Saturday, 15th September, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

The following was an extract from the Report of the Law Commissioners with reference to that Section :—

"Objections to this Clause are made by many Officers, which may be summed up in the question of Sir H. Seton, 'who is to decide what is unjust, and how is the knowledge of it to be proved?' Her Majesty's Justices are required by their oath to 'do equal law and execution of right,' that is, as it is expressed in the margin, 'to do justice' to all her Majesty's subjects, and it is provided in the Digest, (that is, the Digest which was prepared by the Criminal Law Commissioners in England, but which had never been passed) that all who shall be found in default in any of the points contained in the oath shall be punished with imprisonment not exceeding three years and fine, with a saving Clause that 'no judicial officer shall be criminally liable in respect of any error in giving judgment.' It seems to us that a Judge, who by his decision, does injustice, not by error of judgment, is in other words a Judge who pronounces a decision which he knows to be unjust. We apprehend that the expression 'which he knows to be unjust' was adopted purposely to exclude the excuse of an error of judgment, and that the meaning is that a Judge who pronounces a decision which is unjust without the excuse of an error of judgment, must be presumed to have pronounced the decision conscious of its injustice, and shall be liable to punishment accordingly. So understood, the Clause appears to us no more exceptionable than the English law in the same matter, as it is expressed in the Digest. Mr. A. D. Campbell suggests that the words 'contrary to law,' should be substituted for 'unjust.' 'as it is not intended that the Code should meet individual opinions of justice, except as these may coincide with the sentiments of the Legislature;' but such a substitution would narrow the provision to a degree that would greatly impair its efficacy, for many a decision may be unjust, which cannot be said to be contrary to any law, except the general law which requires justice to be done."

After some conversation, the consideration of Section 29 and also of Section 30 (relating to commitment for trial or confinement by a person having authority who knew that he was acting contrary to law), was postponed, on the Motion of Sir Charles Jackson.

Sections 31 to 34 were passed as they stood.

Section 35 (providing for cumulative punishment) was omitted.

Section 36 was passed as it stood.

Section 37 (providing for cumulative punishment) was omitted.

Section 38 was passed as it stood

Section 39 (providing for unlawful return from banishment) was omitted.

Sections 40 and 41 were passed as they stood.

Section 42 (providing for cumulative punishment) was omitted.

Section 43 was passed after a verbal amendment.

Chapter XII provided for offences relating to Coin and Government Stamps.

Section 1 was passed after amendments.

Section 2 was omitted.

Section 3 was passed after a verbal amendment.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council adjourned.

Saturday, September 15, 1860.

PRESENT :

The Hon'ble the Chief Justice *Vice-President* in the Chair.

Hon'ble Sir H. B. E. Frere.
Hon'ble C. Beadon,
H. B. Harington, Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.,
and
C. J. Erskine, Esq.

COTTON-FRAUDS.

THE CLERK presented a Petition from Messrs. Fischer and Co., merchants of Salem, in Madras, praying for the extension to the Madras Presidency of the provisions of Act XV of 1851 (for the better suppression of frauds in respect of Cotton in Bombay).

MR. FORBES moved that the Petition be printed.

Agreed to.

PAPER CURRENCY.

THE CLERK reported that he had received by transfer from the Finan-

cial Department a communication from the Bombay Government, forwarding the opinion of the Chamber of Commerce of Bombay on the subject of the Paper Currency measure proposed for India by Mr. Wilson.

MR. ERSKINE moved that the communication be printed.

Agreed to.

RECOVERY OF RENTS (BENGAL.)

MR. SCONCE, in moving the first reading of a "Bill to amend Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal)," said that the purpose of this Bill was simply to correct what appeared to have been an oversight in the original Act, and not to challenge discussion on any of the important questions or principles on which that Act was founded. The question involved in the Bill was confined to the limitation of suits under Section XXX of the Act. The Act provided periods of limitation in certain cases, and Section XXX enacted that—

"Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action."

Thus the general rule of limitation for ordinary suits, with certain exceptions, was one year. In such cases, before that Act was passed, the ordinary rule was twelve years. The effect of that Act had therefore been to reduce the period of limitation from twelve years to one year, and thus it might happen, and in some cases had happened, that the period of one year allowed for the institution of a suit had elapsed before the Act came into force. The purpose of this Bill was to allow a certain period of two years, in cases in which the former period of limitation had been reduced. A similar rule was followed in the general limitation law passed in 1859, Act XIV of that year, which provided that—

"All suits that may be now pending or that shall be instituted within the period of two years from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed."

Adopting this principle, he (Mr. Sconce) proposed to provide by Section I of the Bill he was now introducing—

"The following provision shall be read as part of Section XXX Act X of 1859:—'If in any suit to which this Section is applicable, the cause of action shall have accrued before the 1st day of August 1859, such suit shall be instituted within two years from that day or within the time allowed for the institution of the same by any law in force before the passing of the said Act, whichever may first expire.'"

If it should happen in any case that the period of limitation allowed by the said law would expire within two years, the old law would be followed.

The second Section was to enable parties, whose suits or appeals had been dismissed or rejected on the ground that the suit had not been commenced within the period prescribed in Section XXX of the existing Act, to apply for a revival of the same within four months.

With these observations he begged to move the first reading of this Bill.

The Bill was read a first time.

EMIGRATION TO THE FRENCH COLONIES.

MR. BEADON rose to move the second reading of the Bill "to authorize and regulate the emigration of native laborers to the French Colonies." In doing so, he said that it had been his intention to move the suspension of the Standing Orders to enable him to carry the Bill through its remaining stages. The urgency of the case was great, particularly with reference to the six thousand laborers required at once for Bourbon. But on considering the Bill, he had found so many points upon which he entertained doubts, that he thought the Council should have the advantage of a report from a Select Committee before proceeding to the third reading of the Bill. He did not think it was necessary for him to add much to what he had stated on the occasion of moving the first reading of the Bill. There was only one point upon which he wished

to make a few remarks. It was a point on which he entertained some little doubt himself, and to which he desired to draw the serious attention of the Council.

A question had been raised, whether in passing an Act to give effect to this Convention, we were at liberty, or rather, he should say, whether it was consistent with the conditions on which the Convention had been agreed upon, to reserve to this Council or to the Executive Government of India a power of interference, so that, in case the Convention should be violated in any colony, the Government might have the power of suspending the emigration of laborers to that colony. He (Mr. Beadon) confessed that his own view was that we were not so restricted, and that the Council might fairly and unobjectionably give the Governor-General the same power to interfere in behalf of coolies emigrating to the French colonies as he now possessed with regard to those proceeding to our own colonies. The Council was doubtless fully aware that in 1856 the Honorable and learned Vice-President, who was then a Member of the Supreme Government, brought in a Bill to empower the Governor-General in Council to suspend the laws relating to emigration to any of our own colonies in which he had reason to believe that proper measures had not been taken for the protection of the emigrants immediately upon their arrival at, or during their residence in, the colony, or for their safe return to India. The immediate occasion of that was the gross ill-treatment of certain coolies who had emigrated to the Mauritius a short time before. In consequence of the prevalence of cholera at that time at Port Louis, and the fear on the part of the inhabitants that the infection was brought there by the Indian emigrants, the vessels in which they arrived, instead of being allowed to go into the harbour, were obliged to lie in the open road-stead and to land the emigrants on a barren rock, where they were left for days without any shelter or protection from the weather, and without any proper medical attendance. The result was that the mortality among these poor people was frightful. The Colonial Government not being able to give a satisfactory explanation on the subject, or to afford any reliable assurance that such a calamity would not occur again, the Governor-General in Council felt himself bound to apply to the Legislature for an Act to suspend emigration to that colony. Accordingly, the Bill to which he had referred was passed as Act XIX of 1856, giving the Executive Government the power of suspending the emigration laws in respect to any British colony in which there might be a failure to fulfil the conditions on which the emigration of Indian laborers was permitted, and of withdrawing the suspension when satisfied that proper measures had been taken to secure the fulfilment of those conditions. Now it seemed to him (Mr. Beadon) that the Governor-General in Council ought to possess the same power in regard to coolies going to the French colonies. The only objection which might be felt to the measure was this. We were called upon to pass an Act to give effect to a Convention which had been agreed upon between the French and English Governments, and it might be said that the only power that could put an end to that Convention was one of the contracting parties to it. It was possible that the French Emperor might object to sign the Convention if he saw that, in the Act of the Indian Legislature, power was reserved to the Governor-General in Council to suspend emigration under any circumstances; but he (Mr. Beadon) did not think that such a consideration should prevent this Council from vesting the Governor-General with the power, because that power, when given, could only be exercised with the permission of Her Majesty's Government. If the French Government should object on the ground that the Governor-General in Council virtually retained the power of putting an end to the Convention, it could readily be explained why such a precaution was considered necessary. It could be

shown that the effect of it was only to place emigration to French and British Colonies on the same footing, and that the power would be exercised, if at all, under general instructions from Her Majesty's Government in England. If the terms of the Convention should under any circumstances be violated by the agents of the French Government, he (Mr. Beadon) did not think that it materially signified whether the power of suspension was exercised here or by the Government at home. It was clearly necessary that the Governor-General in Council should have the power, so that the very moment he saw that the rules had been infringed in any colony, and especially in Bourbon, he could put a stop to the further emigration of laborers, pending a reference to Her Majesty's Government on the subject. This was the only matter on which he (Mr. Beadon) desired to make any observations. The Bill as printed did not give such a power, but he proposed to add a Clause to that effect. There was a doubt indeed whether Act XIX of 1856 might not be made applicable to the French colonies; but, on the whole, he (Mr. Beadon) thought it best to provide for it expressly in the last Section of the Bill. He did not know if it were necessary for him to say more at this stage of the proceedings, and he would therefore conclude by moving the second reading of the Bill.

MR. SCONCE said he had very little to say on the subject of this Bill, and that certainly would not be in opposition to it. His idea was that the natives of India had a perfect right to go wherever they pleased and to carry their labor to the best market. He would not say that he had mastered the Bill in all its details. But from the remarks which had just fallen from the Honorable Member to his right (Mr. Beadon) with regard to the terms of the Convention on which the Bill was founded, it seemed to him (Mr. Sconce) that we ought not to legislate on the Convention. At any rate, we should not embody the Convention in the Bill. We should do what was right, both as regards the coolies, and, if possible, the French Government. We should act on the principle of legislating justly and properly, and not on the principle of obtaining a *quid pro quo*. If the question, whether the coolies should go, or should not go, to the French Colonies, depended on the circumstance of the English Government obtaining an equivalent, that would be in the nature of a bargain and was certainly, as he thought, opposed to the principle on which he was disposed to act, that is, the freedom of the coolies and their right to emigrate irrespectively of any arrangement that might be made in England in which they had no interest. We had an illustration of legislating upon a Convention in the present session of Parliament. He alluded to the treaty of commerce lately concluded between the French and English Governments. The engagements of that treaty were accepted early in the session, but he had a strong impression, from the political events that subsequently occurred in Europe, that the House of Commons would not have encumbered their own legislation with the conditional engagement entered into with France. He should, therefore, prefer independent legislation on this occasion, with exclusive reference to the object to be attained. So far as the coolies themselves were concerned, it might be extremely proper that the local Government, or the Home Government, should be able to provide for the establishment of a Consulate at each colony, so as to take care that the coolies were properly treated, that justice was fairly administered to them at the colony, and that proper arrangements were made to enable them to return on the expiration of their term of service.

There were one or two points in the Bill which also seemed to him to be open to some objection. The first was as to Section VI, which provided that—

"No emigrant shall be embarked under this Act, unless the Protector of Emigrants shall have been enabled to satisfy himself either that such emigrant is not a British subject, or,

if a British subject, that his engagement is voluntary."

Therefore, what he understood from these words was that, where emigrants were gathered at a depôt, it was only with regard to those emigrants who were British subjects, and not with regard to any others, that the Protector was required to satisfy himself that their engagement was voluntary. With regard, therefore, to emigrants other than British subjects, theirs would virtually be an embarkation by force, and this was a matter to which he thought we should not give our sanction. A somewhat similar blot lurked in Section XXIX, which enacted as follows :—

"In the said Ports of Calcutta, Madras, and Bombay, the Emigrants who are subjects of Her Majesty shall be at liberty, in conformity to the regulations of Police relating to the depôts where such emigrants reside prior to departure, to leave such depôts or other places in which they may be lodged in order to communicate with the Protector of Emigrants, &c."

So that those in the depôts who were British subjects, and not others, would be allowed to leave the depôts for the purpose of communicating with the Protector, and thus our law would permit natives of foreign states to be detained and treated as slaves.

These were the only points on which he (Mr. Sconce) entertained doubts. In expressing them, however, he wished to repeat that it was not his intention to offer any opposition to the second reading of the Bill.

THE VICE-PRESIDENT said, he had only a few words to say on the subject of this Bill. It appeared to him perfectly clear that, as had been observed by the Honorable Member for Bengal, we ought not to restrict the native laborers of this country from emigrating to any place where they pleased and where they thought they were likely to get the best remuneration for their labor. The only difficulty was that the people of this country were in a state of utter ignorance, and were, comparatively speaking, mere children. Consequently we were bound to look after their interests and not for our own benefit, and we should not only see that the laborers were properly taken care of, but that they thoroughly understood the terms upon which they were to leave the country. On being satisfied of these matters, we no longer had any right to restrain them from going to any Colony they pleased. It had been usual hitherto to pass separate Acts authorizing the emigration of laborers from this country to the several Colonies. This was in consequence of a general law existing, restricting emigration altogether; so that, when it was considered expedient to allow emigration to any Colony, it became necessary to pass a special law for the purpose. In passing such special laws, we had invariably included in them provisions requiring the laws of the country to which emigrants were going, to be properly explained to them, and stipulating for their return to India after a certain period. That duty had hitherto devolved upon the Governor-General in Council, and there was a Clause in each special law which provided that the Act should not come into force until the Governor-General in Council declared that he was satisfied that the laws of the Colony to which the Act related were sufficient to protect the laborers going thither. There were also provisions requiring each laborer to be examined by the Protector of Emigrants, who was to satisfy himself that the laborer was going of his free will and accord before he was allowed to embark. That was not provided for by the present Bill, and was not, it appeared to him (the Vice-President), necessary, because he thought we might safely trust Her Majesty's Ministers that they would not allow Coolies to go to any place unless they were satisfied that the Coolies would be properly treated. There was, however, some ambiguity in Article 23 of the Convention which provided as follows :—

"The labor regulations of Martinique shall serve as the basis for all the regulations of the French Colonies into which Indian Emigrants, subjects of Her Britannic Majesty, may be introduced.

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"The French Government engages not to introduce into those regulations any modification, the result of which would be to place the said Indian subjects in an exceptional position, or to impose upon them conditions of labor more stringent than those prescribed by the said regulations."

He was not aware what were the laws in force in Martinique. With regard to our own Colonies, the Governor-General in Council was required, before allowing an Act to come into force, to see that the laws of the Colony to which it applied were sufficient. He (the Vice-President) did not think that it was necessary in this case for the Governor-General in Council to satisfy himself respecting the laws of Martinique. It appeared to him most probable that Her Majesty's Ministers, before entering into the present Convention had thoroughly satisfied themselves that the laws at Martinique were sufficiently just; and he thought we might be satisfied that, if upon the authority of Her Majesty's Ministers, we were to authorize the emigration of Coolies to the French Colonies, they would be properly treated there.

The next question was whether there were any provisions in the Convention which appeared to be unjust. The Honorable Member for Bengal had alluded to Articles 6 and 12 of the Convention as being objectionable. Now he (the Vice-President) quite agreed with the Honorable Member that we ought not to allow any laborer, so long as he was a resident in any portion of British territory, no matter whether he was a British or Foreign subject, to emigrate without ascertaining that his engagement was voluntary, or to be locked up in a depôt and prevented from communicating with the Protector of Emigrants. Such a proceeding could only be justified in the case of criminals surrendered under the terms of some special Convention with a Foreign Government. But supposing a French Coolie was unwilling to go to a French Colony, it was the duty of this Council to prevent his being carried away by force. Section XXIX of the Bill, which was the same as Article 12 of the Convention, provided as follows:—

"In the said Ports of Calcutta, Madras and Bombay respectively, the emigrants who are subjects of Her Majesty, shall be at liberty, in conformity to the regulations of Police relating to the depôts where such emigrants reside prior to departure, to leave such depôts or other places in which they may be lodged in order to communicate with the Protector of Emigrants, &c."

That certainly implied that, if they were not British subjects, they could not go out of the Depôt for the purpose of consulting the Protector of Emigrants; and Section VI, which carried out Article 6 of the Convention, provided that—

"No emigrant shall be embarked unless the Agent described in the preceding article shall have been enabled to satisfy himself either that the emigrant is not a British subject, or that his engagement is voluntary, that he has a perfect knowledge of the nature of his contract, of the place of his destination, of the probable length of his voyage, and of the different advantages connected with his engagement."

He (the Vice-President) did not think we ought to allow any Coolie whether he was a British or Foreign subject, to engage himself, unless he was made thoroughly acquainted with the conditions on which he was emigrating. This was a matter requiring the particular attention of the Select Committee to whom the Bill would be referred for consideration. He was not sure whether the Articles of the Convention were intended to be obligatory on the French Government only as regarded emigration from our Ports and not from a French Port, for he believed that the French Government were to be at liberty to embark Coolies from a French Port; but as the French Government, though anxious to export French Coolies from French Ports, had agreed not to take any British subjects from French territory without affording them an opportunity of first communicating with the Protector, he (the Vice-President) was of opinion that it was the duty of this Council to see that the same privilege was granted to a French

subject embarking from a British Port, and that no Coolie whatever, residing in British Territory, should be taken out of or confined in such territory against his will, though he might have entered into an agreement with the Emigration Agent. He (the Vice-President) thought that no Coolie should be allowed to leave the country without clear proof having been previously given as to his being a consenting party. These, however, were questions which would be considered by the Select Committee, and he should not have referred to them at present, had they not been noticed by the Honorable Member for Bengal.

With regard to the question of investing the Governor-General in Council with the power of revoking the law, he (the Vice-President) thought that we ought not to give the Governor-General such a power. If the necessity for revocation should arise, this Council alone ought to repeal the Act. But he doubted if the Council had the power of repealing the Act, for the Home Government could disallow the repealing Act and order us to repeal it. Then the question was whether we should give the Governor-General the power of suspending emigration at any moment. In reply to this, it might be said that the Home Government could restrain the Governor-General in the same manner as they could this Council. Now if we were to confer that power on the Governor General, he would be able to put a stop to the Convention, Article 1 of which provided as follows:—

"The French Government shall be at liberty to recruit and engage laborers for the French Colonies in the Indian territories belonging to Great Britain, and to embark Emigrants, being subjects of Her Britannic Majesty, either in British or French Ports in India, under the conditions hereinafter stipulated."

Here then was to be a binding contract between the British and French Governments that the latter should be at liberty to recruit and engage laborers for their Colonies. Before concluding the Convention, the French Government wished to ascertain whether the Indian Legislation would pass an Act to authorize emigration to the French Colonies; and all that this Council had to do was to be satisfied that the Home Government would see that the conditions of the Convention were fairly and fully carried out. Article 26 then provided as follows:—

"The present Convention shall begin to take effect on the 1st of August 1861, and shall continue in full force for three years and a half. It shall remain in full force, if notice for its termination be not given in the course of the month of August of the third year, and then notice can be given only in the course of the month of August of each succeeding year.

In case of notice being given for its termination, it shall cease eighteen months afterwards."

Thus by an obligation binding on Her Majesty's Government and the French Government, the latter would be at liberty to recruit laborers for three years and a half. Ought we therefore to give the Governor-General in Council the power of stopping this emigration, which would in fact be a breach of the Convention and was likely to lead to unpleasant results? But then it might be said that the French Government might be the first to violate some of the terms of the treaty and thus put an end to the Convention. That however, it appeared to him (the Vice-President), was not a question between the French Government and the Government of India, but a question between Her Majesty's Government and the French Government only. It appeared to him therefore that, if we could trust Her Majesty's Government with the power of ascertaining whether the laws in force at the place to which emigration was to be allowed were sufficient for the protection of the Coolies, we might also safely leave it to Her Majesty's Government to put an end to the Convention when they thought it necessary to do so. For these reasons he thought that it would be injudicious for the Council to confer the power in question on the Governor-General in Council.

With regard to our own Colonies the case was quite different, for we had always trusted and could trust the Governor-General in Council with that power without putting Her Majesty's

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Government in the same difficult position. There was no binding contract between us and any of the Colonial Governments, and therefore there was some reason why the Governor-General in Council should be able at any time to put an end to emigration thither.

With regard to the observation of the Honorable Member for Bengal that we ought not to introduce the Convention into the Bill, he (the Vice-President) confessed he saw no objection to it. There were many Acts of Parliament which recited Conventions, as for instance the Act for giving effect to a Convention with the French Government regarding the surrender of criminals, and the Act for carrying out a treaty with the Government of the United States for a similar purpose. He thought that the Convention was our justification for passing this Act. He did not mean to say that, because Her Majesty's Government were about to enter into this Convention, we were bound to pass the Act; but that we should do so, if we thought it just and proper to allow emigration to the French Colonies.

MR. BEADON said, he did not understand that the Honorable Member for Bengal or the Honorable and learned Vice-President had offered any opposition to the second reading of the Bill, and therefore perhaps it was scarcely necessary for him to say anything more on the subject. But he thought he ought to refer to the objections which had fallen from the Honorable Member for Bengal, though they had been in a great measure answered by the Honorable and learned Vice-President, who had shown that it was usual to embody in enactments Conventions requiring legislation to give them effect.

The Honorable Member for Bengal had referred to the disfavor with which the recent commercial treaty with France had been received in Parliament; but he (Mr. Beadon) apprehended that the objection was not to the embodiment of the treaty in a Bill, but to the treaty itself, on the ground that commerce was not a fit subject for treaties, but that every nation should be left to adjust its own tariff on sound principles without regard to what the rest of the world might do.

With regard to the objections made to Sections VI and XXIX of the Act which were founded on Articles 6 and 12 of the Convention, he admitted that these objections were not without force. These were two of the Sections which, he thought, required to be carefully considered by a Select Committee before they came under the consideration of the Council. If the Council would refer to Article 5 of the Convention, it would be found there stated—

"The Government of Her Britannic Majesty shall appoint in those British Ports where Emigrants may be embarked, an Agent who shall be specially charged with the care of their interests.

"In French Ports the same duty with regard to Indian subjects of Her Britannic Majesty shall be confided to the British Consular Agent;"

and then came Article 6 which declared that—

"No Emigrant shall be embarked unless the Agent described in the preceding Article shall have been enabled to satisfy himself either that the Emigrant is not a British subject, that his engagement is voluntary," &c.

It was quite clear that this Article chiefly referred to emigration from French Ports and provided full protection to British subjects emigrating from those Ports to the French Colonies. It was of course impossible that we could attempt to interfere with French subjects in French territory, though in our own territory French and British subjects were alike free and entitled to the protection of the law. The same remark applied to Section XII. In framing these Sections he allowed that the distinction had not been sufficiently adverted to, and it might on consideration be thought expedient to make them applicable only to emigration from French Ports.

With regard to the observations of the Honorable and learned Vice-President regarding the power which it had been proposed to confer on the

Governor-General in Council to suspend the operation of the Act, he must confess, with great deference, that some of the arguments used by the Honorable and learned Gentleman rather tended to convince him the more of the necessity for making such a provision. It was perfectly true that, if we once passed the Act, we could not be sure of being able to repeal it, because the Government at home had the power to disallow the repealing Act and order its repeal. He therefore thought it the more necessary to put into the hands of the Governor-General in Council some power to interfere on behalf of the Coolies emigrating to the French Colonies, so that if, in any Colony they were not treated according to the terms of the Convention, the Government of India might be able to prevent further emigration to that Colony, pending a reference to England. If it should come to the knowledge of the Government of India that, owing to the misconduct of the subordinate agents of a Colonial administration or from any other cause, some gross oppression had been practised upon emigrants from the British territories in India, it would be three months before any action could be taken, if it were necessary to refer the matter in the first instance to the Home Government. In the meantime a stream of Coolies might be leaving India for that Colony, and the Governor-General in Council, though knowing the sort of treatment they were likely to be subjected to, would be unable to prevent them from going there. If this power were reserved to the Governor-General in Council, it would of course be exercised under the control and direction of Her Majesty's Government at home, who might permit its free exercise or limit it by any conditions they chose to impose, or disallow it altogether. At any rate, the Council would have done its duty in reserving the power to the Governor-General in Council, leaving its exercise to be determined by Her Majesty with reference to political considerations. It might be that the Home Government would not under certain circumstances wish to put an end to the Convention altogether, but yet might desire to suspend emigration, pending negociations with the French Government. If there were no power to suspend emigration, Her Majesty's Government, if they thought that the Convention had been violated in any Colony and that emigration thither should cease, would have to send out instructions to repeal the whole Act. Thus the Government would be driven to the alternative of either allowing that to go on which they knew to be wrong or annulling the Convention altogether, whereas, if the Governor-General in Council had the power to suspend the Act temporarily, an opportunity would be given for explanation in the matter, and if the explanation were satisfactory, emigration might be resumed. He (Mr. Beadon) did not think that the Emperor of the French could reasonably object to the exercise of such a power by the local Government, and it appeared to him to be incumbent upon the Council to reserve the power of interference for the protection of the Coolies, whether Her Majesty's Government thought proper to sanction its exercise or not.

THE VICE-PRESIDENT said, he only wished to explain that, if a case of that kind were to arise, although we should not anticipate it, it could be dealt with by this Council just as much as by the Governor-General in his executive capacity.

MR. BEADON said, the distinction he wished to draw was that, if we were to repeal the Act, we should be virtually putting a stop to the Convention.

THE VICE-PRESIDENT said, we might repeal the Act as to a particular Colony, or pass just such an Act as the Governor-General in Council would make an order.

MR. HARINGTON said, he thought that the question which had been raised, as to whether power should be given to the Governor-General in Council at any time to suspend the operation of the law which they were now asked to pass in the event of any material violation of the terms on which emigration was to be allowed

from India to any French Colony, must undergo further discussion in Committee. As he read Act XIX of 1856, it would apply to the Bill under consideration equally with the emigration laws which were in force at the time that Act was passed. The Preamble certainly referred only to Acts which had already been passed, but the first Section said :—

"Whenever the Governor-General of India in Council shall have reason to believe that in any Colony or place to which the emigration of natives of India is allowed, &c."

These words appeared to him to give to the Act a prospective as well as retrospective effect in respect to any legislation relating to emigration. The point was clearly one which should not be left in doubt, and if it was thought that the Governor-General in Council ought not to exercise the power with which he was invested by Act XIX of 1856 in respect to the law now under consideration, the Bill should contain an express declaration to that effect. He entertained no doubt as to the competency of this Council to give the Governor-General in Council the powers described in Act XIX of 1856 in respect to the Bill before the Council. If the Council were at liberty to reject the Bill because they were not satisfied with the terms of the Convention or for any other reason, and he supposed that no one would question the power of the Council in this respect, they must, he thought, be equally competent to limit the period for which the Bill should remain in force, or to give to the Governor-General in Council the same power for suspending at any time for any sufficient reason the operation of the Bill which he already possessed by legislative enactment in respect to all other emigration laws. Whether these powers should be given in the present instance, was a question which he should prefer to consider more fully when the Bill got into Committee.

The Motion was then put and carried, and the Bill read a second time.

MR. BEADON moved that the Standing Orders be suspended to enable him to carry the Bill through its remaining stages.

SIR BARTLE FRERE seconded the Motion, which was put and carried.

MR. BEADON then moved that the Bill be referred to a Select Committee, consisting of Mr. Forbes, Mr. Erskine, and the Mover, with an instruction to submit their Report on Saturday next.

Agreed to.

THE VICE-PRESIDENT said that, as this Bill was a very important matter affecting all the Presidencies, if there was no objection, he would beg to move that Mr. Harington and Mr. Sconce be added to the Committee.

Agreed to.

PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Bill

MR. BEADON went back to Section 1 of Chapter XII, and moved the addition of the following Illustration :—

"The Coin denominated as the Company's Rupee is the Queen's Coin."

Agreed to.

THE CHAIRMAN also went back to Section 3 and proposed an amendment in the Explanation, which was carried.

Sections 4 and 5 were passed after verbal amendments.

Section 6 was passed as it stood.

Sections 8 to 10 were passed after amendments.

Sections 11 to 25 were passed as they stood.

Sections 26 to 30 were passed after verbal amendments.

Sections 31 and 32 were passed after amendments, including the substitution of seven years for two years, as the term of imprisonment.

Section 33 was passed after a verbal amendment.

Sections 34 and 35 were passed as they stood.

Chapter XIII (of offences relating to Weights and Measures) was passed as it stood.

Chapter XIV (of offences affecting the Public Health, Safety, Convenience, Decency, and Morals) was passed after amendments in Sections 14 and 27.

Chapter XV (of offences relating to Religion) was passed after the omission of Section 4 (providing for cumulative punishment).

The consideration of the Bill was then adjourned, and the Council resumed its sitting.

EMIGRATION TO SAINT KITTS.

SIR BARTLE FRERE moved that the Council resolve itself into a Committee on the Bill "relating to the Emigration of Native laborers to the British Colony of St. Kitts."

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

NOTICE OF MOTION.

MR. HARINGTON gave notice that he would, on Saturday next, move the first reading of a Bill for licensing and regulating Stage Carriages.

The Council adjourned at 5 o'clock on the Motion of Sir Bartle Frere, till Tuesday, the 18th instant, at 7 o'clock in the morning.

Tuesday Morning, Sept. 18, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq.,
Hon'ble C. Beadon,	C. J. Erskine, Esq.,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	Hon'ble Sir C. R. M. Jackson.

PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Bill.

Section 1, Chapter XVI (of offences affecting the Human Body) was passed with the addition of the following Illustration :—

"A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or cause death by doing an act that he knew was likely to cause death."

Section 2 related to murder.

Amendments were made in Illustration (*b*), in Exception 1 and its Explanation, and in Exception 3.

Exception 5 provided as follows :—

"Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustrations.

(a) A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

(b) Z, a Hindoo widow, consents to be burnt with the corpse of her husband. A kindles the pile. Here if Z be above the age of eighteen years, A has committed culpable homicide. If Z be under that age, A has committed murder."

SIR CHARLES JACKSON said, he objected to this Exception on principle. He thought that a man who killed another *primâ facie* committed murder, even if he had obtained the consent of the murdered man, because no man had a right to give his consent to the commission of any unlawful act. The Exception seemed to him (Sir Charles Jackson) to be founded upon the false principle that the consent of a person to his own death absolved another from causing his death. The act was *primâ facie* a malicious one, and the consent of the party could not in any sense be regarded as a legal consent. He (Sir Charles Jackson) thought it a violation of principle not to call that mur-