ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

# LAWS AND REGULATIONS.

VOL 13

Jan to Dec

1874

# ABSTRACT OF THE PROCEEDINGS

OF THE

# Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

# LAWS AND REGULATIONS.

## 1874.

## WITH INDEX.

VOL. XIII.



Published by the Authority of the Governor General.



CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.

1875.

*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.*

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The Council met at Government House on Tuesday, the 7th April 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble Rájá Ramánáth Tagore.
The Hon'ble R. A. Dalyell.
The Hon'ble B. D. Colvin.

## ASSAM CHIEF COMMISSIONER'S POWERS BILL.

The Hon'ble MR. HOBHOUSE moved that the Bill to provide for the exercise of the powers hitherto exercised by the Lieutenant-Governor and Board of Revenue of Bengal in the territories forming the Chief Commissionership of Assam, as amended, be passed. He said that the Council would remember that the only reason why this Bill was not passed at the last meeting was that some objection was taken to the spelling of the names in the Schedule to the Bill, and it was on that account that this motion stood over. Now the spelling had been subjected to a severe criticism in the proper quarters. Our Military friends with their usual sagacity had attacked one untenable post, and with their usual gallantry had captured it. That post was Nowgong. With that one exception, the spelling had run the gauntlet successfully, and the Bill stood as it was. He had no remarks of his own to make upon it.

His Honour THE LIEUTENANT-GOVERNOR said, as the hon'ble and learned member in charge of the Bill had told them, since this Bill was last before the Council there had been only one amendment in its spelling, and that was a

very great improvement to be sure. The spelling of the word "Nowgong" was a very great improvement upon what it was before, namely Naugáon. But as regards the other districts, the new or compromised spelling had been left. HIS HONOUR would only say that in the North-Western Provinces and in Bengal the system had been followed of maintaining the names of districts according to the old established mode of spelling them. Districts were well-known places. He found that some of the names of districts in Assam were spelled in the Bill in the new-fangled manner: they were spelled in a new manner, with certain diacritical marks. It was a mere question whether the Government of India chose to depart from or to retain the spelling of well-known names of districts, or to allow new-fangled modes of spelling upon any system of compromise. He found that Kamroop, was changed into "Kámrúp," and Durrung was changed into "Darrang." If that was the decision of the Government of India he had nothing more to say, it was for the Government to approve or otherwise of the compromise.

The Hon'ble MR. BAYLEY believed the spelling now adopted in the Bill was the same as that used in the maps issued by Government, and he thought the Council were right in adopting it.

The Motion was put and agreed to.

## EUROPEAN VAGRANCY BILL.

The Hon'ble MR. BAYLEY moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to European Vagrancy, be taken into consideration. He said that in originally introducing this Bill, he had explained that it was not desired to initiate any great reform in the principle of the measure already in existence. It was in fact merely intended to amend certain details which had been found defective in practice and to consolidate the law, which was already spread over two enactments, into one. As he then said, the main changes which were proposed were three in number: they were, first, to amend a slight defect in the law as to making persons who imported European servants in charge of horses responsible for their maintenance after their landing; secondly, to enable the governing officers in charge of work-houses to maintain discipline; and, lastly, to enable persons who deserted from a work-house, while on absence under a ticket-of-leave, to be punished.

Since the Bill had been introduced, it had been circulated to the various Local Governments, and we had received from them, and more particularly from the Governments of Madras and Bombay, a good many suggestions which

the Select Committee had considered very carefully, and some of which had been adopted. The Committee had, for example, in section two amended the definition of "person of European extraction." Some difficulty was felt under the existing definition with regard to persons who were not of pure British blood, although of legitimate descent. Many of these were virtually in all respects as natives of this country, and the provisions of this Act were obviously inapplicable to them, although they came within the technical definition of "person of European extraction." At the suggestion, therefore, of the Secretary in the Legislative Department, a clause had been added to the definition which provides that it should not include persons commonly called Eurasians or East Indians. This, it was hoped, would be sufficient to meet the difficulty.

There was another rather curious point, that as the law now stands, although a Magistrate might enquire into the cases of vagrants brought before him by the Police, yet, if a vagrant came before the Magistrate himself, the Magistrate could do nothing until he had given the man in charge of the Police and so had the man secured and brought before himself. The Committee had amended section five to remedy this anomaly.

Under clause nine a certificate can be given to enable a vagrant to seek for work. It was found that sometimes these certificates were used by the persons to whom they were given as a pretext for going about begging. An alteration had, therefore, been made in the form of the certificate, by which, if a person was so found begging, his certificate would become void.

Then we came to the question of giving the Governors of work-houses sufficient power to maintain stringent discipline. In the clause upon this point which formed part of the original Bill, considerable alterations had been made. In the first place, at the suggestion of the Government of Madras, the Committee had introduced a modification in the form of the section which would enable powers to be given not directly to the Governors, but sometimes to the Governor under the supervision of the Committee of Management. In some of these work-houses, the Governors were officers of considerable standing who were in the receipt of high salaries: in other cases, the work-house was managed by a committee of officers with an officer ordinarily of the rank of a sergeant, and who was in receipt of a very small salary. It had, therefore, been thought necessary to enable the Local Governments to give the power intended to be given to the Governor, to the really governing body of the work-house.

In the next place, the Committee had considered very carefully the scale of punishment to be prescribed for breaches of discipline. It had ultimately

been thought better to confine the summary authority of the Governor of the work-house or the Committee of Management within comparatively small limits, and to provide that when any really serious offence against discipline was committed, the case should be brought before a Magistrate, before whom the offender would undergo formal trial and conviction. In these last cases, the punishment which might be awarded would not be carried out in the work-house, as would be done in cases of punishment inflicted under the summary orders of the Governor or the Committee, but in Jail. The provision made in the Bill for punishments under summary order were solitary confinement for seven days, solitary confinement for three days upon a diet reduced to such extent as the Local Government should prescribe, hard labour for seven days and reduction of diet as aforesaid for five days. He did not think that these punishments were excessive, but he hoped they would suffice to meet such petty breaches of discipline as the Governors of work-houses would ordinarily have to deal with.

There was before some difficulty as to the correct procedure to be followed in the case of a vagrant refusing to go before a Magistrate. It had now been provided that a vagrant so refusing might be arrested without a warrant, and taken before a Magistrate.

Then with regard to any proceeding under Part V of the Bill, we had made an alteration in respect to the declaration mentioned in clause five, by which it had been made *primâ facie* evidence that the person under detention was a vagrant. That was a technical point which had been left doubtful in the original Bill.

So far as regards the Bill as it now stood. There were one or two provisions which were pressed upon the Committee by the Local Governments, but which it had not been thought proper to adopt. To one of these MR. BAYLEY had alluded before, which was that the Governors of work-houses should have the power of flogging. This the Committee had not thought necessary, for as the class of persons with whom this Bill would deal were not actual criminals, although to a certain extent they were *quasi*-criminals, the Committee did not consider that they should be lightly subjected to punishment of this kind. Then, again, the Bombay Government specially urged upon the Committee to declare the power of the Government to prescribe that work might be performed in work-houses. Now, the Select Committee thought that the law as it stood was sufficient to meet that point. The place of confinement for vagrants was itself designated as a work-house, and he thought there should

be no doubt that it was a place for work. We had moreover given the Local Government power to prescribe rules for the management of work-houses, and to enforce obedience to those rules. So far, therefore, it seemed to us that under the law as it stood the Local Government could do all that was necessary. He had looked into the English law upon the subject, and found that under the English law the places of confinement for vagrants were designated work-houses, and there was no special provision for the imposition of work, although there was a provision in 55 Geo. iii, c. 137, s. 5, for the punishment of persons who refused to work. It might be said that although, as he believed, it was not absolutely necessary, yet it might be safe to give in express terms the power to impose work. But it appeared to the Select Committee that there was considerable objection to minute provisions of that kind, for it was almost impossible by any amount of foresight beforehand to provide for every similar minute necessity that might arise; and if the legislature took upon itself the province of determining beforehand and of providing beforehand for every possible contingency, it took away from what ought to be the natural discretion of the Courts to interpret the language of the law according to the most obvious common sense, and therefore the Committee had on that account deliberately abstained from saying in so many words what every man might naturally infer from the language employed to be the meaning and intention of the law.

Then there was another point which was pressed upon the attention of the Select Committee both by the Governments of Madras and Bombay. They wished to have the power to deport vagrants whether the vagrants wished it or not. At present they were deported only if they had no ostensible means of living and if they wished it. As the Bill was originally drawn by Sir Henry Maine, a clause to the effect suggested by the Madras and Bombay Governments formed part of it. But in Committee that clause was struck out, and it was struck out on account of a doubt as to the legal competence of the Council to make such a provision, that was to say, it was a question how far any law to that effect would have legal force outside of the territorial jurisdiction of the Government of India. MR. BAYLEY thought it was possible that an Act of this Council might have sufficient force in this respect, but at any rate there was a very serious doubt upon the subject; it was therefore considered unsafe to insert such a provision in the law. Moreover, although the Local Governments whom he had mentioned had both unanimously asked for such a clause, it did not appear that any real necessity for it existed. He thought the effect of the present law was practically sufficient, and did in fact get rid of all or nearly all of the persons of whom it was desirable to be rid.

MR. BAYLEY had nothing more to say as to the details of the Bill. He had explained all that the Select Committee had done and all that they had omitted to do. In all other respects the law was precisely upon the same footing as when it was passed originally by the Council. The Bill no doubt was one of a very peculiar and somewhat stringent nature. It was introduced to meet an evil which had grown almost intolerable—one which had interfered materially with the police of the country, and which was not only a scandal, but had almost assumed the dimensions of a political embarrassment. It was not until, upon all these grounds, the question was absolutely forced upon the notice of Government that action was taken in the matter. The subject was very attentively considered when the Bill was originally introduced. The Government of India had since watched the operation of the law very carefully, and had required from all the Local Governments minute periodical returns of its operation, and had invited suggestions for its amendment. The amendments which the Select Committee had thought fit to make were all the results of those suggestions. But as to the main principles of the Bill, it remained intact. The alterations suggested were only in the details, and he thought he might fairly say that he hoped that this Bill, as the law had hitherto done, would work well. It had not only checked in a very great and material degree what at one time was a serious and growing evil, but it had also worked in a manner which had been very humane, and had operated very much to the benefit of the very unfortunate class of people of whom it treated.

His Honour THE LIEUTENANT-GOVERNOR said he had not had an opportunity of studying the details of this Bill, but he wished to add his testimony to this, that he thought the present law did require amendment. He was satisfied that the matter was in very good hands, and he trusted that the amendments supplied by this Bill would be such as were wanted. He might, however, say that he was not prepared to go to the length which the hon'ble member in charge of the Bill did, and say that the present law had worked well. He was sorry to say that the practical working of the law had been attended with very considerable difficulty; very considerable difficulty had been experienced in regard to the people who were not to be transported under the Bill, and considerable questions and considerable correspondence and difficulties had also arisen in regard to the people who were to be transported, and HIS HONOUR must express his regret that the hon'ble member in charge of the Bill had not seen his way to comply with the recommendations submitted by the Governments of Madras and Bombay, because in this Presidency also difficulty had been felt in regard to those who were

not willing to be transported. Here in Calcutta it had come to this, that we had filled our jails with vagrants: we had got them into jail, but we had not been able to get rid of them. In two or three cases we had been obliged to accept their promises of future good behaviour and had let them go free. Under these circumstances, HIS HONOUR should have been very glad if the hon'ble member had been able to accept the recommendations of the Madras and Bombay Governments and given a power of deportation in these cases to the Local Governments. It was the very greatest possible evil that men of the class which this Bill affected should enter and go about this country in the way they did, disgracing their country and disgracing the British name. HIS HONOUR thought it most desirable that there should be sufficient power given by the Bill over these men. However, he hoped that the amendments, so far as they went, would be found good, always excepting the one point with which the hon'ble member in charge of the Bill regretted he had not power to deal.

The Hon'ble MR. HOBHOUSE said that with reference to the point which had just been mentioned by His Honour the Lieutenant-Governor, he was *particeps criminis*, if there was any crime in the matter. He entertained considerable doubt as to the power of the Council to pass such a law as was asked for. The matter had been fully debated when the existing Act was passed, and Sir Henry Maine then intimated his opinion that the Council had no such power. MR. HOBHOUSE was disposed to agree with Sir Henry Maine. He did not mean to say that the question was not arguable, but he thought the balance inclined to the negative. Our power was to legislate for persons in British India. British India was a place within certain limits, and it might include the usual distance of three miles or a cannon-shot from the shore; but when you got beyond that, our laws had no binding force upon European British subjects, and it was for Europeans entirely, and European British subjects principally, that this law was intended. He thought we might find ourselves subject to considerable embarrassment if a question as to the validity of our law were raised by a person who had got beyond our territorial limits. He believed it would be wiser, as this legislature was not a sovereign legislature, but was confined to certain limits defined by its charter, to keep within those limits; and if we had a grave doubt in any matter, it would be better to abstain from passing a law with regard to which such doubt existed.

Looking also at the matter from a practical point of view, he did not believe that such a provision could work. It was quite true, as the Lieutenant-Governor had said, that there was considerable embarrassment in working the

law even as it stood. We had complaints from Liverpool, from the Mauritius, from Australia; in fact people tell us that they do not want our vagrants any more than we want them ourselves. Now, if you sent a man to a place to which he wished to go, he was likely to find some friends or some occupation for himself, and you had some guarantee for his good behaviour; but if you took a man away by force from where he was and set him down in some place where he did not wish to go, what likelihood was there that he would earn his bread honestly when there? There appeared to MR. HOBHOUSE to be no more sure way of driving people into the commission of crime than taking them by force from hence and putting them down on some shore where they did not want to go. That was a course which, he thought, must get us into trouble greater than the trouble we now had. These were the reasons why he objected to the course proposed by the Local Governments, and he believed they had received the assent of his colleagues on the Select Committee.

The Motion was put and agreed to.

The Hon'ble MR. BAYLEY said, that before moving the next motion, he wished to ask His Excellency the President's assent to move a verbal amendment in section three, clause *(a)* between the words "New Zealand" and "or the Cape Colony." Since the Bill had been drawn the Secretary had ascertained that the Colony of Natal had been separated from Cape Colony, and what MR. BAYLEY proposed was merely to insert the word "Natal" after "New Zealand." He did not think there was any objection to the amendment, and as it was a purely verbal one, perhaps it could be made without necessitating the postponement of the next motion.

The Motion was put and agreed to.

The Hon'ble MR. BAYLEY applied to His Excellency the President to suspend the Rules for the conduct of business to enable him to move that the Bill be passed.

His Excellency THE PRESIDENT observed that it was not necessary to suspend the Rules, unless any member had an objection to the motion, which the President should consider a valid objection.

The Hon'ble MR. BAYLEY then moved that the Bill as amended together with the amendment now adopted be passed.

The Motion was put and agreed to.

## BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. ELLIS presented the preliminary Report of the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue. He said that though he had no motion to make, he begged permission to make a few remarks, and to explain the alterations that had been made in the Bill. He would premise that a great many petitions had been presented against the principle of the Bill. With two or three exceptions the whole of these petitions were in precisely the same words, and had evidently a common origin: they did not, therefore, carry so much weight as if they had been the spontaneous productions of the different districts and associations from which they came. Still he recognized among the signatures the names of many of the Native community for whose opinions he had much regard, and he should be sorry if their representations were set aside without due deliberation. In this case, full consideration had been given to all that had been urged, but the objections taken had in no way shaken the conclusions previously arrived at. The presentation of a report was not the proper occasion to go into all the arguments for and against a Bill. MR. ELLIS desired only to correct some misapprehension on one or two points. In the first place, it was a mistake to suppose that this was a quasi-private Bill. The Bill had been prepared on the motion of the Bombay Government; the principle had been discussed and approved by the Government of India, and he had been requested to take charge of the Bill and bring it before this Council. He might add that he had had the advantage of consulting the learned Chief Justice, Sir Richard Couch, and that this high judicial authority, whose opinion carried great weight both from his position and from his special local knowledge of the Bombay Presidency, had expressed his full concurrence in the principle of the Bill, and had approved of the form in which it was at present framed.

In the next place, there was misapprehension as to the scope of the Bill. To correct this, he could not do better than refer to a pamphlet published by Mr. Shámráo Vithal, a pleader of the High Court of Bombay, who had favoured him with a copy. The object of the pamphlet was to show how injuriously the measure before the Council would affect the right of the people to appeal to the Civil Courts for redress of wrongs inflicted by revenue officers, and to this end the compiler had collected together twenty-five decisions against Government passed by the Courts within the last ten years. Now he (MR. ELLIS) had analyzed this collection. Setting aside one case, of which the report was too meagre to enable him to judge, he found that out of the remaining twenty-four cases cited, there were only *two* of the class which would, by the passing of this Bill,

be excluded from the cognizance of the Courts, and of these one was the case of Wamnají Sadásiv so frequently referred to. Thus it would be obvious that it was by no means the design of the present Bill to give revenue officers complete immunity from being sued in the Civil Courts, and it would be also seen that until recently there had not been in the course of many years any cases of the class to be excluded. Both the two decisions already referred to were quite recent, and it was owing to a number of cases of the same class having lately arisen that the necessity for legislation became apparent.

He would now briefly mention the modifications made by the Select Committee, which were numerous, though the principle of the Bill had been maintained. The original preamble had been altered as being no longer appropriate in consequence of the change in framing the essential section of the Bill. This section (3) had now been based on the section of the Revenue Bill recently passed for the North-Western Provinces, providing for the exclusion of the Civil Courts from cognizance of certain matters. That section was passed without any expression of dissent either from the Council or from the public, and it had now, by the modifications made by the Select Committee, been adapted to the circumstances of the Bombay Presidency. A comparison, however, would show that the North-Western Provinces Act was the more stringent, especially in excluding the Courts from cognizance of disputes between private parties *inter se* regarding revenue or rent. These suits the Bombay Courts would continue to entertain. On the same principle, the Select Committee had omitted clause (*c*) of section three of the original draft—a clause framed in accordance with the law in what had been termed "the newer districts" of that Presidency. This omission left power to the Civil Courts to deal also with complaints of exaction by district and village officers.

On the other hand, some additions had been made to the Bill, as introduced. A section had been added to provide for an appeal to a Commissioner from the orders of an executive officer. Moreover, following the precedent of the Revenue Bill of the North-Western Provinces, specific reference had been made in the present Bill to village officers and servants, whose appointments and official remuneration the Courts would not be at liberty to discuss; and, indeed, so far as concerned both the official lands and the cash payments held by these persons, the jurisdiction of the Civil Courts was probably sufficiently barred under the existing law.

As these changes were of some importance, the Select Committee had recommended the republication of the amended Bill. He had no motion to make at the present stage.

## HIGH COURTS CRIMINAL PROCEDURE AND PRESIDENCY POLICE MAGISTRATES BILLS.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to regulate the Procedure of the High Courts in the exercise of their Original Criminal Jurisdiction, and for other purposes. He pointed out that the notice intimated that he had also to present a supplementary report, but for certain reasons turning on matters of form he wished not to present that supplementary report, but to substitute a motion of which notice had been circulated though somewhat late in the day. Upon the report that he presented, he had no motion to make, and would have made no observations if it were not that it contained one important matter to which he thought the attention of the Council should be drawn, and because it contained the reason why he was about to make an irregular motion for presenting a new Bill. The matter to which he referred was an alteration in the constitution of juries. He was not going to argue the matter here. The Committee had recommended that the Bill be republished, and on its being republished, he had no doubt that there would be a great deal of criticism and of controversy. He would now only say that they had received very strong representations as to the extreme burden that service on juries laid upon residents in Calcutta. It was from Calcutta they had heard, because here we were in Calcutta and within reach of those who are interested in the question; but he supposed that the burden was not less in the other Presidency towns. There seemed no reason in the nature of things why the number of the jurors in the Presidency towns should differ from that in the Mofussil, and the Committee therefore considered that the easiest way of giving relief from the burden was to lessen the number of jurors. They had also received several express opinions to the effect that jurors might be conveniently reduced in number, and opinions also that the rule about unanimity might be dispensed with in the Presidency towns as it had been in the Mofussil. The Committee then proposed to make the alterations set forth in paragraph 11 of the report. The proposal was this—

"A verdict of guilty or not guilty, as the case may be, shall be delivered either when the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them.

"When the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

"If the Judge disagrees with the majority, he shall then discharge the jury.

"If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury."

The Council would see that instead of the present law of unanimity, the Committee proposed a rule that six out of the nine, and the Judge should concur to secure a verdict. Otherwise the jury should be discharged.

The other part of the report which MR. HOBHOUSE would mention was that which recommended that the Bill should be cut into two. When he introduced the Bill into the Council, he explained the two parts. It was thought at first that as the whole related to criminal procedure and to the Presidency towns, it would be convenient to join the two into one Bill. It was found, however, that different discussions arose, and that different persons were interested in the two different parts; and, in all probability, one part might be advanced with considerably greater speed than the other part. We had therefore thought it better to cut the Bill into two, and we proposed to treat the first part of the Bill, which was also the part indicated by the title, as representing the original Bill.

As to the other half, in point of form it should be introduced as a new Bill, and he should ask His Excellency the President to suspend the rules of business and to allow him to introduce it that day as a new Bill. The Council would see that this was a pure matter of form, and that in point of substance everything had been done that was requisite. The Committee had drawn a supplementary report to the original report on the High Courts' Criminal Procedure Bill. That supplementary report showed how they had dealt with the second part of that Bill—the part which related to the Police Magistrates in the Presidency towns. He would beg the Council to take that supplementary report as being in effect the Statement of Objects and Reasons to the Bill which he should now ask leave to introduce, and which he should subsequently introduce.

He had explained to the Council, when he introduced the Bill, that with regard to the practice of the Courts of the Police Magistrates, the subject was one of which he could not pretend to have any personal cognizance. Probably not many of the Council could have such cognizance. He did not suppose that any body could say of any part of the Code of Criminal Procedure that it was or was not expedient to apply it to the procedure of Police Magistrates in the Presidency towns, except persons who had had experience as Police Magistrates of the Presidency towns. For that reason the Bill as introduced had followed closely the suggestions of the only gentlemen who had sent in any detailed suggestions. These were the suggestions of the Police Magistrates of the town of Madras who had bestowed great pains in going through the Procedure Code and pointing out the parts which seemed to them applicable to the business of Police Magistrates. The suggestions were sent up with the

approval of the Government of Madras, and formed the basis of the second part of the Bill. Since the introduction of the Bill, further suggestions had been made by the Madras authorities, who had again been carefully considering the subject. Those suggestions were principally in the direction of excluding portions of the Criminal Procedure Code from application to Police Magistrates. The Committee did not feel themselves quite competent to deal with the matter if unassisted, and MR. HOBHOUSE would explain exactly what they had done. They had put themselves in communication with Mr. Dickens, the Police Magistrate, and that gentleman had, with great kindness and pains, been going through the whole matter. He had given up some of his valuable time by attending the Committee, who had examined the suggestions of the Madras Magistrates with him. Therefore, the Committee had a valuable criticism upon those suggestions, the bulk of which had been adopted. That was the substance of the Bill which MR. HOBHOUSE now asked leave to introduce. The whole of the details were shown in the report, but he did not know that there was any detail so important that he should specially point it out to the Council. He now moved for leave to introduce the Bill to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates in the Presidency Towns.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

His EXCELLENCY THE PRESIDENT observed that it appeared to him that the rules of the Council had been substantially complied with, with regard to the Bill, and therefore it was nothing more than a matter of form to suspend the rules on this occasion.

The Hon'ble MR. HOBHOUSE then introduced the Bill and moved that it be referred to a Select Committee with instructions to report in two months.

His Honour THE LIEUTENANT-GOVERNOR said he was inclined to think that the Committee had done very wisely in cutting what was one Bill into two Bills. He thought that it had been rightly explained that one part of the Bill referred to matters and places beyond the Presidency towns, and that the other portion was confined to the Presidency towns. The second part of the Bill dealt with a very important question, which was not quite sufficiently treated in the original form of the Bill. Therefore, he thought the Committee had done wisely in dividing the Bill into two parts. He could not, however, say that he was prepared to follow the hon'ble and learned member in charge of the Bill in all the observations he had made.

With regard to the first part of what was originally one Bill, he had only that day seen the report of the Select Committee; but he was inclined to think that the amendments proposed were good amendments. With regard to the question of the number of persons of which a jury should be composed, he quite agreed with the hon'ble member in charge of the Bill that it was desirable that the number should be reduced. HIS HONOUR had said that he had only seen the report of the Committee that morning, and he spoke from memory and without book when he said that his impression was that in the Courts of the interior the number of a jury was not fixed at nine, but it might be fixed by order of the Local Government at nine, seven or five. His own opinion was that nine was an unnecessarily large number, and might be reduced, and he believed the number had been reduced in most of the districts in Bengal. Therefore, he ventured to suggest that if a fixed number should be taken to form a jury, seven would, probably, be a more convenient number than nine.

Then with regard to the question of unanimity, HIS HONOUR had a good deal to do with the working of juries in England, and had carefully observed the working of the English system. His practical belief had been from an English point of view, that in the great majority of cases in which there was an unreasonable difference of opinion, only one juror differed from the others, and taking the question from an English point of view, his opinion inclined towards the view that if the whole of the jury, except one, was unanimous, the verdict should be accepted. That was to say, that in the case of there being only one dissentient in the jury, that one dissentient should be non-effective. He was inclined, however, to believe that the view taken by the Committee that two-thirds of the jury, with the concurrence of the Judge, should be entitled to give a verdict, was a very reasonable and good proposition, and well worthy of the consideration of the Council.

HIS HONOUR was sorry to see that the first part of the Bill was postponed indefinitely for future consideration, and that the second part of the Bill was still in a very inchoate state. This Bill had been a long time before the Council. We who were interested in the Bill thought we had done something towards its maturity when we obtained the consent two years ago of the hon'ble member who lately occupied the seat of his hon'ble friend opposite, to stand sponsor to the Bill. But he regretted to see that the Bill had been somewhat neglected, and that it had dragged on a somewhat ill-nurtured and uncared for existence. Now he trusted that the hon'ble member in charge was inclined to adopt the Bill as his own, and that it would now be properly nourished and brought up.

With regard to the second part of the Bill, to which the motion before the Council was specially designed, His Honour might say that he did not think that the Bill had yet attained anything like the shape which it deserved to attain. Certain parts of the Criminal Procedure Code were declared applicable to the Police Courts of the Presidency towns, but he did not find that any provision was made for those parts of the Police procedure which did not come within the scope of the parts of the Criminal Procedure Code which were proposed to be extended. Provision was wanting in the Bill for the rest of the procedure of Police Courts. He thought that the clauses of the Bill did not touch what he had persistently pressed upon the Government of India as his opinion, namely, that there was that floating undefined English law which rendered the procedure of these Courts altogether uncertain, altogether obscure, and altogether beyond the powers of the public to comprehend.

The English common law in the country of its birth to which it was adopted by long practice, was no doubt in some respects a good law. But when you came to extend it to another country under a different state of things, it was a most obscure airything. On a former occasion he showed that the English law which prevailed here was not the modern English law, and not either the ancient English law, but something which was introduced bit by bit in a manner which no mortal could understand between the years 1750 and 1800; and we were now still in that stage in which no mortal could say what was the English law which now prevailed in Calcutta. He should be sorry to see now any Bill passed which would leave the law in that extremely indefinite state. He was willing to concede that so far as the first part of the Bill went, it was a fair measure of reform. But he hoped that a great measure of this kind after several years of growth would not be passed without being made worthy of the time and labour which had been bestowed and which would be bestowed upon it. He trusted that the hon'ble member having taken charge of this neglected step-child would make it still more worthy of his name and reputation, and would settle by it the whole criminal procedure of the Presidency towns; that we should get rid of some English notions which were to be found existing amongst us in such offices as that of Sheriffs and the like, amalgamate the whole duties of Coroners with those of Magistrates, and give a succinct procedure and a written and a sensible guide to the criminal procedure of the Presidency towns.

The Hon'ble Mr. Hobhouse said in regard to the delay in introducing the Bill, he thought the Lieutenant-Governor must have forgotten that up to a short time before its introduction we were in correspondence with the Local Governments about it. He believed he was correct in saying that that

correspondence was commenced at the request of the Bengal Government. It was true that the Lieutenant-Governor had urged the Legislative Department and MR. HOBHOUSE personally to go on with the Bill, but the answer was that we must wait for the opinions that had been asked. It was a matter of difficulty requiring special and local knowledge, and it would not have been wise to go on with the Bill before they were in possession of the materials which were necessary to a full and proper treatment of the matter. He was not conscious of any neglect in his Department. When he introduced the Bill, he had been at the pains to explain the lapse of time between obtaining leave to introduce the Bill and its actual introduction. He could only coincide with the Lieutenant-Governor's hopes in this matter and wish they might be realized. If the Bill was a step-child, it should, at all events, receive as much attention as though it were a natural child.

With respect to the observation made by the Lieutenant-Governor as to the incompleteness of the second Bill, MR. HOBHOUSE was not aware that there was any part of the criminal procedure of Police Magistrates in the Presidency towns which would be left unprovided for by the present measure. If there was, we must call the attention of the Police Magistrates to it, and ask them what it was which went on in their Courts with respect to which they would not find a guide in the present Bill. As at present advised, he was not aware of any necessary provisions which were not included in the Bill: when he was told what they were he would promise to give them his best attention.

The Motion was put and agreed to.

## BURMA COURTS ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill for the further amendment of the Burma Courts Act, 1872. He said that the Burma Courts Act was before the Council during the course of the year 1872 and had already been amended by Act I of 1873. It was an experiment setting up new machinery; and from time to time, as the machinery became clogged, it would require some fresh legislation to make it work smoothly. As various wants were discovered, they would be considered, and the Act amended. The present occasion for amendment was this. The Act established a great many Courts. The lowest was the Court of the Extra-Assistant Commissioner of the third class who had jurisdiction up to a certain value. The next was the Court of the Extra-Assistant Commissioner of a higher class and the Assistant Commissioner with power to try a higher class of suits. The third was the Court of the Deputy Commissioner having jurisdiction in all suits of all values, and receiving appeals from the first and second grades of Courts. As to that a difficulty had arisen,

The Act followed the principle of the other Acts passed for establishing Courts of judicature in other parts of the country. It entrusted the discharge of the higher judicial Courts to the officers in whom was reposed the duty of discharging the higher executive duties. In the meantime, in dividing the territories of Burma amongst the executive officers, it was found not convenient to have so high an officer as the Deputy Commissioner, the chief executive officer in all districts. It was also found inconvenient in some cases to have appeals from the two first mentioned grades of Courts lying to the Deputy Commissioner, who might not even be in the district in which those Courts were sitting. Therefore, the Chief Commissioner desired to be empowered to confer upon the officer (whatever might be his title) in chief executive charge of any District the appellate jurisdiction now exerciseable only by the Deputy Commissioner. That was the main reason for the present Bill.

At the same time opportunity would be taken to relieve the Recorder of Rangoon from complying with certain requirements under the Criminal Procedure Act, which at present compelled him to observe certain minute points of practice and to perform certain duties from which the High Courts were relieved. The opportunity would also be taken to revive certain Acts which the Burma Courts Act had repealed, and which it was now found were wanted.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates in the Presidency Towns,—The Hon'ble Messrs. Ellis, Bayley and Dalyell and the Mover.

The Council then adjourned to Tuesday, the 21st April 1874.

CALCUTTA,
*The 7th April* 1874.

WHITLEY STOKES,
*Secretary to the Government of India,*
*Legislative Dept.*

Office Supdt. Govt. Printing.—No. 6 L. D.—10-4-74.—230.