

Saturday, February 2, 1861

***INDIAN LEG.  
COUNCIL  
DEBATES***

***Vol. 7***

***5 Jan. - 25 May***

***1861***

***P. L.***

SIR BARTLE FRERE then moved that Mr. Laing be added to the Select Committee on the above Bill.

Agreed to.

#### ARTICLES OF WAR (NATIVE ARMY.)

SIR BARTLE FRERE moved that the Bill "to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army" be referred to a Select Committee consisting of Sir Charles Jackson, Mr. Erskine, and the Mover, with an instruction to present their Report within six weeks.

Agreed to.

#### MUNICIPAL ASSESSMENT (RANGOON, &c.)

MR. FORBES moved that the communication from the Foreign Department, which was reported this day, be referred to the Select Committee on the Bill "for extending certain provisions of Acts XIV and XXV of 1856, to the Town and Suburbs of Rangoon, and to the Towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners, and for levying rates and taxes in the said Towns."

Agreed to.

The Council adjourned.

*Saturday, January 26, 1861.*

#### PRESENT :

The Hon'ble the Chief Justice, *Vice-President*,  
and C. J. Erskine, Esq.

No other Member of the Council was this day present, and the Vice-President adjourned the Council till Saturday morning, the 2nd February, at 11 o'clock.

*Saturday, February 2, 1861.*

#### PRESENT :

The Hon'ble Sir Henry Bartle Edward Frere,  
*Senior Member of the Council of the Governor-General*, in the Chair.

Hon'ble C. Beadon,	A. Sconce, Esq.,
Hon'ble S. Laing,	and
H. B. Harrington, Esq.,	C. J. Erskine, Esq.,
H. Forbes, Esq.,	

#### LANDS FOR PUBLIC PURPOSES.

THE VICE-PRESIDENT read a message, informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)."

#### LICENSING OF ARTS, TRADES, AND DEALINGS.

THE CLERK presented to the Council a Petition of the British Indian Association, concerning the Bill "for imposing a Duty on Arts, Trades, and Dealings, and to require dealers in Tobacco to take out a license."

MR. LAING moved that the Petition be printed.

Agreed to.

#### STATE PRISONERS.

THE CLERK presented to the Council a Petition of the Bombay Association against the continuance of Act III of 1858 (to amend the law relating to the arrest and detention of State Prisoners).

MR. ERSKINE moved that the Petition be printed.

Agreed to.

#### LICENSING OF ARTS, TRADES, AND DEALINGS.

THE CLERK reported to the Council that he had received a communication from the Commissioner of Pegu, relative to the Bill "for imposing a Duty on Arts, Trades and Dealings, and to require dealers in Tobacco to take out a license."

MR. LAING moved that the communication be printed.

Agreed to.

#### ENGLISH PASSENGERS' ACT.

THE CLERK reported that he had received a further communication from the Home Department, relative to the question of extending the provisions of the Imperial Passengers' Act of 1855, to the carriage of Passengers from India, under the authority conveyed in Section 99 of that Act.

MR. BEADON moved that the communication be printed.

Agreed to.

## PORT BLAIR.

MR. SCONCE moved the second reading of the Bill "to regulate the administration of affairs in Port Blair."

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

## MALACCA LANDS.

MR. SCONCE moved the second reading of the Bill "to regulate the occupation of land in the Settlement of Malacca."

MR. ERSKINE said, he had no wish whatever to oppose the second reading of this Bill. But there were two points which, on a cursory perusal, struck him as requiring some explanation, and he had no doubt that the Honorable Member in charge of the Bill would be able to give it. The first was in Section III which proposed to render cultivators and resident tenants holding lands by prescription subject to a payment to Government of one-tenth of the produce of their lands. It was possible that there might in this Settlement be no cultivators holding by prescriptive title only, and at the same time entitled to exemption from assessment; but if there were any such tenants, he did not see why they should thus be subjected to an assessment of one-tenth of their produce. Again the 6th Section of the Bill proposed to deprive all parties of any claim, on the ground of prescriptive right or of possession, to any forest or pasture land. If there were any persons who now claimed interests in any such land on the ground of prescription or immemorial possession, he did not see why such claims should be summarily barred in this way. This also therefore was a point which seemed to require some explanation.

MR. SCONCE said, the Sections of the Bill to which the Honorable Member had referred, were intended to be strictly based on Act XVI of 1839, which declared the right of Government to assess the whole land situated within the Settlement of Prince of Wales' Island, Singapore, and Malacca.

That Act therefore applied to the land of Malacca generally, and the last Section excepted land occupied, as the words ran, by "such cultivators and resident tenants of Malacca as hold their lands by prescription," and all who so held land were by the same Section "subject only to a payment to Government of one-tenth part of the produce." Except such tenants as were included in the last Section of the Act, all occupants of land were subject to the law as declared in the earlier Section of the Act. The 2nd Section of that Act enacted that, "if any person, except as is provided in the last Section of this Act," (which he, Mr. Sconce, had just read), "shall hold or occupy any land within any of the Settlements aforesaid, not under a grant or title from Government duly registered, and which land has not been declared, by competent authority, free from assessment, such land shall be liable to assessment, and shall be assessed in such manner, at such rate, and under such conditions, as the Collector acting under the instructions of the Governor of Bengal shall determine." It had been his (Mr. Sconce's) purpose, in preparing this Bill, to declare, as was declared in the Act of 1839, what was the liability of all occupants of land, other than those who held by prescription. Section III of the Act went on to declare that, "if any person, holding or occupying land in the manner set forth in the preceding Section, shall refuse to engage for or to remove from the land within one month from the date on which he shall be called upon by the Collector to enter into such engagement or to remove from it," the Collector was empowered to eject such person.

The 5th Section of the Act provided that "after the date on which this Act shall be in force in the Settlements aforesaid, any person desirous of clearing and occupying waste and forest lands for the purposes of agriculture shall make application to the Collector," &c. So that, subsequently to the passing of the Act of 1839, no person could occupy land without applying to the Collector for a lease,

and on his receiving that lease, he could not occupy the land except for twenty years. His (Mr. Sconce's) object therefore, in preparing this Bill, was to protect the rights of all actual occupants of land subject to be assessed according to such rates as the Collector might impose. It was quite possible that the exception in the 2nd Section of the Act, reserving the rights of occupants of land who held by prescription, had not been distinctly brought out in the 3rd Section of the Bill. He had intended to reserve all such rights, as would be seen from the 13th line of the 3rd Section, where the liability was intended to be confined to Section II Act XVI of 1839. The words at the 18th line of Section III of the Bill, which declared that all other cultivators and undertenants should be liable, *as directed in Section II of the Act of 1839*, to be assessed as the Resident Councillor should determine, might probably not be considered sufficiently guarded. By the word "directed" he meant to adopt the restriction of the Section referred to, so as to exclude land declared by competent authority to be free from assessment; but if the words were not sufficiently clear upon this point, they might without objection be amended.

In all other respects, it would be observed that Section III of the Bill reserved all engagements entered into for a specific time and under specific conditions.

It had been his object to adhere to the principles of assessment as settled by Act XVI of 1839, and any doubts that existed might be cleared up in Committee, so that both the former law and the present Bill should conform to the same principles. He believed that these were the two points on which the Honorable Member for Bombay required explanation.

MR. ERSKINE said that apparently the provision to which the Honorable Member for Bengal referred (Section V of Act XVI of 1839) applied only to persons desirous of clearing fresh lands for cultivation, while Section VI of the present Bill

seemed to refer to all forest or pasture lands, though immemorially possessed by the claimants.

MR. SCONCE resumed.—The Act of 1839 excepted all tenants occupying land upon prescriptive titles, so that excluding prescriptive tenants, whose rights were reserved by that Act, the whole remaining land of the settlement became subject to the rules of assessment determined by the Act. Tenants holding prescriptive tenures were specially provided for, and all the land otherwise occupied could be leased only on conditions approved of by the local authorities. As he said before, when the Bill went before Committee, he had no objection to the substitution of any words to declare more fully than he had done the meaning of the Act of 1839.

SIR BARTLE FRERE said, he was not quite certain if he rightly understood the Honorable Mover of the Bill as to the particular object of Section VI. As he (Sir Bartle Frere) understood the case, there were in Malacca great quantities of waste, forest, and uncultivated lands, and there was a great number of squatters, who did not make use of the land for purposes of cultivation, but who, by virtue of occupancy, prevented other people from taking it up for cultivation. It was, therefore, the object of the Bill to restrict that squatter right, and he believed that one of the objections of the Honorable Mover for Bombay was that Section VI of the Bill not only provided for taking away the prescriptive right which any squatter might allege by virtue of occupancy of land which he did not use, but also to take away the right which he might have established to land of which he had made use, but not for purposes of cultivation. He was not sure if he had correctly understood the Honorable Member for Bombay. (MR. ERSKINE.—Yes.) Probably the objection might be met if the Honorable Mover of the Bill consented so to alter the tenor of the 6th Clause, and as to confine its application to those forest and waste lands of which no beneficial occupation could be alleged as conferring a prescriptive title.

*Mr. Sconce*

Mr. SCONCE said, the suggestion just made by the Honorable President was so proper in itself that he (Mr. Sconce) could have no objection to the introduction of any words to preserve existing rights. With regard to the observation respecting squatters, he could only say that, in the papers to which he had had access, he did not find any such fact asserted as that there were squatters, nor did he find any mention made of squatter right. Squatters had been spoken of as holding by a prescriptive right. Now whatever holders of land occupying upon prescriptive titles there might be in Malacca, they hold under the Act of 1839, and they would in like manner hold under this Bill; so that whatever prescriptive right might at present be vested in any party, the same prescriptive right he (Mr. Sconce) now proposed to confirm. Section VI of the Bill needed from him more explanation than he had offered in proposing the Bill for the first reading, and which he had intended, but inadvertently omitted, to offer on that occasion. That Section was in fact based on a judgment of the Supreme Court so far back as 1829, and he had within the last two days added to the papers printed as annexures to the Bill what purported to be an extract from that judgment. The extract ran as follows:—

"It was proved that, in the territory of Malacca, the owners of the soil, and the cultivators of it, are entirely distinct persons, except in and in the immediate vicinity of town; that the owners of the soil cannot eject the cultivator so long as he continues to pay him a certain portion of the produce, generally one-tenth; that the owner of the soil may sell, or otherwise dispose of his interest, without prejudice to the cultivator, and the cultivator *vice versé*; that."

and this, he (Mr. Sconce) thought was the most important point

"in case the cultivator allows the land to lie waste, the owner of the soil may eject him by due process of law; that the fact of lands lying uncultivated for certain periods is evidence of waste; that the periods are:

" For Paddy lands...	...	3 Years.
" Coconut and other fruit trees	3	"
" Gambier	1	"
" Pepper	1	"

In this Act, however, instead of going into details of one or three years, he proposed to place all on the same footing and to give three years' grace. But he had done more. It seemed to him unreasonable to require every man who occupied land in Malacca to cultivate every beegah, as we called it here, in his possession; so that if he had 500 beegahs, and cultivated 420 beegahs, you would leave to him the cultivated land alone and take away the rest from him. It appeared to him (Mr. Sconce) that that would be not only intrusive but injurious. He had therefore added a Section allowing such parties to hold one-fourth more above his cultivation than the law, as interpreted by the Recorder of Malacca, proposed to give him. It might be said that one-fourth was not enough, and he (Mr. Sconce) for his own part was willing to increase the proportion. In preparing this Bill it had been his object to embrace all the points which the local authorities seemed to think should be settled by legislation, with a view to promote the best prosperity of the Settlement. He thought it important that the legislation which they had been pressed to adopt should be as complete as possible. He had nothing further to say with regard to this matter except to repeat his willingness to adopt in Committee any amendment having for its object the protection of any right of prescriptive occupancy which might be considered to be in the nature of an immemorial right vested in the cultivators.

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

#### PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

Mr. FORBES moved that the Council resolve itself into a Committee on the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George," 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.

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

#### PORT BLAIR.

MR. SCONCE moved that the Bill "to regulate the administration of affairs in Port Blair" be referred to a Select Committee consisting of Mr. Beadon, Mr. Harington, Mr. Forbes, and the Mover.

Agreed to.

#### MALACCA LANDS.

MR. SCONCE moved that the Bill "to regulate the occupation of land in the Settlement of Malacca" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Erskine, and the Mover.

Agreed to.

The Council adjourned.

*Saturday, February 9, 1861.*

#### PRESENT :

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

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

#### PEPPER DUTY (COCHIN).

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "to provide for the collection of Duty of Customs on Pepper exported by Sea from the British Port of Cochin."

#### PETITION OF KHOSHAL MUNDUL.

THE CLERK presented to the Council a Petition of the Indigo

Planters' Association, praying that a full enquiry be made into the matters stated in the Petition of Khoshal Mundul, and that the Council will take such measures as may be necessary and expedient to prevent the reception of Petitions containing such unsubstantiated charges against any party, as are put forth in the Petition referred to.

SIR CHARLES JACKSON said that, in rising to move that this Petition be printed and referred to the Standing Orders Committee, he begged leave to make a few observations. Sometime ago, one Khoshal Mundul and others presented a Petition to this Council, containing serious charges reflecting on the character of a gentleman, an Indigo Planter in the Mofussil, Mr. Hills. The Petition charged him with instituting false and vexatious suits against them for rent, without making any demand, and without placing gomashas in the villages to collect them. It also stated that the Petitioners were unwilling to go to the factories of this gentleman to pay in their rents, from fear of ill-treatment there, and of their accounts not being fairly settled, and of full credit not being given for the payments made by them. These, no doubt, were very serious charges against Mr. Hills. That Petition was ordered to be printed on the Motion of his Honorable friend to his left (Mr. Sconce), and the consequence was that we now had a counter Petition, answering *seriatim* those charges, and concluding with a prayer, *first*, that a full enquiry should be instituted into the matter; and, *secondly*, that some course should be adopted to prevent the reception of such Petitions by this Council. Now, although he thought the Petitioners had good ground to complain, he (Sir Charles Jackson) must confess that he could not concur in the prayer of their Petition. *First*, as to the institution of an enquiry, it should be remembered that we had no time to undertake such business. The public would seem to think that we did nothing more than sit here once a week for the purpose of passing laws, and seemed to be unaware