

Thursday, 20th September, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

tion might lead to the inference that the Legislature had in some measure justified the rite of Suttee.

The Motion was put and carried, and the Section as amended then passed.

Sections 3 and 4 were passed as they stood.

Section 5 was passed after an amendment.

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

The Council adjourned at 10 o'clock on the Motion of Sir Bartle Frere, till Thursday Morning, at 7 o'clock.

Thursday Morning, Sept. 20, 1860.

PRESENT :

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

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

PENAL CODE.

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

Sections 6 to 18 of Chapter XVI were passed as they stood.

Section 19 related to the exposure and abandonment of a child under twelve years by its parent or a person having the care of it.

Mr. SCOVCE enquired whether twelve years was not too high a limit. The limit in the Section, as it originally stood, was five years.

The CHAIRMAN explained that the alteration in question and the introduction of the new Illustrations in Sections 9 and 10 were made by the Select Committee in consequence of some papers received from the Government of Bengal, whilst the Code was under consideration. Those papers referred to a superstitious custom which appeared to be rather prevalent of

abandoning children in the Soonderbuns. The following is one of the cases as mentioned by the Magistrate of the 24-Pergunnahs :—

"I find that, in April 1853, a case somewhat similar to that at Jessore was brought before this Court. One Kooran, a native of a village in the South West part of Kishennuggur, had two sons. The elder died. The other being grievously sick, Kooran made a vow that should his child recover and he spared to the age of ten, he would then dedicate him to the Almighty, by turning him loose in the Soonderbuns in order to his becoming a 'bunbasi.' Kooran had come all the way to Bulleaghatta with his boy Panchoo aged ten, and had there hired a boat to convey them to the Soonderbuns, when they were arrested by the Police and sent before the Magistrate. My predecessor apparently doubted the boy being Kooran's son. Investigation by the Nuddea Police however proved the truth of Kooran's statements. But the boy's mother declared that there had never been any intention of abandoning the lad. He was merely to have been let loose for a few minutes, in fulfilment of the strict letter of the vow, and then taken into the boat and brought safely home again. Kooran was discharged, having been previously warned that, if he abandoned the lad in the Soonderbuns, and thus (as was probable) caused death, he would incur the penalty for wilful murder. The Magistrate of Nuddea was requested to direct the Police to look after the boy occasionally, and to report if he was absent at any time."

The Section was passed after the insertion of the word "wholly" before the word "abandoning" on the Motion of the Chairman.

Section 20 was passed as it stood, Section 21 was passed after a verbal amendment.

Sections 22 to 29 were passed as they stood.

Section 30 (relating to the administering of poison or drugs) was a new Section proposed by the Select Committee who left a blank for the punishment.

Several amendments were carried on the Motion of the Chairman which made the Section stand as follows :—

"Whoever administers to, or causes to be taken by any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause

hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Sections 31 to 36 were passed as they stood.

Section 37 provided for imprisonment of either description extending to two years, or fine extending to one thousand Rupees, or both, as the punishment for causing grievous hurt on grave and sudden provocation.

THE CHAIRMAN said, two years' imprisonment seemed to him to be a very inadequate punishment for the offence provided against by this Section, which carried out the same principle on which murder committed under provocation was reduced to culpable homicide. The punishment for causing grievous hurt without provocation was seven years' imprisonment if done without a deadly weapon, or transportation for life if done with a deadly weapon. If therefore a man was liable to be punished with transportation for life or imprisonment for seven years for causing grievous hurt without any provocation, it appeared to him (the Chairman) that two years was too great a mitigation for the same offence committed under grave and sudden provocation. He should move the substitution of "four years" for "two years."

MR. SCOTCH said, it appeared to him that the same inconsistency occurred in Section 9, which proposed to punish an attempt to murder with imprisonment for ten years only.

THE CHAIRMAN explained that Section 9 provided ten years' imprisonment for an attempt to murder where no hurt was caused; or if hurt was caused, the offender was liable to transportation for life.

THE CHAIRMAN'S amendment in Section 37 was then put and carried, and the Section as amended was passed.

Sections 38 to 51 were passed as they stood.

Section 52 defined what committing an assault was.

THE CHAIRMAN said, this Section was in substitution for the

Section in the Original Code defining what was meant by the use of Criminal force. But when the Chapter of offences against the Public Tranquillity was under the consideration of the Committee, the words "Criminal force" and "show of Criminal force" were inserted in the Section which declared under what circumstances an assembly of five or more persons was to be designated as an unlawful assembly. But as there was now no Section which defined what Criminal force was, he proposed to restore the Section as it was originally printed.

Agreed to.

Sections 53 and 54 were passed after amendments.

Sections 55 to 60 were passed after verbal amendments.

Section 61 was omitted as unnecessary, except as to the Explanation which was passed after a verbal amendment; and the heading "Of Assault" was restored to "Of Criminal Force and Assault," as it originally stood.

Section 62 was passed as it stood.

Section 63 was passed after an amendment.

Section 64 provided as follows:—

"Whoever takes or entices any minor under fourteen years of age, or any person of unsound mind, out of the keeping of his lawful guardian without the consent of such guardian, is said to kidnap the person from lawful guardianship."

THE CHAIRMAN said, to make this Section consistent with the 9th Geo. IV c. 74 which provided sixteen years for a female, it would be necessary to make in the Section an alteration to that effect. He therefore proposed to omit the Section and to substitute the following new Section:—

"Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind without the consent of such guardian,

is said to kidnap such minor or person from lawful guardianship."

Mr. SCONCE said, the Section as proposed to be amended would apply to the case of a married female enticed away for the purpose of adultery. He had no objection to its application to such cases, but it struck him as introducing a great novelty.

THE CHAIRMAN saw no reason why the Section should not be applicable to the kidnapping of married females.

After some further conversation, the Section was passed with the addition of the following Explanation on the Motion of THE CHAIRMAN:

"The words 'lawful guardian' in this Section include any person lawfully entrusted with the care or custody of such minor or other person."

Section 65 was passed as it stood. Section 66 prescribed the punishment for "whoever kidnaps any person from British India or from lawful guardianship."

THE CHAIRMAN proposed to insert the words "or abducts" after the word "kidnaps."

Mr. SCONCE thought that the amendment would make the Section too general. It might be held to be applicable to the case of a child enticed away from his father's house across a street.

After some discussion the consideration of the Section was postponed, and the Council resumed its sitting.

UNIVERSITIES.

SIR BARTLE FRERE presented the Report of the Select Committee on the Bill "for giving to the Universities of Calcutta, Madras, and Bombay, the power of conferring degrees in addition to those mentioned in Acts II, XXII, and XXVII of 1857."

The Council adjourned.

Saturday, September 22, 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,	Hon'ble Sir C. R. M. Jackson,
H. B. Harrington, Esq.,	and
H. Forbes, Esq.,	C. J. Erskine, Esq.

RECOVERY OF RENTS (BENGAL.)

THE CLERK presented to the Council a Petition signed by one Doyal Chand Ghose, of Nuddea, concerning Section XXX Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal), and observed that a Bill had already been brought in on the subject of the prayer contained in the Petition.

THE CLERK also presented a Petition from the Indigo Planters' Association, praying for the repeal or alteration of the same Act.

Mr. SCONCE moved that the petition be printed.

Agreed to.

PENAL CODE.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding copy of a letter from the Secretary to the Government of the North-Western Provinces on the subject of the translation of the Indian Penal Code into Hindoostanee.

EMIGRATION TO THE FRENCH COLONIES.

Mr. BEADON presented the Report of the Select Committee on the Bill "to authorize and regulate the Emigration of Native laborers to the French Colonies."

LICENSING OF STAGE CARRIAGES.

Mr. HARRINGTON in moving the first reading of a Bill "for licensing and regulating Stage Carriages," said he would preface his statement of the