

Saturday, July 16, 1859

LEGISLATIVE COUNCIL
OF
INDIA

VOL. 5

JAN. - DEC.

1859

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Saturday, July 16, 1859.

PRESENT :

The Hon'ble Barnes Peacock, *Vice-President*,
in the Chair.

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

CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received from the Home Department, for consideration in connection with the Code of Criminal Procedure, copies of papers regarding the system of appeal in Criminal cases.

MR. HARRINGTON moved that the above papers be printed.

Agreed to.

ELECTRIC TELEGRAPHS.

THE CLERK also reported that he had received, from the Home Department, a copy of a communication from the Bombay Government, relative to a proposed amendment of Act XXXIV of 1854 (for regulating the establishment and management of Electric Telegraphs in India).

MR. LEGEYT moved that the above communication be printed.

Agreed to.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYT presented the Report of the Select Committee on the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay."

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT also presented the Report of the Select Committee on the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a Fund for Municipal purposes in the Town of Bombay)."

BILLS OF EXCHANGE.

MR. HARRINGTON moved the second reading of the Bill "for declaring the law in relation to Bills of Exchange

and Promissory Notes becoming payable on days generally observed as Holidays."

MR. PEACOCK said, it was not his intention to oppose this Bill at the present stage. But he was not quite sure as to the soundness of the principle of the Bill. He was particularly doubtful as to the last Clause, which declared that "the words 'Bill of Exchange,' as used in this Act, shall include Bank Post Bills and all Native Drafts or Hoondees requiring by law presentment and notice of dishonor." He did not know what Native Drafts or Hoondees required by law presentment or notice of dishonor. If there were any, he did not think it right that they should be governed by the English law applicable to Bills of Exchange and the like. For instance, Section IV provided that, if a Bill fell due on Christmas Day or on Good Friday, it should be payable on the day preceding. Now Mahomedans and Hindoos did not recognize Christmas Day or Good Friday, because they did not observe them as holidays; and it would be hard to compel them to do so.

Then there was another objection as to Bills and Promissory Notes becoming due on the day preceding those on which the Government Public Treasury would be closed. There were sometimes very long holidays occurring, and the Public Treasury might be closed for many consecutive days, in which case Merchants and others would be compelled to pay perhaps a fortnight before the Bill fell due; and, although the Treasury might be closed on those days for the convenience of the native clerks, Merchants and others might prefer to keep their Offices open, in which case he could not see any sufficient reason for compelling them to pay so much earlier than the time at which the Bill would be due in ordinary course. There would also be a difficulty as regards the Doorgah Poojah Holidays. There were one or two days which intervened between the Doorgah Poojah and the Luckee Poojah, which were not even native holidays; and if the Treasury, as he believed had generally been the case, were closed from the commencement of the Doorgah Poojah till the end of Luckee Poojah, Bills becoming due during that interval would become pay-

able on the day preceding that on which the Doorgah Poojah holidays commenced. He believed it was the practice among Merchants and Bankers to open their Offices at least on the intervening days, and he thought it would be rather hard to make it obligatory on persons to pay their drafts a fortnight before they fell due.

He threw out these suggestions for the consideration of the Select Committee to whom the Bill would, in due course, be referred, and reserved to himself the right of opposing the Bill, if necessary, at a future stage. He was disposed to think at present that it would be better to leave the matter to be settled by the custom and usage of Merchants.

MR. HARRINGTON said, at the time he prepared this Bill doubts similar to those which had been expressed by the Honorable and learned Vice-President, as to whether it would be right to apply its provisions to Native Hoondees, had occurred to him also, but as he could discover no reason why such Hoondees should not be included, he thought it better to make the Bill general. Should the Council allow the Bill to be read a second time, its publication would doubtless be followed by representations from Native Bankers and others, which would assist the Council in determining whether the provisions of the Bill should be made applicable to all Bills of Exchange alike, whether English or Native, which required presentment and notice of dishonor, or whether their operation should be confined to Promissory Notes and Bills of Exchange, requiring to be governed by English law; and any alterations in the Bill which might be considered necessary might then be made. He (Mr. Harrington) had made enquiries on the subject, and he found that the practice amongst Native Bankers was not at all uniform. For instance, he was told that some Native Bankers were in the habit of cashing Hoondees which fell due on a native holiday on the day preceding, if the payee happened to be a friend or a countryman; but that, if he was not either one or the other, they would not cash the Bill until the day after. It appeared to him that such a state of things was not desirable, and that it would be better to have a fixed law for all classes. He had therefore

made the Bill of general application. It seemed to him that it was always better to draw a Bill as large as possible in the first instance, though its provisions might afterwards require to be considerably narrowed. This could always be done without any difficulty; whereas, if a Bill underwent much enlargement in Committee, it must either be republished, which caused delay, or it was passed in a form which might make its provisions applicable to many classes whose interests not being affected by the Bill at the time of its publication after the second reading, they had not considered it necessary to take any notice of it. This was obviously objectionable.

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

SALT DUTY (MADRAS).

MR. FORBES moved the second reading of the Bill "to establish a Duty of Excise on Salt manufactured in the Presidency of Fort St. George."

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

STAMPS.

MR. SCONCE said that, before making the Motion, of which he had given notice, for the second reading of the Bill "to consolidate and amend the law relating to Stamp duties," there were one or two points on which he desired to say a few words with regard to Schedule B, which contained the specification of duties chargeable on Law Papers. He alluded to the effect produced by recent legislation on the receipt of Revenue derived from Stamps.

It would be in the recollection of the Council that, by Act VIII of 1859, the practice formerly in force of requiring the presentation of every piece of evidence, and the nomination of every witness, to be effected by the use in each case of a separate Stamp, had been discontinued. He did not look back with regret to the change thus effected; he conceived that the Council was wisely reluctant to continue the system which the new law had superseded. But at present it was simply his purpose to show the result which

was likely to follow from this change of the law.

He had ascertained from the suits decided in the Courts of the Principal Sudder Ameen and the Sudder Ameen of the 24-Pergunnahs, for the two months of March and April last, that on an average the Stamp paper supplied in those suits for the purposes above adverted to, that is, to cover exhibits and support the nomination of witnesses, amounted in each case to eighteen Rupees. Now it appeared that in Bengal the number of suits exceeding the value of three hundred Rupees, to which the old law was applicable, amounted to about four thousand a year; and thus, as the loss of Stamp Revenue in each suit appeared to be on an average eighteen Rupees, the whole loss for the four thousand suits should amount to about seventy-two thousand Rupees per annum.

Then as to the operation of the Rent Act X of 1859, the loss which would arise to Government by the transfer of such suits from the Civil Courts to the Revenue Courts would be as follows. Taking the average number of these suits filed in Moonsiffs' Courts to be fifteen thousand a year, and the average Stamp Revenue on each suit to be four Rupees, the amount of Revenue given up would be about sixty thousand Rupees.

There would be a similar loss of Revenue on account of suits disposed of by the Principal Sudder Ameens to the extent of about twenty-four thousand Rupees.

On the whole, therefore, he estimated that the loss of Stamp Revenue to be anticipated from recent legislation, speaking in round numbers, would somewhat exceed a lakh and fifty thousand Rupees. Partly to meet that deficit, and also to increase the general Revenue, he had proposed to extend the liability to the payment of Stamps to certain suits which had hitherto been exempted, that is, to suits decided by Moonsiffs. As the Bill now stood, Stamps were proposed to be levied on all petitions, and on copies of decrees, in regular suits exceeding fifty Rupees.

There was one other matter which he felt it necessary to mention. Under Act VIII of 1859 the Courts had the discretionary power to receive deeds written on plain paper, but for which a

stamp was requisite, after the lapse of any period from the date of execution; whereas the present Bill proposed to enact that no deed, which was required to be stamped, should, if unstamped, be admissible in evidence after three months from the date of execution. He had not adverted to the special provision relative to this matter as made in Act VIII of 1859, before he had submitted the present Bill for a first reading, and no doubt the point would in due time receive the attention of the Council.

These were the only points to which he thought it necessary to allude just now, and with these observations he begged to move the second reading of the Bill.

MR. LEGEYTT said, it appeared to him that the Bill was no improvement upon the existing Stamp Law of Bombay. But he would reserve his objections till a future stage.

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

MAGISTRATES.

MR. PEACOCK moved the second reading of the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate."

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

OATHS AND AFFIRMATIONS.

MR. FORBES said, the Council would remember that, when he moved the second reading of the Bill "concerning Oaths and Affirmations," it was decided that, before the Council was pledged to the principle of the measure, the opinions of all classes throughout the Empire should be invited, and certain questions were circulated from the Council, with the view of eliciting what was the general feeling regarding the repeal of Act V of 1840, and the enactment of a law to require that all witnesses should be examined on whatever oath might be most binding on their consciences. The replies to these questions were as yet by no means complete, and in those that had been received, as might have been expected,

Mr. Speaker

both sides of the question were supported.

He should have waited until the whole series of replies was complete, before proposing to the Council to adopt any final measure regarding this Bill; but that in the Despatch from the Secretary of State, which had lately been laid before the Council by the Government of India, although no decided opinion was expressed, there was a very clear intimation that the measure was **not in accordance with the views** entertained by the Government at Home, and there was a probability that, even if it became law in India, the Secretary of State would exercise regarding it his undoubted right of veto.

After giving the subject every consideration, it had appeared to him to be inexpedient that he should further occupy the time of this Council in the consideration of a measure which, after all, would not become the law of the land, and that it was his duty to ask leave to withdraw a Bill which, whatever might be his own conviction of its value, would not, as was now evident, ever come into practical operation.

He hoped that the Council would acquit him of having needlessly occupied their attention with the consideration of a measure which he had no reasonable hope of carrying. He was not without very able support when the Bill was introduced, and the names of some of the most distinguished men in India were to be found among those who had since declared in its favor. He had brought the measure forward from a conscientious belief that it was wanted, and he now asked leave to withdraw it, not because his own opinion had changed, but because he considered that it would not be paying the Council the respect which he always desired to show to it, if he were to continue to press on its attention a measure which there was no probability would ever be in actual operation.

Agreed to.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYT moved that the Standing Orders be suspended, in order that the Bill "to amend the law for the realization of Revenue from Ab-

karee in the Island of Bombay" might be passed through its subsequent stages.

Agreed to.

MR. LEGEYT then moved that the Council resolve itself into a Committee on the above 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 after a few verbal amendments, and, the Council having resumed its sitting, was reported.

MR. LEGEYT moved that the Bill be now read a third time and passed.

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

MR. LEGEYT moved that Sir James Outram be requested to take the above Bill to the Governor-General for his assent.

Agreed to.

MAGISTRATES.

MR. PEACOCK moved that the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate" be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

BILLS OF EXCHANGE.

MR. HARINGTON moved that the Bill "for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as Holidays" be referred to a Select Committee consisting of Mr. Peacock, Sir Charles Jackson, Mr. Sconce, and the Mover.

Agreed to.

SALT DUTY (MADRAS).

MR. FORBES moved that the Bill "to establish a duty of excise on Salt manufactured in the Presidency of Fort St. George" be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

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