather thought that the effect of such a definition would be that the offender would then be tried in the ordinary way.

The Motions were severally put and agreed to.

His Honour the LIEUTENANT-GOVERNOR then moved the omission of the words "political or religious" in the first line of section 2, and of the words "whose religion differs from that of the offender" in the 7th and 8th lines of the same section. He thought it unnecessary to say anything more in regard to these amendments, because, similar words having been omitted from the preamble, they must also be omitted from the enacting portion of the Bill.

The Hon'ble MR. SHAW STEWART did not consider that the discussion of a point in the preamble obviated the necessity of discussing the penal clauses, to which the Courts looked chiefly for guidance. There was one point not noticed in the discussion on the preamble, which ought to be considered before the words political or religious were omitted from the penal clause. A person might become a fanatic from causes other than political or religious excitement. A person under the influence of hallucination, caused by the influence of opium or other intoxicating drugs, might commit acts closely resembling those against which the Bill was aimed.

MR. SHAW STEWART therefore trusted that the Council would not consider this question to have been decided by the discussion on the preamble, but settle the point on its own merits.

The Hon'ble SIR H. DURAND entirely objected to the amendment on the same ground as before ; it removed the restriction which was the main object of the Bill.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR next moved that the word "person" be substituted for the word "fanatic" in the first line of section 2, and in the first line of section 4. His reason for proposing the amendment was this, that he thought that the Government prosecutor, or other person who might be charged with the prosecution of persons under the Act, would have very great difficulty in proving that the person charged was a fanatic. The word was of rather doubtful meaning, and it seemed to him that, when the preamble had described the kind of persons to whom the procedure under the Act was to be applied and when the Commissioner had exercised the discretion vested in him by section 10 of the Bill, and had formed the opinion that the offence with which the criminal was charged was one which was contemplated by the preamble, it should not be necessary, in order to convict the person of the crime, that he should be proved at the trial to be a fanatic. If the word "fanatic" were retained in the enacting portion of the Bill, HIS HONOUR thought that such proof would have to be given ; and therefore, for the very reasons advanced by His Excellency the Commander-in-Chief in support of the previous amendments, he thought the word "fanatic" ought not to be retained ; and that when the Commissioner had once decided on proceeding under the Act, he should require nothing but proof of the actual crime.

The Hon'ble MR. MAINE was not sure whether the Lieutenant-Governor had quite foreseen the effect of his amendment. The result of substituting the word "person" for fanatic in the enacting sections would be that this special measure would become the general law of the proclaimed districts. Everybody would be first arraigned under the proposed enactment when he was charged with murder or attempt to murder, though it was true that, if his case was shewn to fall under section 10, he would be entitled to be transferred to the ordinary procedure of the Code. Now MR. MAINE must say that the mass of the population of the proclaimed districts might be considered as having a right to be tried under the Code, until reason to the contrary were shewn ;

and certainly they had a right not to be tried twice over, unless it were absolutely necessary so to try them. If his Hon'ble friend's amendment prevailed, it would seem that it would become an ordinary line of defence in a trial for murder, that the accused was a person of no political or religious principle, and consequently incapable of fanaticism, and entitled to an appeal. He thought that His Honour would scarcely persevere in his amendment unless he thought the condition of the frontier districts was such that every person accused of murder or attempt to murder ought to be tried by a summary procedure.

The Hon'ble MR. HOBHOUSE entirely concurred in the opinion of the Hon'ble Mr. Maine, as to what would be the effect of the amendment if introduced. MR. HOBHOUSE would now show what would be the practical effect on all persons in any proclaimed district. By the present law the penal clauses and procedure which applied were as follows :— If a person were charged with murder or attempt at murder, or abetment of murder, he was in the first instance placed under a preliminary investigation before the Deputy Commissioner of the District, who, if a *prima facie* case were made out, would commit the offender to the Commissioner, and the Commissioner would try him and pass sentence. If the sentence was a capital one, the Chief Court would have to confirm it; if less than a capital sentence was passed, there would be an appeal to the Chief Court. So as regarded procedure. Then, as regarded punishment, murder was punishable under the Penal Code with death or transportation for life, and there was a discretionary power of forfeiture of property. Attempt at murder was punishable with ten years' imprisonment, or transportation for life if hurt should have ensued. Abetment of murder, if the act committed was committed in consequence of the abetment, was punishable as the act itself; if not, it was punishable with one-fourth or one-half of the punishment provided for the offence. When this Bill should be proclaimed, what would follow? Murder or attempt at murder was punishable with death or transportation for life. Then, as regarded procedure, there was no preliminary investigation; the Commissioner at once tried and sentenced the offender, and there was no appeal from or commutation of such sentence; and all this would be the effect of the simple substitution of the word "person" for the word "fanatic." This would become the law, and the other the exception. The Bill intended that the ordinary law should obtain as the general law, and this Act should come in for exceptional cases. But under the amendment before the Council, that state of things would actually be reversed. He would therefore oppose the amendment.

His Excellency THE COMMANDER-IN-CHIEF thought it necessary, in justice to himself, to say that he could not permit the application of his words to be

pushed as far as it had been, nor could he take the responsibility of the interpretation which had been applied to them; on the contrary, he would testify his meaning by supporting the view of the Hon'ble Mr. Maine with regard to the amendment before the Council. He would remind the Council of certain facts connected with the original introduction or contemplation of this measure. These facts had an important bearing on the observations of the Hon'ble Mr. Hobhouse. When the measure was first contemplated, the word *Ghāzi* was used in the preamble of the draft so as more especially to mark the class of persons whom the Bill was intended to affect; but *Ghāzi* was a champion who fought against unbelievers in Islam, and there were obvious reasons for not putting a stigma on any class of religionists in a law which would have to receive the sanction of His Excellency the Viceroy, and which, if any such term were used, would probably create a very injurious feeling among the Muhammadans. In adopting the word "fanatic," and refraining from using the more special term, we had not only met the views of the Panjáb Government in guarding our officers and fellow-subjects from political and other outrages, but had precluded ourselves from being charged with having recourse to class legislation.

HIS HONOUR THE LIEUTENANT-GOVERNOR said that, after the observations that had been made, he had no desire to press his amendment, which he had perhaps proposed on a wrong understanding of section 10. He thought that, when an offence of that nature had been committed, the Commissioner would, before the trial, form his opinion as to whether the crime was or was not of the nature contemplated in the Bill; and having come to a conclusion on that point, one way or the other, he would proceed with the trial. HIS HONOUR would therefore, with the permission of His Excellency, withdraw the amendment.

The Motion was accordingly withdrawn.

The Hon'ble MR. SHAW STEWART said that, whatever doubts he might have entertained in his own mind as to the chance of the Bill attaining the object stated in its title, namely, the suppression of murderous outrages in certain districts of the Panjáb, he thought it his duty, knowing so little as he did of the Panjáb, not to urge his opinion in opposition to that of persons who, like His Excellency the Governor General and the Hon'ble mover of the Bill, were intimately acquainted with the country and people and considered that there were certain districts where a prompt and severe retribution would be more effective than any slower procedure. For this reason he had not opposed the introduction of the Bill, but he thought that some safeguard was necessary in carrying out the extraordinary powers which the Bill would give to certain

officers in the Panjáb. In ordinary times, and in cases where a murder had actually been perpetrated, he thought that these powers might be safely given. But the case was different in times of political excitement, when the vehement indignation described by the Hon'ble Mr. Brandreth as caused by a single outrage was intensified and magnified by strong political feeling. The Bill also would meet cases of abetment as well as cases of actual murder; and, looking to the very wide definition of the word "abetment," given in the Indian Penal Code, he thought the Council could hardly be aware of the results which might possibly follow. For this reason he had proposed an amendment which was based on the principle of limiting the power of summary execution after sentence, to cases in which a fairly constituted bench of assessors had concurred in the finding; and he had provided for the constitution of the assessors by reference to the religious beliefs of the murderer and his victim, which was in fact the base of the operation of the Bill. But the alterations which had been made in the Bill by the amendments of the Lieutenant-Governor rendered it necessary to modify the amendments which he (MR. SHAW STEWART) had circulated. With the permission of His Excellency the President, he would therefore submit an amendment which would have the effect of providing, as a safeguard against undue severity, that summary execution without confirmation should follow sentence only in cases where a murder had actually been committed, leaving all cases of abetment to be disposed of according to the ordinary procedure.

The Hon'ble MR. MAINE said that it was for His Excellency the President to consider whether he would allow the amendment to be put. As no notice had been given of it, it could not be put as a matter of course. He therefore suggested that it should be postponed, and the debate adjourned, especially as his Hon'ble friend Mr. Shaw Stewart had named an attentive study of the law of abetment as a condition of the proper understanding of his proposal.

The Hon'ble MR. RIDDELL said that as Mr. Maine had remarked that the Council must study the law of abetment, it would be better to adjourn the debate.

The Hon'ble MR. MAINE said that he had not accused the Council of ignorance, but he himself was unprepared to say what would be the effect of the combination of his Hon'ble friend's amendment with the law of abetment.

The Hon'ble MR. COWIE agreed that the debate should be postponed, and suggested that the Bill should be remanded to the Select Committee.

The Hon'ble MR. SHAW STEWART postponed his amendment, and the further consideration of the Bill was also postponed.

ORIENTAL GAS COMPANY EXTENSION BILL.

His Honour THE LIEUTENANT-GOVERNOR presented the Report of the Select Committee on the Bill to empower the Oriental Gas Company, Limited, to extend their operations to certain places in British India.

EXEMPTION OF VILLAGES (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART, in moving for leave to introduce a Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency, said that there were several villages which were included in the Schedules of various Regulations and Acts relating to Bombay, and which were thereby made subject to the general law prevailing in that Presidency. It had now been found that those Schedules were erroneous, and that some of the villages included in them should not have been placed under the general law. The Bombay Government had therefore drafted a Bill for their exclusion, but were doubtful whether, under the provisions of the Indian Councils' Act, 1861, it was competent to the Governor of Bombay in Council to pass the law, as the exclusion of these villages from the operation of the general Regulations would interfere with the jurisdiction of the Bombay High Court. That doubt seemed well founded, and it would therefore be necessary for the Governor General in Council to legislate for the purpose. The Bill would take the form of a simple repealing Act, by which the villages which had been erroneously included in the Schedules to which he had referred, would be removed from the operation of the general law.

The Motion was put and agreed to.

CORONERS (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE asked permission to postpone his motion for leave to introduce a Bill to alter and amend the law relating to Coroners and Coroners' Inquests in the Straits' Settlement.

Leave was granted.

SARÁÍS AND PURAOS BILL.

The Hon'ble MR. RIDDELL introduced the Bill for the regulation of public Saráis and Puraos, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that, when he moved for leave to introduce this Bill, he referred to the absence of any law for the regulation of Saráis, and mentioned that, on the representation of the

Inspector General of Police, the Government of the North-Western Provinces had urged that a law on the subject should be passed. The Inspector General of Police reported that, at present, every facility was given to the operations of thieves and robbers against travellers lodging or halting in a Sarái. There was no law to compel owners of Saráis to take ordinary precautions to secure travellers from thefts, by employing watchmen and keeping the gates and walls in a state of repair. The provisions of the Bill which he now introduced would, he hoped, secure greater attention to these points ; but while attempting to provide for safety of travellers from robbery, and for the maintenance of Saráis in a habitable state of repair, he had endeavoured to avoid giving any pretext for Police interference with travellers.

The Bill required that the names and residences of the keepers of all Saráis should be registered without charge. It empowered the Magistrate of the District to refuse to register, as keeper of a Sarái, a person who could not produce a certificate of character ; a similar power was given to Magistrates in England in regard to common lodging-house-keepers. The Bill then declared, in section 7, the duties of the keeper of a Sarái. The next section was a re-enacting in a different form of the existing law. By the three following sections the Magistrate of the District was empowered to shut up, secure and clear deserted Saráis, and to pull down or repair a Sarái in a dangerously ruinous state ; similar powers were given in the English Public Health Act, 11 & 12 Vic., cap. 63. By section 13 the Local Government might make rules, and by section 14 very moderate penalties were imposed for disregarding the provisions of the Act. If referred to a Select Committee, he had little doubt that the details of the Bill would be improved, but he trusted that no provision would be introduced authorizing any more minute interference with the internal arrangement of Saráis. The law would require that public Saráis should be kept in a state of habitable and wholesome repair, and that watchmen should be employed, when necessary, for the protection of travellers ; but he should be very sorry to attempt to fix a tariff of charges, or interfere in any way between the keeper of a Sarái and his customers.

The Motion was put and agreed to.

REGISTRATION OF BOOKS BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to provide for the preservation of copies of books published in British India and for the registration of such publications, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that, on the last occasion on which he addressed the Council with regard to this Bill, he had stated

fully what were the circumstances which led to the introduction of the Bill and the object with which it was introduced. He would now state again shortly, that the object of the Bill was, first, that a complete catalogue of all books published in India should be made and sent to England; and secondly, that one copy of the books themselves should also be sent to England for the benefit of scholars, and that two other copies of those books should be preserved and registered in this country for the same purpose, and also in order that the Government might, through the literature of the country, be better informed of the condition, opinions, and feelings of the people. He would now state briefly the provisions of the Bill, which were not many. It provided that three copies of every book published in British India should be delivered by the publisher to certain officers named by the Local Government: those officers were to give receipts for the books, and to pay for them at the prices at which they were *bond fide* sold to the public. Of these copies, one was to be sent to the Secretary of State; another was to be kept in some public library in this country; and the third was to be disposed of as the Local Government might desire, the object of requiring the third being that, in case one of the other copies should be lost or damaged, it might be replaced. There was a further provision that a register should be kept in the form of a complete catalogue, which would contain the title of the book, and a translation of it if it was not written in English; the language of the book; the name of the author, translator or editor; the name of the publisher; the number of sheets or pages the book contained, and so on: in fact, a scientific catalogue, the entries in which for each quarter would be published from time to time in the official *Gazette*. It was also proposed to give power to the Local Government to frame rules for carrying out the provisions of the Act. In the first instance, the Act would extend only to the lower Provinces of Bengal; but if any of the other Local Governments should desire to introduce it into the territories under its Government, this could be done by a notification to that effect, and the Act would thenceforward take effect in those territories. The word "book" was defined to mean every volume, part, or division of a volume, pamphlet, newspaper and sheet of letter-press, whether in English, Sanscrit, or any of the vernacular languages, and every sheet of music, map, chart or plan separately published. The only provision of the Bill regarding which, as the Bill was at present drafted, there could be much doubt, was that which declared that the book should be delivered by the *publisher* thereof. He was told that, in this country, it was in most cases extremely difficult to find the publisher of a book: ordinarily, a person who wished to publish a book went to a printer and got a certain number of copies printed; but how he published the book and disposed of those copies was not known. It was true there was an Act (No. XI of 1895)

requiring the printer and publisher of every book to put their names to it ; but he believed that Act was not followed out. It might therefore be a question whether it should not rather be the printer, than the publisher, who should be required to deliver the copies to Government. By the English Act (5 & 6 Vic., cap. 45) all publishers were compelled to deliver gratis one copy of each book published by them to the British Museum, and they might be called upon to deliver four other copies to certain other libraries named in the Act. That Act extended to the territories under the Government of the East India Company, but had hitherto never been enforced in this country, and there were probably some technical difficulties regarding its application to India ; but it might be enforced at some future time, and then, if the proposed Act did not provide for paying the publisher, he would be compelled to deliver no less than eight copies without remuneration. Now this, it seemed to him, especially in the case of valuable works which, besides the letter-press, contained prints or photographs, would be rather a hardship on the publisher, and he was also told by persons competent to judge, that if the copies were not paid for, the proposed Act would become a dead letter. The Bill therefore provided that the three copies which it required every publisher to deliver, should be paid for at the price at which the book was sold to the public. There might, it was true, be some sort of fraud perpetrated on Government, in the case of a man publishing a trumpery book, getting a few dishonest friends to conspire to buy copies at a high rate, and then compelling the Government to purchase the book at an exorbitant price ; but that was precluded by the clause which provided that the price should be that at which the book was *bond fide* sold for cash to the public. Some books, on the other hand, were not sold : he was told that a great many vernacular prints were not for sale ; and such cases would have to be considered and provided for by the Select Committee to whom the Bill would be referred. There was a provision that the Act should only be in force for two years : it was a question whether there should not rather be a power enabling the Government to suspend the operation of the proposed Act whenever it was thought fit. That was also a point which could be considered by the Select Committee ; but he thought the provision seemed a useful one with regard to a tentative measure of this kind.

The Motion was put and agreed to.

PRESIDENCY JAILS' BILL.

The Hon'ble MR. MAINE presented 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.

THE INDIAN SHIPPING BILL, 1867.

The Hon'ble MR. SHAW STEWART presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Merchant ships, Seamen and Passengers by Sea.

The following Select Committees were named :—

On the Bill for the regulation of public Saráis and Puraos—The Hon'ble Mr. Maine, the Hon'ble Colonel Sir H. Durand, the Hon'ble Mr. Hobhouse and the Mover.

On the Bill to provide for the preservation of copies of books published in British India and for the registration of such publications—The Hon'ble Messrs. Maine, Riddell, Shaw Stewart and the Mover.

The Council adjourned till the 1st March, 1867.

CALCUTTA,
The 22nd February, 1867. }

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