

Saturday, July 23, 1859

**LEGISLATIVE COUNCIL
OF
INDIA**

VOL. 5

JAN. - DEC.

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MAGISTRATES.

MR. PEACOCK moved that the Standing Orders be suspended to enable the Select Committee on the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate" to report thereon on Saturday next.

MR. FORBES seconded the Motion, which was then agreed to.

STAMPS.

MR. SCONCE moved that the Bill "to consolidate and amend the law relating to Stamp Duties" be referred to a Select Committee consisting of Mr. Harington, Mr. LeGeyt, Mr. Forbes, and the Mover.

Agreed to.

The Council adjourned.

Saturday, July 23, 1859.

PRESENT :

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

Hon. Lieut.-Genl. Sir J. Ontram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson, and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.

LEGISLATIVE COUNCIL.

The following Message from the Governor General in Council was read by the Vice-President.

MESSAGE No. 180.

The Governor General in Council has the honor to forward to the Legislative Council the accompanying copy of a Despatch in the Legislative Department from the Right Honorable the Secretary of State for India, No. 5, dated the 3rd Ultimo, and to request that the Council will be pleased to furnish, for the information of Her Majesty's Government, a report on the practical working of the Standing Rules and Orders of the Legislative Council.

By order of His Excellency the Governor General in Council,

W. GREY,

Secy. to the Govt of India.

*Fort William, }
The 16th July 1859. }*

MR. HARRINGTON moved that the above Message and Despatch be printed. Agreed to.

ABKAREE REVENUE (BOMBAY).

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor General had assented to the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay."

ESTATE OF THE LATE NABOB OF THE CARNATIC.

THE CLERK presented to the Council a Petition of Narrain Doss Gopaul Doss of Madras, praying for the repeal of Act XVI of 1859 (to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic).

MR. FORBES moved that the Petition be printed.

Agreed to.

CIVIL PROCEDURE (SUPREME COURTS).

THE CLERK reported to the Council that he had received, from the Home Department, a copy of a Despatch from the Secretary of State for India, regarding the enactment of a Code of Civil Procedure for the Courts established by Royal Charter in India.

MR. HARRINGTON moved that the Despatch be printed.

Agreed to.

EMIGRATION TO BRITISH GUIANA.

THE CLERK also reported that he had received, from the Home Department, copies of papers on the subject of Emigration on private account from Bombay to British Guiana.

MR. HARRINGTON moved that the papers be referred to the Select Committee on the Bill "to amend the law relating to the Emigration of Native Inhabitants of India to the Island of Mauritius and other places."

Agreed to.

MAGISTRATES.

THE VICE-PRESIDENT presented the Report of the Select Committee

on the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate."

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

MR. SCONCE moved the first reading of a Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)." He said, the Bill to which he now had the honor to invite the attention of the Council had originated at the instance of the Bengal Government, in consequence of the operations for taking land for the Eastern Bengal Railway having been found to be considerably retarded, particularly during the last working season. The evil, or rather the defect, which it was proposed to correct, might be thus shortly stated. It was said that, when the operations of the Railway Company for the taking of the land were finished, that is, when the ground was surveyed and planned and the line marked out, from the time when the proceedings of the Railway Officers for this purpose were closed, up to the time when under the law the land could be taken possession of and the Railway works commenced upon, a period of two or three months must elapse. This was considered by the Government of Bengal and the Railway authorities a sufficient ground for the interference of the Legislature.

There was no intention, he might say, in the Bill, as it now stood, to interfere with the principle of the existing law. It was prepared for the purpose of expediting the process by which the land was taken possession of, in order to carry on the works of the Railway, without prejudice, he believed, to the interests or claims of private individuals.

Under the present law the process followed for the taking of land was this. Under Section IV the Collector was required to cause the land to be marked out and measured, and a plan of the same to be made. Practically, however, the land was surveyed and marked out by the Railway Officers, and on a plan of each section (ordinarily two miles in length) being furnished to the Commissioner, that Officer would proceed to make the detailed measurement of the

land required by Section IV Act VI of 1857. The Railway Authorities had wished that their own survey should be received by the Collector as the basis of his operations. But that survey was made geographically, and furnished no means for the ascertainment of the nature of the land and of the buildings and other property upon it. Therefore, the detailed measurement by the Commissioner was necessary for the distinct specification of the several interests vested in the land to be taken for the Railway. As he had said, the Collector, on being informed that the line had been surveyed and marked out, proceeded to measure. In proceeding to measure, the Collector was required under the general law to give general and special notices, calling upon the persons interested to appear on the expiration of fifteen days from the date of publication of notice, and set forth their interest in the land about to be taken. Thus, first, there was the Railway Officer's survey and marking out; then there was the Collector's detailed measurement, which was usually accomplished by the Ameen attached to the Commissioner's establishment; then there were the notices issued by the Commissioner; and, last of all, the Collector or Commissioner was required to review the measurement proceedings and to adjudicate claims.

The object of the present Bill accordingly was to dispense with a portion of the process now required. It was proposed that the Collector, as soon as he was informed that a line had been surveyed and marked out, should notify to the parties interested that he was about to measure the land, and intimate to claimants that, on the expiration of at least fifteen days from the date of publication of notice, they were required to appear before him and set forth their claims to compensation. A further period of ten days was allowed for the revision of the detailed measurement, after the expiration of which time the Bill proposed that immediate possession of the land might be taken.

In the first instance, then, between the present law and the proposed Bill there was this difference, that in the former the issue of notice followed, and in the latter it would precede, the measurement. But

it was important to observe that, in the whole course of the proceedings taken by the Commissioners, two steps of perfectly distinct characters had to be disposed of; first, the specification of the land, and, secondly, the determination of claims. As the practice now was, all parties seemed to accept the specification, that is, the detailed measurement, as furnishing as clear an exhibition of the condition of the land, as the land itself. It had been found, generally speaking, that in forty-nine cases out of fifty the measurement, as reported by the Surveying Officers, furnished a sufficient basis, without the necessity of inspecting the land, for the determination of the amount of compensation. On that principle, accepting the detailed measurement as a sufficient basis for the award to be made, it appeared to him (Mr. Sconce) that possession of land might be taken under this Bill without detriment to the interests of any other parties, whether occupants, tenants, or proprietors of the land, at the same time that it would secure to them the early payment of their dues, and remove the obstacles which retarded Railway operations under the practical working of the existing law.

A suggestion had been made in the papers which had been referred to him to revert to the old law of 1850, which enabled the Commissioner to take possession of land summarily before detailed measurement. But there was no intention in this Bill to adopt that suggestion. So far as it appeared to him (Mr. Sconce), the completion of the measurement was conclusive authority for the Commissioner taking possession of the land, and he (Mr. Sconce) had no hesitation to adopt the proposition which he had just expressed, that, on that Officer being first satisfied that the measurement was completed, and allowing a further period of ten days to pass after completion, he might be permitted to take possession of the land without detriment to the rights or interests of any private individuals.

As he had said, from two to three months now elapsed before the Railway Officers were enabled to go on with the Railway works after they were ready to go on, and considering the shortness of the working season in Bengal, it became

Mr. Sconce

a matter of urgent necessity to shorten the time which was unprofitably consumed under the provisions of Act VI of 1857. The main object of the Bill was in fact to save time by which no man gained. The rights of occupants or owners of the land did not seem to be in any way protected by the tardier process of the present law. Their rights were sufficiently protected by the specification of the property to be taken, as recorded by the measurement of the Railway Commissioner; and to give them full information of what was going forward, it was proposed that a notification should first be published of the intention to undertake the measurement of the marked out line.

Besides, in addition to the publicity which the survey and marking out by the Railway Officers gave as to their proceedings, a provision was inserted in this Bill, not contained in the Act now in force, namely, that by a notification, the attention of all parties interested should be called to the preliminary survey undertaken by Section XXXIV of that Act.

He would also remark that the proposition now made in fact virtually corresponded with the declared principle in the present law. As he had said, the object of the proposed Bill was to take immediate possession of land on the measurement being finished. So under the present Act, if the Collector and a claimant of compensation did not agree as to amount, and the case was referred to arbitration, the Collector might at once take possession of the land; so that, although arbitration was still pending, and however long it might be pending, possession passed to the Government, and the arbitrators who had to make the award were governed by the measurement record. The same principle might safely be adopted in this Bill, and land be allowed to be taken upon the completion of the detailed measurement.

The Bill was read a first time.

MAGISTRATES.

THE VICE-PRESIDENT moved that the Standing Orders be suspended, in order that the Bill "to amend the law relating to offences declared to be punish-

able on conviction before a Magistrate" might be passed through its subsequent stages. He had mentioned, at the time when he introduced this Bill, that the object of it was not to increase the powers of Justices of the Peace or of Police Magistrates, but merely to provide that certain offences under the Post Office and other Acts, punishable upon conviction before a Magistrate, should not be committed with impunity within the local limits of the Supreme Court, or by European British Subjects in the Mofussil.

As the Bill was not intended to alter the existing law, but only to correct defects in certain Acts, he thought that he was not asking too much of the Legislative Council in proposing that the Standing Orders should be suspended with a view to this Bill being passed through its subsequent stages.

MR. HARRINGTON seconded the Motion, which was then carried.

THE VICE-PRESIDENT said, before moving that the Council should go into Committee upon the Bill, he would request the Clerk of the Council to read the Report of the Select Committee upon it.

The Report was read accordingly.

THE VICE-PRESIDENT then moved that the Council resolve itself into a Committee upon the Bill, 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 any amendment, and, the Council having resumed its sitting, was reported.

THE VICE-PRESIDENT moved that the Bill be read a third time and passed.

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

THE VICE-PRESIDENT moved that Mr. Harrington be requested to take the Bill to the Governor General for his assent.

Agreed to.

LEGISLATIVE COUNCIL.

MR. HARRINGTON moved that the Message from the Governor-General in Council, calling for a report on the

practical working of the Standing Rules and Orders of the Legislative Council, be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Mr. Sconce, and the Mover, with an instruction to report thereon on an early day.

Agreed to.

NOTICES OF MOTIONS.

MR. HARRINGTON gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," and (following the course adopted with respect to the Civil Procedure Bill) he proposed that the consideration of the Bill in Committee on that day should not extend beyond Section 108 Chapter X. In the event of any Honorable Member intending to move an amendment of any of the Sections within the limit mentioned, he ventured to hope that, as a matter of convenience to the Council, notice of the same would be given to the Clerk of the Council in time to admit of its being printed and considered before the next meeting of the Council.

MR. LEGEYT gave notice that he would, on the same day, move the first reading of the following Bills, namely:—

A Bill to extend to India the provisions of Sections LII to LV of the English Passengers Act 18 and 19 Vic. c. 119.

A Bill to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the Jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil); and

A Bill to amend Act XXXIV of 1854 (for regulating the establishment and management of Electric Telegraphs in India).

MR. HARRINGTON gave notice that he would, on the same day, move the first reading of a Bill to amend Act XVII of 1854 (for the management of the Post Office, for the regulation of the duties of Postage, and for the punishment of offences against the Post Office).

The Council adjourned.

Saturday, July 30, 1859.

PRESENT :

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

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq., Hon. Sir C. R. M. Jackson,
Hon. H. B. Harington, P. W. LeGeyt, Esq.,	and A. Sconce, Esq.

MAGISTRATES.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor General had assented to the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate."

MARKETS.

THE CLERK presented a Petition from certain Native Inhabitants of Bengal against the Bill "for regulating the establishment of Markets."

MR. SCONCE moved that the petition be referred to the Select Committee on the Bill.

Agreed to.

JAMSETJEE JEJEEBHOY BARONETCY.

THE CLERK reported to the Council that he had received, from the Home Department, a copy of a Despatch from the Secretary of State for India returning the Jamsetjee Jejeebhoi Baronetcy Bill in order that it might be remodelled consequent on the death of Sir Jamsetjee Jejeebhoi.

OATHS AND AFFIRMATIONS.

THE CLERK also presented a communication from the Government of the North-Western Provinces regarding Oaths and Affirmations.

MR. HARRINGTON moved that the communication be printed.

Agreed to.

PASSENGERS.

MR. LEGEYT moved the first reading of a Bill "to amend the law relating to the carriage of Passengers by Sea." He said, the object of this Bill was to extend the provisions of a portion of

the Act of Parliament of the 18 and 19 Vic. c. 119 to vessels sailing from Ports in British India. The provisions of that Act did not include vessels sailing from any Port in British India and carrying Native Emigrants as Passengers. A case had lately happened at St. Helena of a vessel which had run on shore, and was consequently unable to proceed on her voyage, and great difficulty might have been experienced by the authorities as to how the Emigrants were to be dealt with. But the difficulty did not arise in consequence of the Master of that vessel having made arrangements at his own expense for at once forwarding the Emigrants to their destination by another vessel. Still it had been pointed out that Masters of vessels might not always be found to act in the same manner, and it had been thought expedient to take advantage of Section XCIX of the English Passengers Acts (18 and 19 Vic. c. 119), which authorized the Governor General of India in Council to enact by a local law that any part of the said Act should be made applicable to vessels sailing from Ports in British India and their passengers.

This Bill had accordingly been prepared to guard against inconvenience likely to arise from accidents which were incident to voyages by sea, by making Sections LII to LV of that Act so applicable.

Section I enumerated the voyages from certain Ports in India which were to be regulated by the Bill; Section II empowered Governors or Consuls to pay expenses of taking off passengers at sea; and Section III empowered them to send on passengers if the Masters failed to do so; while Section IV made the expenses incurred for the above purposes a Crown debt.

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

The Bill was read a first time.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

MR. LEGEYT moved the first reading of a Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the