

Saturday, January 19, 1861

***INDIAN LEG.
COUNCIL
DEBATES***

Vol. 7

5 Jan. - 25 May

1861

P. L.

Saturday, January 19, 1861.

PRESENT :

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

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

ADMINISTRATION OF JUSTICE IN
THE SUPREME COURT (BOMBAY).

The VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "for the improvement of the administration of justice and despatch of business in the Supreme Court of Judicature in Bombay."

FINANCES OF INDIA.

The CLERK presented to the Council a Petition from the Bombay Association, relative to the finances of India.

MR. ERSKINE moved that the Petition be printed.

Agreed to.

RECOVERY OF RENTS.

THE CLERK also presented to the Council a Petition from Khosal Mundul and others, of Mouzah Patturghatta Govindpoor, in Zillah Nuddea, praying that Collectors of Revenue may be empowered to receive money tendered by ryots on account of rents due by them to zemindars and others entitled to receive the same.

MR. SCONCE moved that the Petition be printed.

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON, &c.)

THE CLERK reported to the Council that he had received from the Foreign Department a copy of a further communication from the Commissioner of Pegu, relative to the passing of a Municipal Act for the Town of Rangoon.

MR. FORBES moved that the communication be printed.

Agreed to.

PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. FORBES presented the Report of the Select Committee on the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George."

PORT BLAIR.

MR. SCONCE moved the first reading of a Bill "to regulate the administration of affairs at Port Blair." He said that, at this early stage of our connection with the Andaman Islands, the Council probably was hardly prepared to entertain any proposition to legislate for that part of the world. As we all knew, Port Blair was mainly distinguished as the place of residence for convicts who had placed themselves beyond the pale of the law, and it might be doubted whether the other inhabitants of the Islands, the Aborigines, could properly furnish occasion for legislative interference. But nevertheless occasion had arisen for preparing an enactment in connection with that Settlement, and he hoped he should satisfy the Council that the Bill which he was now about to introduce, was not one unworthy of their consideration.

It had lately been considered desirable that free settlers should be encouraged to reside at the Settlement of Port Blair. In one sense, therefore, and that a sense very acceptable to his mind, considering the character of the Settlement and the circumstance that an Officer invested with a kind of autocratic power was there located, it might be said that it was found hard to live in an atmosphere where liberty was so much restrained, and that the Superintendent longed to be associated with men who were free like himself and subject to the same congenial associations. In proposing that parties should be permitted to settle as free residents in Port Blair, it must be understood that they should reside there under

some restrictions. The primary object of the Settlement being to secure convicts sentenced to transportation, it was expedient that those who resorted to the Settlement should live under the surveillance of the official authorities there, and be prevented from interfering with the discipline of the convict establishment, or in any way from facilitating the escape of the convicts.

The Bill which he had the honor to propose consisted of seventeen Sections. The first portion of the Bill would regulate the occupancy of land by free settlers. He (Mr. Sconce) proposed to declare that the whole of the land should be vested absolutely in the Government, and that no possession of land should be acquired, except by an instrument in writing executed by the Superintendent.

Then, again, from the 1st of May next, the Penal Code would take effect throughout that Settlement as it would everywhere else. It seemed desirable, therefore, to establish a tribunal there for the investigation and trial of whatever offences the Penal Code would take cognizance of. Whether we looked to the protection of the free settlers, or to the necessity of adequately providing for the administration of justice as respected the convicts themselves, it seemed to him to be essentially necessary that some legal authority should be constituted in the Settlement. As he understood at this moment, the only written law by which the conduct of the proceedings of the Superintendent of Port Blair was regulated, was Act XVI of 1840, which was entitled "An Act concerning the management of convicts transported to places within the territories of the East India Company." So far, therefore, as respected the discipline to be exercised towards the transported convicts, that law contained ample provision. But he apprehended that it was desirable to follow up the enactment of 1840, and to provide tribunals for the trial of offences, such as murder, that might be committed by the convicts. A convict might commit an offence against another convict, or against a free settler; or offences might be per-

petrated against the Aborigines, or by one free settler against another. In any case the necessity was apparent for the constitution of legal tribunals for the investigation and trial of offences, and the Bill accordingly made provision for this purpose.

Another portion of the Bill applied to communications with the shore by vessels for the landing of passengers or goods, and proposed rules for regulating that communication. Provision was likewise made in respect of vessels leaving the Port, so that they should afford no opportunity for convicts escaping from the Island. The Penal Code declared the unlawful return of convicts from transportation to be an offence, and he apprehended that any one who facilitated the escape of a convict would be punishable as having abetted that offence. So far therefore as the offence was concerned, the Penal Code made ample provision. But it was necessary to pass a law creating the Court by which the offence should be tried.

The latter portion of the Bill provided for the granting of licenses to persons who might choose to reside in the Settlement. The conditions of the license were not included in the Bill, but it would be left to the discretion of the Government to prescribe what those conditions should be.

With these remarks he begged to move that the Bill be read a first time.

The Bill was read a first time.

MALACCA LANDS.

Mr. SCONCE moved the first reading of a Bill "to regulate the occupation of land in the Settlement of Malacca." He said, he need hardly tell the Council the position of the somewhat remote Settlement regarding which he was now about to propose to legislate. It was well known that the Settlement of Malacca was situated in the Straits from which it derived its name. This Settlement was acquired by cession from the Dutch, under a treaty executed in 1824. From March 1825 possession of the Settle-

ment was acquired by the East India Company on the part of the British Government. The Settlement was by no means large in extent; but, if he might judge by the representations which had been made from time to time by those who were best qualified to speak on the subject, it was a Settlement comprising land of the utmost fertility, and offering peculiar advantages to persons desirous of devoting their industry and capital to the development of its resources. The Settlement was no more than forty miles in length, and upon an average about twenty-five miles in breadth, containing somewhat under one thousand square miles. The Settlement included two Districts, one of which was Malacca, and the other was the District of Naning. Both were acquired at the same time, though there was a great difference observable between them in the nature of the tenure under which the land of the two districts was occupied. It was found that the land of Malacca Proper had been all assigned, with the restriction which he would hereafter mention, to certain grantees under some supposed titles executed with the Dutch. These grants were assumed to be a hundred years old, more or less, and the purport of them was, not absolutely to give the grantees a title to the land, but to assign to them the right vested in Government to levy what was considered to be the customary share of the produce, namely, one-tenth, which was due annually to the Sovereign. He did not find that any exact investigation had ever been made as to the legal validity of these grants. A good deal of doubt, it would seem from the papers before him, had been thrown on this matter, but that question was quite immaterial to the present subject. Mr. Fullerton, who was the Governor of the Malacca Settlement in 1826-27, put himself in communication with the grantees; and under the impression that it was important, if possible, to recover the grants, so as to enable the Government to deal with the land in the way they thought most advantageous for promot-

Mr. Sconce

ing the prosperity of the Settlement, Mr. Fullerton redeemed the grants on this understanding. He undertook to pay the grantees rather more than the full annual value of the land. That is, he agreed to pay in money the full equivalent to the tenth of the produce which they had been in the habit of collecting. Almost all the grantees consented to this arrangement. From a Minute recorded by Mr. Fullerton in 1829, he (Mr. Sconce) found that the total sum, which he had bound himself to pay, and on receiving which the grantees bound themselves to relinquish their grants, was 16,270 Sicca Rupees; while there were, as he understood, four or five grantees who did not accept Mr. Fullerton's terms. The whole Settlement had never been surveyed and measured with any great exactitude, and he was therefore unable to say what was the precise extent of land which had been redeemed. On the whole, the land thus acquired seemed to have fallen little short of four hundred square miles; and on the other hand, it was now estimated that the land situated within the grants of the parties who did not surrender their tenures, did not exceed twenty-four square miles. So far, therefore, as the latter was concerned, as he had already stated, it was of no importance, and bore no proportion to the quantity of land actually recovered by the Government. The object of the arrangement made by Mr. Fullerton, therefore, so far as regarded the District of Malacca, was to put Government into possession of all the land as proprietors of the soil, to enable it to levy the usual tenth on the produce of such portion as might be occupied, and to do as it pleased with the waste land.

The District of Naning was not so held. It seemed to have been occupied by cultivators subject to the management of Native Chiefs, who were liable to contribute one-tenth of the produce to Government. But, unhappily, some disagreement arose, as too often did arise, between the assertion made of the authority of Government, and the rights to which the people con-

sidered themselves entitled. Hostilities ensued and the result was, that many lives were lost, and many lakhs spent, until 1832, when these hostilities were brought to a close. Ever since that time the proprietary right of Government had been invariably asserted and allowed. Thus in both districts the position of Government towards the land came eventually to be the same. In Nanning and in Malacca, by virtue of the redemption of the Grants, the Government was entitled to levy one-tenth of the produce of cultivated land and to dispose of the unappropriated waste land in any manner that should seem best calculated to promote its cultivation. Nevertheless, the local authorities had hesitated to give effect to the absolute right acquired over the Malacca land. It happened that, in the redemption deeds, a Clause was added that, if ever the British Government should re-transfer the Settlement to another State, the grantees should be replaced in their original position. Now it appeared to him (Mr. Scone) that this was tantamount to saying that, so long as the Sun and Moon endured, the right of Government to deal with the land should continue. He could not tell with what view the Clause in question had been introduced. Possibly in those days, when the recollection of the restoration of Java and Sumatra was fresh, it might have been thought possible that Malacca also would be given up. But he felt, and he was sure the Council would agree with him, that no such utterly improbable contingency should be allowed to defeat the good government of the Settlement. The whole land comprised within the released grants had absolutely lapsed to Government, and we need not hesitate to assert this totally undisputed right. The proposition which, from time to time, had come up from the Governor of the Straits was to declare the right of Government in the land, and accordingly it was the first object of this Bill so to do. But the Bill at the same time did more. It declared also the right of the parties by whom, for annual money payments, the grants had

been surrendered, to receive in perpetuity these annuities. In this respect he proposed to create no new obligations. These annuities had been paid for thirty-two years, and we had no choice but to perpetuate the payment. It seemed to him, however, that it might be acceptable both to the annuitants and to the Government that the annuities should be bought up, and the claims which the annuitants had upon the Government be thereby at once and for ever discharged. Accordingly a provision to buy up the annuities was included in the Bill. He would repeat that he did not propose to interfere with the land comprised within the unredeemed grants. These estates, as he had already shown, were small in extent, and he thought there would be no advantage in attempting to recover the land for Government. The immediate effect of the proposal now made would be to enable the local Government to deal freely with the land of the released estates. Hitherto, under the supposition that they could not give a perfectly good title to any land taken, they had felt their hands tied. The Bill would so far get rid of that difficulty. But another important object was to change the terms upon which waste land might be conferred on persons desirous to clear and cultivate it. As the law stood, it was complained that Government could do no more than lease the waste land, and he therefore proposed to empower the Government, for such consideration as might be agreed upon, to transfer the land of the Settlement upon a fee-simple title. He believed that the law that required the land to be leased was Act XVI of 1839. He had not seen this Act noticed in any of the papers to which he had access, but the fifth Section of this law, which was as follows, seemed to show upon what policy alone waste land could be assigned :—

“ And it is hereby enacted 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 of Land Revenue, who is hereby authorized to measure and assess the land, and to grant a lease for the same in such manner, and under such conditions, as the Governor of Bengal may from time to time prescribe. And if, by reason of the density of the jungle or other obstacles, it should be found impracticable to cause immediate measurement to be made of land so to be leased, it shall be competent to the Collector to issue to such applicant a permit or written authority, of which the number, date, and all essential particulars shall be entered in a Register to be kept for that purpose, to clear and occupy such land, subject to the conditions on which a lease would have been granted. And on all land occupied under any such permit so issued, it shall be lawful for the Collector to demand and enforce the payment of rent in like manner as if a regular lease had been granted. And the Collector shall, with all practicable despatch, cause all land so occupied to be measured, and after such measurement, the permit shall be called in and cancelled, and in lieu thereof, a lease shall be issued, the term of which shall commence from the date of the permit: Provided, however, that it shall not be competent to a Collector to grant any lease of lands for a term exceeding twenty years, renewable on such conditions as the Governor of Bengal may direct for a further period of thirty years."

Clearly then under the provisions of Act XVI of 1839 no waste land could be granted otherwise than upon a twenty years' lease, renewable for a further period of thirty years, subject, however, to such conditions as the Government might impose. Against this limitation of the power to deal with the land, the late Governor, Mr. Blundell, made repeated remonstrances, and he (Mr. Sconce) would, with the permission of the Council, read an extract of a letter written by that Gentleman. It was as follows:—

"In the other stations in the Straits, forest and waste land is sold outright to individuals at prices varying from 5 to 8 Rupees per acre, and becomes the absolute property of the purchasers. In this manner the Government derive a revenue from the land, while speculators are induced to lay out their capital in bringing the land under cultivation. In Malacca no such benefit can accrue, either to the country or to the revenue, and my object in pressing this subject on the attention of the Legislative Council, is to obtain the means of benefiting one of the Settlements under the Straits Administration. In the Settlements of Penang and Singapore, land being once sold, is free from all taxation, quit rent, or other Government demand. In Malacca, land is subject to a Government demand of one-tenth of the

Mr. Sconce

produce. The effect of enforcing this right of demand has been most injurious to the interests of the Province, and the knowledge of the existence of such a right, and the possibility of its being enforced, naturally deter Capitalists from embarking in agricultural speculations in Malacca. No man will form spice, sugar, or pepper plantations, and lay out his money in mills and drying houses, with a demand of ten per cent. on his produce hanging over him, and so long as this right exists, unknown as it is in the other Settlements under this Government, Malacca can never recover from its present poverty and insignificance."

He would not trouble the Council by reading any further papers on this point. The object simply was to enable the local Government to dispose of the land by an out-and-out sale, and to amend the law in so far as it now withheld that power.

There was only one other matter to which he wished to advert, and for which it seemed necessary to make some provision in this Bill. Twenty years ago or more an attempt had been made to improve the tenure of land in Malacca by commuting the payment of one-tenth share of the produce payable in kind into an equivalent money amount, and certainly he had no objection to offer to the principle of that arrangement. But it appeared that, in giving effect to the commutation, much confusion had resulted. The land supposed to be included within these commutation leases had not been measured or surveyed, and it appeared that the same land was claimed as given to different persons. He could not do better than read to the Council an extract of a letter written three or four years ago by the late Recorder, Sir R. McCausland, in which the evil referred to was fully described:—

"There is, however, a matter of much greater importance to the well-being and prosperity of that Settlement, namely, the state of land tenures. Numbers of persons, Europeans, Natives, and Chinese, are ready and willing to invest their capital in the further cultivation of the land, and working of the tin mines, if they could only obtain titles that would ensure them against disturbance for reasonable terms of years.

"Several cases came before the Court, at its civil sittings, in which it appeared that from the inefficiency of the native surveyors, who were employed at the time of the issuing of the

Commutation Deeds from the Land Office in Malacca, in the year 1837 and the following years, the same lands were included in the maps annexed to the Commutation Deeds granted to different holders, and the confusion of boundaries which had been thus produced, has led to the most serious inconvenience in the transfer of the lands, the titles to which, as demonstrated by the East India Company's Deed and recorded in the Land Office, being thus of little or no real value. The settlement of this question demands immediate attention, for in addition to the uncertainty of title, the confusion of the boundaries is apt to lead to differences, which end in assaits and breaches of the public peace. Nor is it among themselves alone, that the landholders will be content to litigate; they will seek for an indemnity against the losses they incur at the hands of the East India Company by reason of the inaccuracy of their Commutation Deeds; besides that there must be a considerable present loss to the income of the East India Company, by reason of the large quantity of land which is held throughout the Settlement, upon no other title than bare occupancy without payment of any rent, commutation rent, or otherwise, to any person whomsoever."

To meet this difficulty, he (Mr. Sconce) proposed to authorize a survey of all the land already held under leases, and in case of dispute to permit a summary adjudication as to conflicting titles, subject to review in the ordinary Court of judicature.

With these observations he begged to move that the Bill be read a first time.

The Bill was read a first time.

MUNICIPAL ASSESSMENT (RANGOON, &c.)

MR. FORBES moved that 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" be read a second time.

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

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 read a second time.

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

PEPPER-DUTY (COCHIN).

MR. FORBES moved that the Bill "to provide for the collection of Duty of Customs on Pepper exported by sea from the British Port of Cochin" be read a third time and passed.

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

MR. FORBES moved that Mr. Laing be requested to take the Bill to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON, &c.)

MR. FORBES moved that 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" be referred to a Select Committee consisting of Mr. Beadon, Mr. Harington, and the Mover.

Agreed to.

PAPER CURRENCY.

SIR BARTLE FRERE said, he believed there could be but one opinion among the Members of this Council as to the desirableness of having Mr. Laing on the Select Committee on the Bill "to provide for a Government Paper Currency." But that Committee already consisted of five Members, and the Standing Orders did not allow of more than five Members being appointed to a Select Committee. He (Sir Bartle Frere) therefore proposed that the Standing Orders be suspended, to enable him to move that Mr. Laing be added to the Select Committee on that Bill.

MR. HARRINGTON seconded the Motion, which was put and carried.

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.