

Saturday, 17th January, 1857

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

VOL. III.

Published by the Authority of the Council.

CALCUTTA :
PRINTED BY J. THOMAS, BAPTIST MISSION PRESS.
1857.

IMPRISONMENT OF CRIMINALS (STRAITS SETTLEMENT.)

THE CHIEF JUSTICE said, he had a motion to make regarding the Bill "relating to the imprisonment of Criminals in the Settlement of Prince of Wales' Island, Singapore, and Malacca," which he had introduced a short time ago at the suggestion of the learned Recorder of Singapore, but which that officer, on a further consideration of the Charter under which he acted, had come to the conclusion (and he, the Chief Justice, thought correctly) was not required. The Bill had been referred to a Select Committee; and the motion which he had to make was, that that Committee be discharged, and that he be at liberty to withdraw the Bill.

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL.)

MR. ELIOTT moved that Mr. Peacock be requested to take the Bill "to prevent the over-crowding of Vessels carrying Native Passengers in the Bay of Bengal" to the Governor General for his assent.

Agreed to.

INDIAN PENAL CODE.

MR. PEACOCK moved that the Indian Penal Code be referred to a Select Committee consisting of the Chief Justice, Mr. Grant, Mr. Elliott, Sir Arthur Buller, and the Mover.

Agreed to.

NOTICE OF MOTION.

MR. CURRIE gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "relating to Trespasses by Cattle." The Council adjourned.

Saturday, January 17, 1857.

PRESENT :

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice.	D. Elliott, Esq.
Hon. Major Gen. J. Low,	C. Allen, Esq.
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock.	E. Currie, Esq., and
	Hon. Sir A. W. Buller.

BOMBAY MUNICIPAL TAXES.

THE CLERK presented a Petition from Justices of the Peace, Merchants, and others, Inhabitants of Bombay, against so much of a Bill "to amend and consolidate the Laws relating to the Municipal Taxes in the Islands of Bombay and Colaba" (about to be laid before the Council) as relates to the levy of town dues on goods in transitu, and on the shipping in the harbor.

MR. LEGEYT moved that the Petition be printed.

Agreed to.

JOINT-STOCK COMPANIES.

THE CLERK presented a Petition from the Bengal Chamber of Commerce praying that the Bill "for the Incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof," might be so amended that the winding-up of Insolvent Joint-Stock Companies might be entrusted solely to Her Majesty's Supreme Courts.

MR. PEACOCK moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

HINDOO POLYGAMY.

THE CLERK presented a Petition of Hindoo Inhabitants of Bora praying for the abolition of Hindoo Polygamy.

THE CHIEF JUSTICE moved that the Petition be printed.

Agreed to.

APPELLATE JURISDICTION OF PRINCIPAL SUDDER AMEENS (BOMBAY.)

THE CLERK reported that he had received a communication from the Secretary to the Government of India in the Home Department forwarding, with remarks, for consideration in connection with the new Law of Procedure, copies of papers on the subject of extending the appellate Jurisdiction of Principal Sudder Ameens in Bombay.

CALCUTTA UNIVERSITY.

THE CHIEF JUSTICE presented the Report of the Select Committee on the Bill "to establish and incorporate an University at Calcutta."

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE moved the first reading of a Bill "for raising funds for making and repairing roads in the suburbs of Calcutta and the station of Howrah."

In doing so, he said when he had prepared the Bill for levying rates and taxes in the town of Calcutta, he had introduced into it provisions which would have rendered liable to the horse and carriage tax for Calcutta, all horses and carriages kept in the suburbs which might be brought upon the town roads. But before that Bill came under the consideration of the Select Committee, he was made aware that the Government had declared that it would no longer sanction any expenditure from the general revenues for the maintenance of the roads of the suburbs; and that the expense of maintaining those roads must be provided from local funds. Under these circumstances, as it appeared that the residents of the suburbs would have to pay for the repairs of their own roads, it seemed clear that they ought not to be called upon to contribute towards the expense of repairing the roads of the town; and, accordingly, in Select Committee, he had procured that the provisions which would have made them liable to such payment should be struck out of the Bill, with the understanding that he would introduce a separate Bill for levying a similar tax on horses and carriages kept in the suburbs.

It was hoped that the town horse and carriage tax would produce an amount about equal to the expense incurred by the Municipal Commissioners in repairing the town roads. But as the population of the suburbs was more scattered, and the houses of persons keeping horses and carriages were few and far between, it was not to be supposed that a horse and carriage tax, levied in the suburbs at the town rates, would yield an amount nearly sufficient to defray the expenses of the annual repair of the suburban roads.

Considering how very far short of the amount required the produce of a tax of that kind would fall, he had himself, at one time, been inclined to think that the requisite funds might be best raised by tolls taken at the canal bridges. But the Supreme Government had expressed

a decided opinion against such a course; and a similar objection had, if he remembered rightly, been taken in this Council when the Report of the Select Committee on the Gas Bill was under discussion. It was also to be admitted that there would be some practical difficulty in carrying out such a scheme. It would leave open the whole of the south-east quarter of the suburbs, from the Balliaghatta Canal to the General Hospital, including all Intally and Ballygunge, which were amongst the most populous parts of the suburbs; and the Inhabitants of that quarter would be altogether exempt from taxation, while the tax would fall very heavily upon such of the Inhabitants of Garden Reach, Allipore, and Cossipore as were obliged to pass the bridges into town daily.

On the whole, therefore, it had seemed advisable to extend to the suburbs the provisions for a horse and carriage tax which had been proposed, and had since been passed, for the Town. But as the proceeds of that tax would certainly not be sufficient for the whole expense of repairing the roads, the question remained how the difference was to be supplied.

There were some Ferries within the limits of the suburbs; and, although the proceeds of those Ferries were not large, it was, he thought, but fair that some share of the receipts of the Ferry Fund should be assigned for the improvement of those roads which not only conduced to the convenience of the Inhabitants of the suburbs, but also assisted in conveying the general traffic of the country and of the town. The amount of this assignment, however, must be left to the discretion of the Executive Government. Under any circumstances, it would not be sufficient to make up the deficit. The expense of repairing the roads within suburban limits on this side the river and exclusive of Howrah would, he calculated, be about Rs. 50,000 a year. He had no means of knowing at present what a horse and carriage tax in the suburbs might yield; but he should be surprised if it produced one-half that amount. It was quite clear that, if the whole expense of repairing the roads of the suburbs was to be borne by the Inhabitants of the suburbs, some other tax must be im-

posed; and the most appropriate one, and that which would be collected with the least harassment to the payers, would be an addition to the assessment to be levied upon occupiers of houses under the new Chowkeydaree Act. Accordingly, he had introduced into the Bill a provision to the effect that an estimate should be made annually of the expenses likely to be incurred during the year for the repair of the suburban roads, and also of the expected produce of the horse and carriage-tax, with such other sums as might be assigned by the Government from the Ferry Fund, or any other public fund; and that the excess of proposed expense over expected income should be added to the amount to be raised under the Chowkedaree Act, and be assessed and recovered under the provisions of that Act, and by the same agency.

The Bill provided that the expense of repairing only those roads which might properly be called suburban roads should be paid from the fund to be established under this Bill. Thus, it excluded those parts of the Barrackpore and Dum Dum Military roads which lie within the limits of the suburbs; and such parts of the Diamond Harbour, Budge-Budge and Culpee roads, within the same limits, as are not required for communication between one part of the suburbs and another.

It also excluded another class of roads, which, though situated entirely within the limits of the suburbs, were not designed for the benefit of the Inhabitants of the suburbs. He alluded to the Balliaghatta and other roads by which the produce of the interior of the country was carried into town from the canals. The traffic which passed along some of these roads was enormous, and the expense of repairing them was proportionately heavy. As the goods carried along these roads, and for the conveyance of which they were mainly designed, had already paid toll on the canals, it was but reasonable that the expense of repairing them should be paid out of the surplus Canal Funds. There was no express provision for this in the Bill. The maintenance of the roads was left to the Government, which might, if it thought fit, apply to the purpose a portion of the surplus tolls at its disposal.

The Bill included the Station of

Howrah as well as the suburbs on this side of the river. Although Howrah was separated from Calcutta by the river, it was, to all intents and purposes, a suburb of the City, and a suburb increasing daily in importance and population; and any measure designed for the suburbs of Calcutta ought to have effect in Howrah.

The Bill was read a first time.

CIVIL PROCEDURE (BENGAL.)

MR. PEACOCK moved the first reading of a Bill "for simplifying the Procedure of the Courts of Civil Jurisdiction of the East India Company in Bengal." He said, it had lately been resolved by the Governor General in Council that the First Report of Her Majesty's Law Commissioners, together with the communications received from the Lieutenant-Governor of Bengal and from other persons regarding it, should be laid before the Legislative Council in order to the enactment of a Law in general accordance with the Procedure recommended by the Commissioners. The Council had had before them that Report and those communications. In addition to them, a communication had been received from the Government of Madras containing the observations of the Members of that Government and of the Judges of the Sudder Court of that Presidency; and he believed, though he had not yet seen it, that a similar communication had also been received from the Government of Bombay. He now proposed to bring in a Bill for reforming the Civil Procedure in the Presidency of Bengal.

The Council was aware that the Commissioners had recommended that the Sudder Courts and Her Majesty's Supreme Courts should be amalgamated. But under the Statute 3 and 4 of William IV. c. 85, s. 46, this Council had no power, without the sanction of the Honorable Court of Directors, to abolish any Court which existed by virtue of a Charter from the Crown. The Council had received no authority from the Court of Directors to abolish the Supreme Courts; and, therefore, it was impracticable, at present, to effect the amalgamation recommended. He had accordingly excepted that question from his Bill, leaving the consideration of it

Mr. Currie

either for the Imperial Parliament, or for this Council if authority should come out for that purpose. The necessity for so doing would not prevent the Council from dealing with the other parts of the Report of the Commissioners which related to Procedure.

He might have inserted in the Bill clauses relating to the Procedure of the Supreme Court; but, after consulting the Honorable and learned Chief Justice, he had thought it better to reserve the Procedure of the Supreme Court for a separate Bill, to be introduced on a future occasion. The present Bill, consequently, had been framed so as to leave the question of amalgamation in abeyance, and it was confined to the Courts of the East India Company.

In the Code of Procedure which they had recommended for Agra, the Commissioners had proposed that there should be one Judge appointed by the Crown in the Sudder Court. But he apprehended that they had made that proposal on the supposition that their Report would be carried out to the full extent, and that the Queen's and the Company's Courts would be amalgamated. If it should be necessary, in case the Courts were not amalgamated, to appoint a Crown Judge at the Sudder Court in Agra, he conceived it would be equally necessary to appoint one or more Crown Judges at the Sudder Court in Bengal and in the other Presidencies. But of course that would be attended with considerable expense; and the Council would hardly be justified in making such an appointment at Agra necessary if it was not prepared also to make a similar provision for Bengal and the other Presidencies. It had appeared to him, therefore, that this question must remain in abeyance; and, accordingly, he had not altered the jurisdiction of the Sudder Courts, but had applied himself to the Procedure of the Civil Courts of original jurisdiction. He had made no alteration in the scheme of procedure proposed by the Commissioners, except so far as became necessary in consequence of the omission of the clauses relating to the amalgamation of the Supreme and Sudder Courts, and a few verbal amendments. To that extent, he had altered their scheme, and to that extent only.

There was one point, however, in the introductory portion of the proposed Code in which he had made a material alteration. The Commissioners had recommended that the Stamp duties should be abolished, and that fees should be substituted for them. After mature consideration, the Government of India had come to the conclusion that financial considerations rendered it at present impossible to sacrifice the large amount of Revenue derived from Stamps; and, in consequence of that Resolution, he had omitted the portion of the Code which related to this subject. If it should be ultimately found that the Stamp duties could be abolished altogether, or be reduced, the abolition or reduction would not in any way affect the Procedure recommended, but might be effected on a revision and consolidation of the Stamp Laws.

The Scheme proposed by the Commissioners, and adopted in the Bill, provided for the appointment of three classes of Judges—Zillah Judges, Principal Sudder Ameens, and Moonsiffs. Moonsiffs would have jurisdiction to the extent of Rs. 2,500; Principal Sudder Ameens would have jurisdiction in all cases above that amount; and Zillah Judges would have a concurrent original jurisdiction with that of the Principal Sudder Ameens in regard to all suits above Rs. 2,500, with power to receive and determine suits within the pecuniary limitation assigned to Moonsiffs; or to direct the transfer of any suit from any Court to another Court of equal or superior jurisdiction in his district. The Commissioners had proposed (and he thought wisely) to abolish altogether the office of Sudder Ameen, and to vest in Principal Sudder Ameens the powers of Zillah Moonsiffs.

It was unnecessary to point out the details of the Procedure which the Commissioners recommended in the Second Chapter of their Code from the commencement of a suit to the final decree. It appeared to him that, on the whole, it would very much simplify the Procedure which now obtained. He did not mean to say that he coincided with the recommendations of the Commissioners in every particular; but he had thought it best, considering the care which had been bestowed on this Code, to publish it to the world in the

form in which it had been proposed, and wait for communications regarding it from those whose practical experience would enable them to give opinions and to make many valuable suggestions upon the subjects which it embraced; and he had no doubt that opinions and suggestions would be elicited from all the local Governments, the Judges of the Sudder Courts, the Zillah Judges, the Principal Sudder Ameens, and the Moonsiffs. After the Select Committee should have considered those communications, and reported upon them, the Council would be in a position to introduce such alterations as it might think proper. He made these remarks lest it should be supposed that, in introducing the Bill without alterations, he had been inattentive to the communications and suggestions which had already been received. There were some very excellent remarks in the communications received from the Government of Madras and the Judges of the Sudder Court in that Presidency. But he thought it would be better for the Council to let the Code go forth to the Public in the form in which it had been proposed by the Commissioners at home, in order that it might elicit the opinions and suggestions of all persons competent to advise upon the subject; and consequently, he had made no substantial alterations in it.

The Code would effect various improvements in the present mode of Procedure. It would enable the Civil Courts to grant injunctions to restrain a Defendant from committing waste, injury, or breach of contract; and also to appoint receivers or managers for the preservation or the better management or custody of property in dispute. It also provided that the parties to a suit, where they were at issue on some question of Law or fact, might state a case to the Judge in the form of an issue, and agree amongst themselves in writing to abide by the finding of the Judge upon such issue; in which case, the finding should be enforced in the same way as if it were a judgment pronounced in a contested suit. This was in accordance with the procedure which had, for some time past, obtained in England. It dispensed with the necessity of going through all the tedious and technical forms of pleading; and

its introduction into this country would be highly beneficial in enabling suitors to avoid litigation, delay, and expense.

He should also mention that the appellate jurisdiction of Principal Sudder Ameens and special appeals had been done away with. In cases relating to land or other real property, and in many other cases which were specified, which involved questions of Law or fact of considerable difficulty, an appeal would lie from the decisions of the Zillah Judge, the Principal Sudder Ameen, and the Moonsiff, whatever might be the amount in dispute. But where the questions at issue were of a simple character, such as breaches of contract and the like, the decision of the lower Courts would be final, unless the amount of the suit exceeded Rs. 50. In cases in which the amount claimed did not exceed Rs. 1,000, the appeal, whether from the decision of the Principal Sudder Ameen or of the Moonsiff, would lie to the Zillah Judge: in suits above that amount, to the Sudder Court. The decision of the Zillah Judge in an appeal from the decision of the Principal Sudder Ameen or Moonsiff, was to be final unless, at the time of deciding, he should record his opinion that the case was a fit one for revision by the Sudder Court, and certify in his judgment his reasons for that opinion.

It was unnecessary to go into the whole details of the Code as recommended by the Commissioners. He thought that, with some alterations and additions, it would be a great improvement in the administration of justice; and he should conclude by moving the first reading of the Bill.

The Bill was read a first time.

CIVIL PROCEDURE (NORTH WESTERN PROVINCES.)

MR. PEACOCK then moved the first reading of a Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in the North Western Provinces." He said this Bill corresponded with the Bill for Bengal. He had felt some doubts at one time whether it would not be better to make one Bill applicable to all the Presidencies and to the North Western Provinces; but as he found that there were various suggestions from the local Governments which might

Mr. Peacock

possibly render it necessary that the Codes of the several Presidencies should slightly differ from each other, he had thought it advisable to frame a separate Bill for each Presidency and for the North Western Provinces. If, after considering those communications, the Council should be of opinion, as probably they would be, that separate Bills were not necessary, and that the same Code of Procedure should be applicable to all the Presidencies, the Council, after considering the Report of the Select Committee to whom the Bills might be referred, might make such alterations as would adapt one of the Bills to all the Presidencies. The introduction of four separate Bills could do no harm, because, if there should hereafter appear a necessity for so doing, the four might, by the course he had just indicated, be converted into one; but, under the Standing Orders, one Bill for all the Presidencies and for Agra could not be converted into four.

He should have mentioned before that the Commissioners had recommended that all witnesses should be examined without oath or affirmation or any warning as a necessary preliminary to their giving evidence; but that every Judge, previously to entering upon his duties, should make a declaration that he would faithfully perform his duties. He had left the Articles on that point untouched, in order that the public might have an opportunity of expressing their opinions regarding them. The whole question of judicial oaths had been referred to a Select Committee who had not yet reported thereon. The Council would probably have the benefit of that Report before they came to discuss the present Bill; and he thought it would be better for the Council to await that Report before they made up their minds finally upon this important subject. In the communication already received from the Government of Madras, there were some very strong observations on the subject; and it was not because he did not feel the force of many of those remarks that he had allowed the Article in question to stand as prepared by the Commissioners. His object simply was to defer dealing with the question until the Council should have had an opportunity of fully considering the point with the aid of all the com-

munications regarding it which the publication of the Bill might draw forth.

The Bill was read a first time.

CIVIL PROCEDURE (MADRAS.)

MR. PEACOCK moved the first reading of a Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Madras."

The Bill was read a first time.

CIVIL PROCEDURE (BOMBAY.)

MR. PEACOCK moved the first reading of a Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay."

The Bill was read a first time.

CALCUTTA UNIVERSITY.

THE CHIEF JUSTICE moved that the Council resolve itself into a Committee upon the Bill "to establish and incorporate an University at Calcutta;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I, which provided for the incorporation of the University, being proposed—

THE CHIEF JUSTICE said he should have to make two or three Motions upon it. The first would be a Motion to amend an error in the name of Dr. Mouat. Being a clerical error, it was not absolutely necessary to move to amend it; but he took that course because he wished to say a few words with the view of remedying an injustice which he was believed to have done to the gentleman in question. It appeared that, in one version of his speech on the motion for the first reading, he had been reported to have spoken of the scheme of a University for Calcutta propounded in 1845 as the scheme of Mr. Cameron. If he had been so reported, the Report was not correct. What he really did say, he found accurately given in the Official Report. He had distinctly stated that, when he spoke of Mr. Cameron, he meant to include the gentlemen who at that time

were associated with him in the Council of Education. He was not in India when the scheme was first propounded. His personal knowledge of the matter was derived from the general Report of the Council of Education for the year 1845. He ought, however, to have made special mention of Dr. Mouat; because, although he was not prepared to say whether the first idea of a University for Calcutta had been conceived and suggested by Dr. Mouat or by Mr. Cameron, or whether, like Adams and Le Verrier and other great discoverers, they had hit upon it independently of each other—he felt certain that a very large share of the merit of elaborating the particular scheme, as the principal share of the merit of elaborating almost every scheme suggested by the Council of Education for the improvement of Education in this country, did belong to Dr. Mouat. Having made these observations, he should move that the word “John” be substituted for the word “James” in the 64th line of the Section.

Agreed to.

THE CHIEF JUSTICE said, on the next motion which he had to make, he must, he feared, address the Council at greater length. He had to move that, in the 87th line of the Section, the words “The Rev. William Stephenson, Rector of St. John’s College” be omitted. The Council was probably aware of a letter which had appeared in the public prints addressed to himself by the Rev. Mr. Fitzpatrick. That Letter he held in his hand. It was addressed to him as Vice-Chancellor of the University of Calcutta, and was to the following effect:—

“Sir,

“The Report published in the local journals of your speech on ‘The Calcutta University Bill,’ states that the University had a representative of the Roman Catholic persuasion of Faith, the Rector of St. John’s College.”

He did not think that those were the precise words which he had used; but undoubtedly he did state, and he stated with great satisfaction, that “the Roman Catholic Institutions of this City would have a representative in the Senate of the University.”

“Assuming the Report to be correct,” the letter proceeded, “I am directed by the Right Rev. Dr. Oliffe to inform you that such a

step on the part of Government has been taken without his sanction and notwithstanding His Lordship’s express refusal to be a Member of the University Senate. This refusal was grounded on the fact that Government considers religious instruction in the University a purely “optional” matter, while the Catholic Church esteems it an essential ingredient of a sound moral education.

“I have the honor to be,

“Sir,

“Your obedient humble Servant,
JOHN FITZPATRICK, B. A.

“Rector of St. John’s College.

“P. S. The ‘Government Gazette,’ containing the above unauthorized appointment, and your speech, having both been published, a copy of this letter shall be also sent to the public Journals.”

The Council would observe that this letter took exception to a statement of his, and took exception to an act of the Government in making a particular appointment. The part of the charge which affected him was easily answered. He had made his statement because he found in the List of the Fellows appointed by the Governor General of India in Council, the name of the Rev. Mr. William Stephenson, Rector of St. John’s College. He did not at that time know that any communication had taken place between the Government and Dr. Oliffe on the subject: he did not at that time know of that learned prelate’s refusal to be a Member of the Senate of the University. He had spoken entirely on the insertion of the name of the Rev. Mr. Stephenson in the List of the Fellows of the Senate, and on his knowledge that that gentleman had taken a very active and a very useful part in the preliminary proceedings of the Committee appointed to consider the rules and constitution of the University. He had answered the Rev. Mr. Fitzpatrick’s Letter. The answer had not been published; but it was to the effect of what he had just said. He had added that he had had nothing to do with the appointment of the Fellows; and that if Dr. Oliffe or Mr. Fitzpatrick conceived that any wrong had been done to either of them in this matter, their complaint ought to be addressed, not to him, but to the Government.

So much for the part of the charge which concerned himself.

With respect to the suggestion that the nomination of Mr. Stephenson was

unauthorized, it was necessary to say something more. When the late Governor General appointed the Committee to consider the rules and constitution of the University, it was fully understood—indeed, he believed it was actually expressed in the Minute—that the Members of that Committee would afterwards be Members of the Senate. Amongst the persons so appointed, was the Rev. Mr. Stephenson. That appointment was made, he believed, with the full concurrence of the then Archbishop of Calcutta, the late lamented Dr. Carew. But whether that was so or not, there could be no doubt that the appointment was accepted by Mr. Stephenson. He held in his hand a letter from Mr. Stephenson to the Home Secretary upon the subject, which he would read:—

“St. John’s College,
7th Feb., 1855.

“DEAR SIR,

“In reply to your favor of yesterday, allow me to say that I shall feel much pleasure in complying with his Lordship’s wishes. Kindly convey to his Lordship my grateful thanks for the honor conferred, and assure him that I shall be happy to co-operate towards the furtherance of so grand a project.

“I remain,

“Dear Sir,

“Your obedt. servant,
W. STEPHENSON.

To

CECIL BEADON, Esq.”

Now, he said again that he believed the appointment thus accepted by Mr. Stephenson was made with the concurrence of Dr. Carew; and, further, that Mr. Stephenson acted throughout under the directions of Dr. Carew. He said this because, although he himself was not a Member of that Section of the Committee which dealt with the subject of Degrees in Arts, and in which Mr. Stephenson co-operated, yet he knew that that gentleman had not only taken a very useful and a very active part in the deliberations of his colleagues, but had, from time to time, mentioned what were the feelings and views of the Archbishop on particular subjects. The principles upon which the University was to be established had not been kept secret. The Despatch of the Court of Directors had been published; the Instructions addressed by the Government of India to the Committee for drawing

up the plan of the University had been published; and it was impossible to conceive that acute, intelligent, and logical men like Dr. Carew and Mr. Stephenson could have supposed that the Government, in constituting this University, meant to depart from those general principles on which it had theretofore conducted education in this country. The University of Calcutta was not designed to be an instructive establishment. Its object was, to bring as competitors for Degrees in certain branches of Literature and Science those who were brought up either in Government or in private Institutions, and whose religious education had been conducted on the principles adopted in such Institutions. He felt the more surprised that the objection in question had been raised, because, since he had come into the room, he had been assured by two gentlemen who were present that, amongst the Institutions affiliated to the University of London on the model of which the University of Calcutta was to be established, was the College of Stoneyhurst. Nothing was better known in the annals of Education than that the London University College had been originally established as an educational Institution which should embrace persons of every persuasion, and should impart no religious instruction. That was a College—an instructive establishment. Many had objected to that principle. Then was formed the University of London for the purpose of conferring Degrees on the students of the London University College, as well as on those of other Institutions. That University, no doubt, included the London University College which was established on the wide basis which he had mentioned; but it also included King’s College which was established in London on Church of England principles; it also included, by way of affiliation, a variety of Dissenting Institutions throughout the country, and, as he believed, the Roman Catholic Institution of Stoneyhurst. Consequently, one would have supposed that the mere announcement, that the University of Calcutta was to be established on the model of the University of London, would have prevented any such misapprehension of its nature and object as that conveyed by Mr. Fitzpatrick’s letter.

He now came to what really had passed between the Government and Dr. Oliffe. That which had originally passed, he was not prepared to state, because it was the subject of a private conversation between the Governor General and the gentleman in question. But subsequently, the Home Secretary wrote to Dr. Oliffe the following Letter:—

“REV. AND DEAR SIR,

“The Governor General has requested me, with reference to a recent conversation you had with His Lordship at Government House, to explain to you the nature of the duties that will devolve upon the Senate of the proposed Calcutta University.”

The Letter then enumerated certain communications which were forwarded with it as affording this explanation; and proceeded as follows:—

“It seems questionable whether, in strict accordance with the instructions of the Honorable Court, we can provide for degrees or for honors in any subject connected with religion, and whether we are not obliged to confine the scope of the University to objects of a purely secular character, leaving religious instruction to be given and prizes for proficiency in religious knowledge to be awarded in the several Colleges and Schools which it is proposed to affiliate.

“But in accordance with the opinions of a majority of the Sub-Committee, it has been proposed that, for honors in the branch of Mental Science, the candidates should be examined in the Evidences of Revealed Religion as an optional and alternative subject. I may also add that Hebrew has been adopted as one of the Classical languages to be taken up at the examination both for Degrees and for Honors.”

DR. OLIFFE, in answer to that letter, wrote the following:—

“July 10th.

“DEAR SIR,

“I beg to thank you for your favor of the 24th ult. explaining to me the nature of the proposed University, and shall feel obliged by your informing the Governor General in reply that, as the Catholic Church considers religious instruction an essential ingredient of education, and as no such instruction is to be imparted in the University, I regret I cannot consistently consent to be a Member of its Senate.

“Yours faithfully,

“THOS. OLIFFE.”

“P. S. I beg to return your enclosures with many thanks.”

Mr. Beadon then wrote a further letter, drawing the Bishop's attention

to the distinction upon which he (the Chief Justice) had commented:—

“REV. AND DEAR SIR,

“I have received your letter of this date, in which you decline to become a Member of the Senate of the proposed University upon the ground that no religious instruction is imparted therein, such instruction, as you truly observe, being considered by the Catholic Church an essential ingredient of education.

“I will do myself the honor to lay this letter before the Governor General; and I beg to be permitted to express my sincere regret that you should have found yourself unable to come to a different determination.

“At the same time. lest I should have unintentionally led you into error, let me explain that the proposed University is not to be a place of instruction of any kind, secular or religious, but simply a body incorporated for the purpose of giving degrees and honors in various branches of knowledge—religious knowledge not being excluded—to all competent candidates who may offer themselves, without reference to the course of education they may have received, or to the place—provided it be an affiliated or recognized school—in which they may have been educated.”

To that letter, Mr. Beadon received no answer; and, therefore, it was beyond a doubt that, upon the correspondence as it stood, Dr. Oliffe had declined to become a Member of the Senate. But Dr. Oliffe had simply declined to become a Member himself: his refusal was limited to himself personally. Assuming that he had the power to decree that no member of the Roman Catholic Church should be a Member of the Senate, he had not done so; and, therefore, it seemed to him rather an unfair thing to say that the appointment of Mr. Stephenson by Government was an unauthorized step. We knew very well that it was not given even to the Roman Catholic Church, with all its boasted discipline, to ensure absolute unity, or altogether to destroy those diversities of opinion which the infinite variety that existed in the constitution of men's minds necessarily engendered. We need not go back to History for that. We need not go back to disputes between Jesuits and Jansenists, or to that page of History in which the master mind of Bossuet was found in painful antagonism to the blameless life and fervent piety of Fénelon. It was sufficient to look at what had happened in this very city. There had been in succession three eminent men holding the office of Vicar Aposto-

lic of Bengal. The first was the Revd. Dr. St. Leger, the second the Revd. Dr. Carew, and the third the Revd. Dr. Oliffe. Dr. St. Leger agreed with the Founders of the Martinière in a common scheme of education which should include Roman Catholics as well as the members of other churches and sects; which proposed for all some religious instruction, and even contained a form of common worship in which, the points of difference being excluded, it was supposed that all the scholars might join. Dr. St. Leger was succeeded by Dr. Carew. Dr. Carew, no doubt conscientiously, objected to this principle; and the result was unfortunate, because many Roman Catholic children were thus deprived of the benefits of the charity. Again, upon the facts which he had stated, Dr. Carew must undoubtedly be considered to have taken a different view of the Calcutta University from that entertained by his successor. He had concurred in the appointment of Mr. Stephenson as a Member of the Committee, and Mr. Stephenson had acted on that Committee. And he (the Chief Justice) would here state what he ought to have stated before, that Mr. Stephenson had actually signed the first Report of the Committee of Arts, which contained the rules under which Degrees in that branch of knowledge were to be granted, and necessarily involved the principle to which Dr. Oliffe now objected.

When he spoke of the conflicting views of these eminent men, he did not presume to impute blame to any of them. We knew well that in our own Church and in other religious bodies, as well as in the Roman Catholic Church, earnest and pious men felt great difficulty as to the degree in which religious instruction ought to be made an essential element in every system of public education; and that these difficulties had hitherto proved in England an insuperable obstacle to the formation of any general and national system of education. But what he meant to say was, that it was quite clear that Roman Catholics, like members of other denominations, might differ amongst themselves on this question; and that, although Dr. Oliffe might conscientiously object to become himself a Member of the Senate, the Government was not bound to infer from that that Mr. Stephenson was not to be

appointed a Fellow of the University. He must indeed express his regret that Dr. Oliffe had come to this conclusion; because, looking at the position which that Rev. Prelate held, and to the influence which he must be supposed to possess, he (the Chief Justice) could not but foresee that there might hereafter be some difficulty in affiliating the Roman Catholic Institutions of Bengal to the University, and that consequently many Roman Catholics might be deprived of the benefits which the University was designed to confer. In such a case, the University might lose many intelligent and deserving graduates; but that the general prosperity of the University would be materially impaired, or even that its benefits would be lost to Roman Catholics altogether, he did not believe. He had been assured by one Roman Catholic parent that many Roman Catholics of this city were still desirous that their sons and wards should be graduates of the University; and he trusted that the Senate of the Institution would find the means of opening its doors to some, at least, of those persons.

If the matter had stood thus, he certainly should not have been prepared to make the motion for the removal of Mr. Stephenson's name from the Section which he was about to make. But he had learnt that Mr. Stephenson had left this country. Mr. Stephenson had been appointed on personal grounds. He had been appointed, not only as Rector of St. John's, but also in consideration of the services which he had rendered. Had he been in this country and expressed his willingness to continue a Member of the Senate, he (the Chief Justice) would not have made his motion. But he was not in this country, and he (the Chief Justice) did not know whether he intended to return to it. Consequently, on the general principles upon which the University was to be constituted, he had ceased to be qualified as a Fellow. Again, it was not known from that gentleman himself what his feelings and wishes on this subject might be. But whatever they might be, considering these things, and anxious that there should be no pretext for saying, with or without foundation, that, by any appointment to the Senate of the University, an unfair and unau-

thorized colour was given to the constitution of that body, he (the Chief Justice) thought it safest to move that the words "the Rev. William Stephenson, Rector of St. John's College" be omitted from the Section.

The motion was carried.

THE CHIEF JUSTICE moved that the following words be inserted after line 100 of the Section:—

"Alexander Grant, Esq., Apothecary to the East India Company"—

and

"Henry Stewart Reid, Esq., Director of Public Instruction in the North Western Provinces."

The motion was carried, and the Section then passed.

Sections II to XIII were passed as they stood.

Section XIV empowered the Senate to charge fees for the grant of Degrees, and "upon admission into the University, and for continuance therein."

MR. CURRIE asked what would constitute "admission" and "continuance?" As the object of the University was declared in the Preamble of the Bill, and explained by the Chief Justice, it did not appear what "admission into the University" and "continuance therein" were to be. He had referred to the Charter of the London University; and he found that the only provision there with respect to fees was for Degrees conferred by the Senate.

THE CHIEF JUSTICE replied, that the Honorable Member was under a mistake. In the London University, a fee was chargeable for Entrance Examinations. When a student desired to enter himself for an Examination for a Degree, although he remained at a particular Institution, he had to pass an Entrance Examination, whereby he became a candidate for the Degree, and then he might, after some time, come up and be examined for the Degree. So it would be in the Calcutta University. At present, it was not intended that fees should be charged for "continuance" in the University; nor did it follow that, if the power was given to make that charge, it would ever be exercised: but in a new state of things, it might be expedient to exercise it.

The Section was passed as it stood.

The Chief Justice

Section XI provided that no person should be admitted as a candidate for any Degree unless he should present to the Senate a certificate from one of the affiliated Institutions that he had completed the course of instruction prescribed by the Senate in the bye-laws to be made by them.

THE CHIEF JUSTICE said, this provision would tie up the hands of the Senate more than it was desirable to do by a legal enactment, and, therefore, he should move that the words "Except by special order of the Senate" be added at the beginning of the Section. There might be cases in which students would be unable to produce the required certificate, and in which it would yet be unjust to refuse a Degree to them. He did not think that the power given by the Section as it stood would be exercised indiscriminately by the Senate: still it would be better to make the amendment which he proposed than to render it necessary for the Senate to come to the Legislature for power to dispense with the certificate in every case in which a candidate for examination might be otherwise eligible.

The motion was carried, and the Section then passed.

MR. PEACOCK moved that the following new Section be inserted after Section VI:—

"The Governor General of India in Council may cancel the appointment of any person already appointed or hereafter to be appointed a Fellow of the University; and as soon as such order is notified in the Gazette, the person so appointed shall cease to be a Fellow."

He said, he moved this Section because he considered that, in consequence of what had taken place, there might be some necessity for it. At present, the appointment of the Fellows of the University was vested in the Governor General in Council; but no power was given to him to cancel any such appointment. On the motion of the Honorable and learned Chief Justice, the name of the Rev. Mr. Stephenson had been omitted from Section 1; but when that Section came to be examined, it would be seen that the removal of Mr. Stephenson's name from it did not remove him from his appointment as a Fellow of the University. The Governor General in Council had already ap-

pointed Mr. Stephenson a Fellow of the University, and the appointment had been gazetted. Section 1 of the Bill merely enacted that certain persons, including Mr. Stephenson—being the First Chancellor, Vice-Chancellor, and Fellows, and all persons whomight thereafter become or be appointed Chancellor, Vice-Chancellor, or Fellows—should be a Body Corporate. The Section had nothing to do with Mr. Stephenson's appointment as a Fellow of the University. The omission of his name from that Section did not cancel or get rid of his appointment as a Fellow, but merely of his appointment as a Member of the Corporation.

The Governor General in Council had no power, as the Bill stood, to cancel any appointment of a Fellow, when once made; and he (Mr. Peacock) proposed to supply the omission by introducing the Section now before the Committee. If his motion should be carried, it would rest with the Governor General in Council to cancel the appointment or not, as he should think fit. Having already been appointed a Fellow of the University, Mr. Stephenson would, by virtue of Section III of the Act, be a Member of the Corporation and of the Senate of the University, unless his appointment as a Fellow should be cancelled.

When the Honorable and learned the Chief Justice moved to remove Mr. Stephenson's name from Section 1, he (Mr. Peacock) entertained some doubts whether the Council ought to support the motion. Mr. Stephenson had not himself applied to have his name struck out of the Bill, or his appointment as a Fellow cancelled; nor had he refused to accept the appointment, which, of course, he was at full liberty to do. The motion rested entirely upon Dr. Oliffe's objection that the appointment had been made without his (Dr. Oliffe's) sanction, and after his Lordship's express refusal to be himself a Member of the University Senate. He (Mr. Peacock) did not think that it was necessary to obtain the sanction of Dr. Oliffe, or of any other Archbishop or Bishop, previously to the appointment of a particular person as a Fellow or Member of the Senate of the University. For what had the Council to do with Dr. Oliffe or any other individual that rendered it necessary for them to obtain his sanc-

tion to the nomination of Mr. Stephenson? But as Mr. Stephenson was absent from India, and the Council could not ascertain what his own views and feelings in this matter might be after considering Dr. Oliffe's objections, and as his express consent to become a Member of the Senate had not been obtained—though his consent might clearly be implied from the fact of his having accepted office, and acted as a Member of the Committee appointed by the Government to consider the rules and constitution of the University—he (Mr. Peacock) had not objected to the motion of the Honorable and learned Chief Justice. Had Mr. Stephenson been in India, he should have thought it necessary, previously to striking his name out of the Bill, to ascertain what were his own wishes and feelings upon the subject, and whether he was willing to accept the appointment or not. But as he was not in India, and his express consent to become a Fellow of the University had not been obtained, he thought it better, under the circumstances, to remove his name from the Bill. As he had already pointed out, however, the removal of his name from the Bill would not get rid of his appointment as a Fellow of the University; and he proposed to insert a new Section with the view of giving the Governor General in Council power to cancel the appointment. It was very much to be regretted that Dr. Oliffe should have considered it necessary to adopt the course which he had done. When he considered the object of the University and the nature of the duties of the Senate, he could see no reason why a Member of the Roman Catholic Church should not act as a Fellow of the University. What were the duties of the Senate? By Section X of the Bill, they were to have power, after examination, to confer the several Degrees of Bachelor of Arts, Bachelor of Laws, Licentiate of Medicine, and Master of Civil Engineering, and also to confer marks of honor for a high Degree of proficiency in the different branches of Literature, Science, and Art according to the rules to be determined by the Bye-laws; and by Section VII they were to have the entire management of, and superintendence over, the affairs and property of the University; and in all cases unprovided for, they

were authorized to act in such manner as should appear best calculated to promote the purposes intended by the University. They were also empowered

"from time to time to make and alter any Bye-laws and Regulations (so as the same be not repugnant to Law, or to the general objects and provisions of this Act) touching the examination for Degrees and the granting of the same; and touching the examination for honors and the granting of Marks of honor for a higher proficiency in the different branches of Literature, Science, and Art; and touching the qualifications of the candidates for Degrees, and the previous course of instruction to be followed by them, and the preliminary examinations to be submitted to by them; and touching the mode and time of convening the meetings of the Chancellor, Vice-Chancellor, and Fellows; and, in general, touching all other matters whatever regarding the said University."

It was open to Members of the Roman Catholic religion, as well as to those of any other religion, if they pleased, to become candidates for Degrees or for honors in Literature, Science, and Art; and it therefore seemed to him to be desirable that some Member of the Roman Catholic Church should be on the Senate to co-operate in the framing of the Rules upon which the examinations were to be conducted, and relating to the previous course of instruction to be followed, so that he might watch over the interests of the Members of his own Church, and take care that no rules should be unintentionally laid down which might form any impediment to their availing themselves of the benefits of the University. But if Mr. Stephenson's name were struck out, there would not, he believed, be any Member of the Senate of the Roman Catholic religion. He had no doubt, however, that the gentlemen composing the Senate, even if Mr. Stephenson should cease to be a Member of that body, would attend to the interests of students from Roman Catholic Institutions who might desire to offer themselves as candidates for Degrees or Honors in the University, with just as much care and impartiality as if they had a Member of the Roman Catholic religion amongst them. He did not think that the objection of Dr. Oliffe to become a Member of the Senate would necessarily prevent Roman Catholic students from availing themselves of the benefits of the University. He thought that Dr. Oliffe had no more right to prevent the

Senate from conferring Degrees or Honors upon any student of the Roman Catholic religion than he had to prevent the nomination of Mr. Stephenson as a Member of the Senate. It might be highly injurious to the Roman Catholics of this city if they should be prevented from becoming candidates for Degrees or Honors at the University in any department of knowledge to which they might desire to devote themselves in life. It might possibly be thought right to allow Degrees at the University to be considered a qualification for certain offices or appointments. And if, for instance, the Degree of Bachelor of Laws should hereafter be considered a sufficient qualification for admission to practise as a Pleader in the Courts of Law, or for an appointment as a Principal Sudder Ameen or Moonsiff, it would be extremely hard if a Roman Catholic youth could be prohibited on account of his religion from becoming a candidate for such a Degree. The amendment which had just been made upon the motion of the Honorable and learned Chief Justice would enable the Senate, if it should see fit, to dispense with a certificate in the case of a young man educated at one of the Roman Catholic Institutions, if the feeling against the University should be carried so far by those who presided over such Institutions as to induce them to refuse to grant a certificate to enable him to become a candidate for a Degree at the University.

MR. PEACOCK'S motion was then put, and carried.

The Preamble and Title were passed as they stood.

The Council resumed its sitting.

CATTLE TRESPASS.

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "relating to Trespasses by Cattle;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to IX were passed as they stood.

Section X prohibited Police Officers and pound-keepers from purchasing cattle at sales under the Act "on pain of dismissal from office."

Mr. Peacock

MR. PEACOCK moved that the words "on pain of dismissal from office" be left out. They would make it appear that dismissal from office was the only punishment to be imposed for the offence; whereas the Penal Code provided other penalties for persons in office becoming purchasers where prohibited.

Agreed to.

After a verbal amendment, introduced on the motion of Mr. Allen, the Section was passed.

Section XI was passed after the amendment of a clerical error.

Section XII was passed as it stood.

Section XIII provided the penalty for forcibly opposing the seizure of cattle trespassing, or for rescuing the same.

MR. CURRIE said that the original Section provided simple imprisonment for a period not exceeding six months, or a fine not exceeding 200 Rupees, or both. For those penalties, the Select Committee had substituted imprisonment with or without hard labor for a period not exceeding three months, or a fine not exceeding 500 Rupees, or both. They had introduced this alteration with the view of making the Section tally with Clause 18 of Chapter X of the revised Penal Code, which related to the resistance of public servants in the discharge of their duties. But he thought that the offence provided for by Clause 13 of that Chapter of the Code was more in the nature of the offence contemplated by Section XIII of this Bill. Clause 13 of the Chapter in the Code was as follows:—

"Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

He thought that imprisonment of either description for a term not exceeding six months was a more appropriate maximum penalty than for a term not exceeding three months; and he should therefore, move that the words "three" before the word "months" be left out of the Section in order that the word "six" might be substituted for it.

The motion was carried, and the Section then passed.

Sections XIV to XXI were passed as they stood.

In Section XXII a date was inserted making the Act take effect from the 1st of May 1857.

The Preamble was passed after amendments which made it correspond with the alterations made in the Bill by the Select Committee.

The Title was passed as it stood.

The Council having resumed its sitting, both the Bills settled in Committee were reported.

CALCUTTA UNIVERSITY.

THE CHIEF JUSTICE moved that the Bill "to establish and incorporate an University at Calcutta" be read a third time and passed.

The motion was carried, and the Bill read a third time.

Moved by the same that Mr. Grant be requested to take the Bill to the Governor General for his assent.

Agreed to.

NOTICE OF MOTION.

MR. GRANT gave notice that he would, on Saturday next, move the first reading of a Bill to amend the Law for the impressment of carts for the use of troops marching.

APPELLATE JURISDICTION OF PRINCIPAL SUDDER AMEENS (BOMBAY).

MR. PEACOCK moved that the communication from the Home Department this day reported, on the subject of extending the appellate jurisdiction of Principal Sudder Ameens in Bombay, be printed.

Agreed to.

BOMBAY CENSUS.

MR. LEGEYT moved that a communication received by him from the Government of Bombay be laid upon the table and referred to the Select Committee on the Bill "for taking account of the population of the town of Bombay."

Agreed to.

BOMBAY MUNICIPAL ASSESSMENT.

MR. LEGEYT moved that a communication received by him from the Clerk of Her Majesty's Justices of the Peace

at Bombay concerning a proposed Bill relating to the Municipal Assessment of Bombay be laid upon the table and printed.

Agreed to.

NOTICES OF MOTIONS.

MR. PEACOCK gave notice that he would, on Saturday next, move the second reading of the Civil Procedure Bills which were read a first time this day.

Also the first reading of Bills for simplifying Criminal Procedure in Bengal, Madras, Bombay, and the North Western Provinces.

The Council adjourned.

Saturday, January 24, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*,
in the Chair.

Hon. the Chief Justice,	D. Elliott, Esq.,
Hon. Major General	C. Allen, Esq.,
J. Low,	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq., and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

CIVIL REGISTRATION OF BIRTHS.

THE CLERK presented to the Council a Petition of Inhabitants of Bangalore stating that, by reason of their creed, they are precluded from recording the births of their children in the Ecclesiastical Registers in this country, and praying for the passing of an Act for the Civil registry of births.

HINDOO POLYGAMY.

Also the following Petitions praying for the abolition of Hindoo Polygamy:—

A Petition of Hindoo Inhabitants of Bengal.

Three Petitions of Hindoo Inhabitants of Hooghly.

MR. GRANT moved that the above Petitions be printed.

Agreed to.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE presented the Report of the Select Committee on the Bill

“to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah.”

IMPRESSMENT OF CARTS (BENGAL.)

MR. GRANT postponed the motion (of which he had given notice for this day) for the first reading of a Bill to amend the law for the impressment of Carts for the use of Troops marching.

CRIMINAL PROCEDURE (BENGAL.)

MR. PEACOCK moved the first reading of a Bill “for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction.” In doing so, he said that he had prepared the Bill on the same principle as the Bill for simplifying the Civil Procedure of India—namely, by reserving, for the present, the question of the amalgamation of the Supreme and Sudder Courts, and leaving the Sudder Courts to exercise the same Criminal jurisdiction as they did at present. Accordingly, he had proceeded with this Code as it had been prepared by the Commissioners.

The Code provided four classes of Courts—Courts of Session; Courts of the Magistrates; Subordinate Criminal Courts of the 1st Class; and Subordinate Criminal Courts of the 2nd Class. First Assistants to Magistrates and Principal Sudder Ameeris were to form the Subordinate Criminal Courts of the 1st Class; and Second Assistants to Magistrates, and Moonsiffs, were to form the Subordinate Criminal Courts of the 2nd Class. The Courts of Session were to exercise original jurisdiction in respect of all offences punishable under the Penal Code, provided that, in any case in which the accused was convicted of an offence which was punishable with death, they should not pass sentence of death, but should refer the case to the Sudder Court. The Courts of Session were also to exercise exclusive jurisdiction in certain specified cases.

Magistrates would be empowered to try all offences not assigned to the ex-