

Saturday, July 6, 1861

***INDIAN LEG.
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of 1860 (for the registration of Literary, Scientific, and Charitable Societies)" be referred to a Select Committee consisting of Mr. Erskine, Mr. Seton-Karr, and the Mover.

Agreed to.

EMIGRATION (SEYCHELLES).

MR. FORBES gave notice that he would, on Saturday next, move the first reading of a Bill relating to Emigration to the British Colonial Dependency of Seychelles.

The Council adjourned.

Saturday, July 6, 1861.

PRESENT :

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

Hon'ble Sir H. B. E. Frere, Hon'ble Major-General Sir R. Napier, H. B. Harington, Esq., H. Forbes, Esq.,	Hon'ble Sir C. R. M. Jackson, and W. S. Seton-Karr, Esq.
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INCOME TAX.

THE CLERK reported to the Council that he had received a communication from the Bombay Government to the address of Mr. Erskine, regarding a proposed amendment in Act XXXII of 1860 (for imposing duties on profits arising from property, professions, trades, and offices).

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

RELIGIOUS ENDOWMENTS.

THE CLERK reported that he had received a communication from the Home Department forwarding a further despatch from the Secretary of State for India on the subject of the repeal of Regulations XIX. 1810. of the Bengal Code and VII. 1817 of the Madras Code, relative to native religious endowments.

SIR BARTLE FRERE moved that the communication be printed and re-

ferred to the Select Committee on the Bill to repeal those Regulations.

Agreed to.

MINORS.

THE CLERK reported that he had received a communication from the Home Department forwarding certain papers from the Government of the North-Western Provinces regarding the practical working of Act XI. of 1858 (for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal).

MR. HARRINGTON moved that the communication be printed.

Agreed to.

VILLAGE WATCHMEN.

THE CLERK reported a communication from the Bengal Government to the address of Mr. Seton-Karr, forwarding the opinions of the local officers on the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the territories under the Government of the Lieutenant-Governor of Bengal."

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

RECOVERY OF RENTS (BENGAL.)

THE CLERK reported a communication from the Bengal Government to the address of Mr. Seton-Karr, forwarding, with reference to the Petition presented to the Legislative Council by certain Zemindars and others of Nuddea and to the Bill before the Council "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)", a report from the Board of Revenue on the subject.

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

REGISTRATION OF ASSURANCES.

THE CLERK reported a communication from the Bengal Government to the address of Mr. Seton-Karr, regarding the Bill "to provide for the Registration of Assurances."

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

EXECUTION OF PROCESS (STRAITS SETTLEMENT).

MR. FORBES said, two or three weeks ago he had the honor to present to the Council a Report by the Select Committee on the 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)." The Bill came before a Committee of the whole Council last Saturday, and a discussion arose out of some remarks of the Honorable and learned Judge opposite (Sir Charles Jackson), which had led him to bestow a more careful examination on the papers connected with the Bill; and he thought that it would be better if the Bill were referred back to a Select Committee for further consideration. He therefore moved that the Bill be referred back to a Select Committee consisting of Mr. Harington, Sir Charles Jackson, and the Mover.

Agreed to.

EMIGRATION TO SEYCHELLES.

MR. FORBES moved the first reading of a "Bill relating to Emigration to the British Colonial Dependency of Seychelles." In doing so, he said that so many Bills for permitting emigration to the British Colonies had from time to time been brought in, that there was little to be said on introducing each new measure, and it had been of late the practice to preface a motion for their being read a first time with hardly any remark at all. This practice he (Mr. Forbes) proposed to

follow on this occasion and he would only remind the Council that the Seychelles dependency consisted of about thirty islands, lying north of the Mauritius and distant about 800 miles. They were first occupied by the English on the capture of Mauritius in 1810 and were formally ceded to England by the treaty of Paris in 1815. They were dependencies of the Mauritius and were subject to the Government of that Colony. They had excellent harbours and enjoyed an entire immunity from the hurricanes which caused such damage to property and shipping at the Mauritius. It was only about fifteen of the islands that were of any importance and were cultivated, and of these Mahé was the largest and contained about 30,000 acres, the others averaged from 120 to 8000 acres. The soil in the vallies was very rich and produced all tropical produce, and it was for the purpose of cultivating these vallies that application was now made by the Mauritius Government for leave to promote emigration from India. The Secretary of State had signified his approval of the measure, and it was at the request of the Government of India that the present Bill was brought in. The Bill extended to the Seychelles dependencies Act XV of 1842 which was the law under which emigration to the Mauritius was now carried on, and included the provisions of the Acts passed for Calcutta, Madras, and Bombay regarding the countersignature of the Protector of Emigrants to the emigration certificate of each emigrant. A Section had been added to provide for emigrants to the Seychelles being taken to the quarantine station of Mauritius in case of sickness breaking out on board the vessel on which they might be, and in that case an option was to be given to them to remain at Mauritius or to proceed to Seychelles as they might please.

The Bill was read a first time.

SETTLEMENT OF ENAMS.

The Orders of the Day being read for the second reading of the Bill "to

facilitate the adjustment of unsettled claims to exemption from the payment of the Government Land Revenue in the Presidency of Bombay, exclusive of Sind, and to regulate the succession to and transfer of lands wholly or partially exempt from the payment of such Revenue"—

SIR BARTLE FRERE said, it had been his intention, on behalf of the Honorable Member for Bombay, who was unfortunately prevented by illness from being present to-day, to have moved the second reading of this Bill. His Honorable friend would not have deputed this duty to any else, had he not been aware of the great anxiety of the Bombay Government for the passing of this Bill as speedily as possible; but as he understood some Honorable Members might prefer that the second reading should not be proceeded with to-day in order that they might become better acquainted with the subject and be better able to discuss the principle of the measure, he would leave it to the Council to decide whether to proceed with the second reading of the Bill to-day, or leave it to the Honorable Member to do so next Saturday.

THE VICE-PRESIDENT said, the second reading of this Bill stood over on a former occasion at his request, because he had not been able to devote sufficient time to its consideration. Last Saturday the consideration of the Bill was again postponed, not at his request, for he had been prevented from attending the Meeting of the Council on that day, but, as he had been given to understand, for his convenience. He was now fully prepared to enter upon the consideration of this Bill unless any Honorable Member desired it to stand over.

SIR BARTLE FRERE said, as no such desire had been expressed by any Honorable Member, he begged to move the second reading of the Bill.

MR. SETON-KARR: Sir, with reference to the postponement of this Bill, and on consideration of the interesting and important papers connected with it, I do not wish to give a silent vote on the second reading. No one can rise

from a perusal of these papers without feeling convinced, that the main object now should be to strengthen the hands of the Bombay Government, and to put an end to harassing and vexatious enquiries into titles.

The proceedings of the Enam Commission have now been going on for seventeen years, and during the last ten years they have been in full and active operation. The cost has been two and a quarter (2¼) lakhs of Rupees a year. It is too late to enquire whether the proposed Bill will be regarded by the natives as an act of political expediency, or as one of pure justice: or what effect it will have on those whose claims have already been adjudicated, and who, therefore, cannot come forward to claim the benefits of a summary settlement. The time for that is past. The thing now to be done is to bring matters to a conclusion. In this view, the main principles of the Bill seem to me unobjectionable. It is proposed to give holders of Enam lands the option of a summary settlement, to confirm the tenure, to fix a quit rent and a Nuzzerana in perpetuity, and to recognise the power of holders to adopt sons and to transfer or devise such lands, as well as to uphold succession to collaterals.

I see no harm in casting the burden of proof on the person claiming a formal adjudication, neither is there anything to object to in the cases proposed for exception in the Bill; namely, those of lands held under treaty, of Surinjams or minor political tenures, of lands held on service tenure, and of lands already adjudicated as not heritable.

But there are other points of principle as well as of detail, which require serious consideration, or even amendment. Sir, premising that I hope the Revenue Survey alluded to in Rule I, Section II, will progress with speed and certainty, I think the provision of Section III open to objection, regarding the rightful owner of the land; and the nature of the possession, when a title shall be established under Section VI, is somewhat without value. In such cases there is no power to adopt

or to transfer or to devise the lands ; and in case of transfer to persons, not heirs by actual descent, the land becomes liable to the full assessment. Now, our object should be to make lands as unfettered and as valuable for sale or transfer as possible, and this object is certainly defeated by this Section.

Next, the proviso for demanding a deposit of one-fourth of the annual assessment, and security for payment of the remainder, under Section VII, seem somewhat harsh and unnecessary. Government is as able to compel compliance with this demand, after adjudication on the point of title, as before, and the proviso will be needlessly harassing to the holders of lands.

Section XIII also requires some further provision for the regular and speedy enquiry into all these claims. It is true that this Section empowers the Collector to serve notices on Enam holders as to whether they claim enquiry, and to demand returns to be furnished within two months. But Collectors may be dilatory or over-worked, or may be shifted unavoidably, and the issue of notices and the registry of claims would fall into arrears. What is wanted is, that holders of lauds may have the option of coming forward themselves and registering their claims, either to formal adjudication or summary enquiry ; and I should like to see a limit of three years fixed for this object, as suggested in some of the papers.

The Section regarding the precise tribunal for appeals is also open to question.

Sir, these are the main points in the Bill which demand strict scrutiny, and there is one other point on which I should be glad of some explanation ; namely, as to the precise meaning of the words "public officers authorised by the British Government to have charge or custody of books and records" in Clause 13 of Section XIII. Are these persons analogous to the *putwaraes* and *kanoongoes* on this side of India, or is the term to be restricted to Collectors and other European officers? I shall be glad if the term can be more accurately defined.

But, with these exceptions, I think the Bill entitled to the support of the Council.

There never was a case in which the legal maxim could be of greater truth or more instant application, *Interes reipublice ut sit finis litium*. I can only judge here from my experience of native feeling in Bengal. With what avidity and alacrity would such a summary settlement as is now proposed, have been accepted by the natives of Bengal some twenty years ago ! It was entirely owing to the want of such a provision that we, in Bengal, had incurred considerable expenditure, introduced complications into claims for real property, engendered irritation, and confirmed discontent. No native connected with landed interest feels any grievance comparable to the grievance consequent on the resumption laws.

Looking, therefore, to the statements made in the elaborate papers appended to the Bill ; to the wise and judicious remarks of the Honorable the Governor of Bombay and his colleagues ; to those of the Members of the Supreme Government and of the Secretary of State ; and to the paramount object which this Council should have at heart ; I shall, subject to a fair revision in Committee, support the main principles, and vote for the second reading of this enactment, as one well calculated to guard the rights and interests of an important section of the native community as well as to provide for the just and lawful dues of the State.

THE VICE-PRESIDENT said, it was not his intention to offer any opposition to the second reading of this Bill. He thought the general principles of it were fair and just, and he quite agreed with the Honorable Member who had last spoken that it was most desirable to get rid as soon as possible of these harassing and vexatious enquiries. But there were one or two points in respect to which, by voting for the second reading, he did not wish to be bound when the Bill came to be considered in Committee.

With regard to the second Clause of the first Section, the following were

some of the cases which would be excepted from the operation of the Bill :—

“Lands granted or held as jagheers or surinjams or on similar political tenures, which shall be held for such time and in such manner as may be in accordance with the existing rules laid down by Government for the regulation of such holdings.”

It was to the words printed in italics that he took exception. He was not quite certain whether the meaning of this provision was that lands of this description should be held subject to such rules as the local Government should make respecting them, or that those lands had been granted on the condition that they should be so subject. If it was merely a description of the lands, then he had no objection to the provision, though in that case some words were necessary to make the meaning quite clear. But if it meant that lands already granted or held as jagheers or surinjams or the like should be held subject to such rules as the local Government might now or at any future time appoint, he thought, that that would be unjust, particularly if the lands should have been held for some time. He should therefore object to that Clause and would propose its omission. But that was a matter which would be considered by the Select Committee, and every Honorable Member would be at liberty to discuss it when the Bill should come before a Committee of the whole Council.

The next point to which he would direct the attention of the Council was the 3rd Section of the Bill, to which the Honorable Member for Bengal had already alluded. He (Sir Barnes Peacock) must observe that he did not read this Section in the way that the Honorable Member had read it. He (Sir Barnes Peacock) read it the other way ; and as he understood it, it provided that an adjustment made with the holder should be binding on the rightful owner, but that it should not bar him, his heirs and assigns, from any rights or remedies either at law or in equity to which he or they would be entitled against the holder, his heirs

and assigns. [Mr. Seton-Karr—Yes, it was a mistake.] Now he would take the case of a mortgagee in possession. In a subsequent part of the Bill he found that a mortgagee in possession was considered a holder. If so, he did not see the justice of making an adjustment entered into by such a mortgagee binding on the mortgager, or making the latter a party to any separate arrangement entered into by the former. He thought that some Clause might be introduced, providing that notice should be served on the owner whenever practicable, and that if the owner was not known, then probably a notice served on the holder should be sufficient, and the holder deemed to be owner for all the purposes of this Act.

Then Section IV provided as follows :—

“Lands held partially or wholly exempt from the payment of land revenue, and already formally adjudicated to be so continuable hereditarily in perpetuity, are to be henceforth recognized, so far as the rights of Government are concerned, as the heritable and also the transferable property, not only of the actual descendants of the person to whose descendants inheritance may have been limited by the terms of the said adjudication, but also of all his legal successors by inheritance, including heirs by collateral succession and heirs by adoption, and their assigns ; and the right of Government or its officers to question the title to possession, or to exemption from the payment of land revenue, of any holder of the said land already so adjudicated to be heritable in perpetuity, on the ground that he does not belong to the family to which title is restricted by the adjudication, is hereby given up, and, in consideration of these concessions, all lands already so adjudicated to be heritable as aforesaid, are henceforth to be held subject to the payment to Government of an annual succession and transfer Nuzzerana, calculated at the rate of one anna for each Rupee of the assessment of the land, ascertainable as provided in the Rules of Section II of this Act, which Nuzzerana is to be in addition to the partial assessment, if any, ordered by the terms of the formal adjudication under which the land has already been declared to be continuable.”

Now this Act was intended for the purpose of compromising various claims. But the above Section gave the Government the power of saying, “We will give you rights beyond what you have, and, in consideration of these rights, we propose to levy from you an

assessment to which, according to the adjudication, we have no right." Now he thought that that would not be a compromise. But supposing the holder of the land which had been adjudicated upon were to say, "I am quite content with the terms of the adjudication, and I do not wish my lands to be made heritable by and transferable to others than those to whom succession has been restricted under the adjudication." He (Sir Barnes Peacock) thought that an option should be given to the holder whether to accept or not the enlarged right of succession and transfer, for which he would have to pay. That also was a matter upon which no Honorable Member ought to be bound by voting in favor of the second reading of the Bill.

Then with regard to Section VII, the Honorable Member for Bengal rather objected to requiring a party to make a deposit of one-fourth of the annual assessment, and give security for the payment of the remainder. Clause I provided as follows :—

"When the holders of lands held wholly or partially exempt from the payment of land revenue, demand a trial and adjudication of their title under the provisions of Section VI of this Act, they shall be required to deposit forthwith a sum equal to one-fourth part of the annual assessment of the land ascertainable according to Rules 1 and 2 of Section II of this Act, and thereafter to continue to pay a fourth of the said assessment, as it would become due from the date of such demand for trial, until the date of such adjudication, if the land were fully assessed to the land revenue, and to furnish satisfactory security for the payment of the remaining three-fourths thereof. In case of their failure to prove the title to exemption asserted by them, and in default of their making such deposits, and furnishing such satisfactory security, the full assessment of the land, which is to be the subject of inquiry, shall be levied, pending the adjudication."

As he understood that Clause, persons claiming exemption were required to pay down forthwith one-fourth of the assessment ascertainable under certain rules, and to continue to pay this one-fourth annually till the case was adjudicated upon, and to give security for the payment of the remaining three-fourths. Now he saw no

Sir Barnes Peacock

hardship in this. *Primâ facie* all lands were liable to assessment, and the principle of this Bill was that the *onus probandi* should lie on the party who claimed exemption. He thought it very fair on the part of the Government to give the holder the opportunity of holding his lands in perpetuity. If the party was unwilling to pay the one-fourth, the Government had a full right to assess the land with the full assessment; and if the claim should be adjudicated in favor of the claimant, Government would be bound by Clause II to return the whole amount of the deposit with five per cent. interest from the date of the deposit to the date of repayment. The Government had no wish to levy the full assessment at once. They said, on the contrary, "Go on paying one-fourth till the case is decided, and give security for the remaining three-fourths; and if the adjudication be ultimately in your favor, we will return the money with five per cent. interest. If you fail to make the deposits and furnish satisfactory security, then we shall at once assess you in the full amount." He saw nothing unreasonable in this. The principle to which the Honorable Member for Bengal did not object, was to throw the burden of proof on the holder; and he (Sir Barnes Peacock) thought it a very reasonable demand to require the party to make a deposit of only one-fourth and to give security for the remaining three-fourths, the Government being bound, in the event of the adjudication being adverse to them, to refund the deposit with five per cent. interest.

The only other Clause upon which he wished to remark was Clause I of Section XIII to which the Honorable Member for Bengal had also alluded. That Clause empowered Collectors to serve holders of land claiming exemption not yet adjudicated upon, with notice requiring them to state whether they demanded an enquiry instead of accepting the compromise. He saw no objection to adopting the suggestion of the Honorable Member, but that was a matter which could be very well considered by the Select Committee.

The object of the Clause, as he understood it, was simply that parties claiming exemption might know that their lands came under this Act. But if holders of land wished to come forward themselves and to bring their cases within the Act, he saw no objection to give them the option.

On the whole, he should vote in support of the second reading of the Bill, leaving it to the Committee of the whole Council to object to any of its details after the Bill had been considered by a Select Committee.

SIR BARTLE FRERE said, as the Council did not object to the principle of the Bill, he should have very little to say with regard to the matters of detail which had been commented on by the Honorable Members who had spoken on the subject. He would briefly state the answer which he thought would have been given by his Honorable friend to the objections which had been taken to some of the details of the Bill.

With regard to the objection to the second Clause of Section I, he might mention that this Clause related chiefly to lands which had been granted by former Governments at various times for military or civil services rendered to the Government. A very large portion of the possessions now held by Scindia and Holkar were originally granted on this tenure, and so were the possessions of the Chiefs known as the Chiefs of the Southern Mahratta country. They were more of political than financial importance, and, as remarked by the Honorable and learned Vice-President, had a great variety of prescriptive rights. Some of them held by grants of the late Peishwa; while others were of longer tenure, having been held from generation to generation, which gave them a strength of title very different from a grant by Bajee Rao, the last of the Peishwas. This Clause, he understood, was intended to reserve to the Government the power to deal with these grants rather on political considerations than by the direct process of law.

With regard to the objection to Section III, he thought the explana-

tion which had been given by the Honorable and learned Vice-President was the correct one, and he (Sir Bartle Frere) had only further to observe, in regard to the apparent anomaly in the mode of treating mortgagers, that, in a great part of the Deccan and Guzerat, there was so great a dislike on the part of a land-owner to part with the smallest particle of land, that generally the only means by which he would consent to give up his land was by giving a mortgage, which often ran through so many generations that it was equivalent to a transfer of the right of ownership. The natural result was that the land would be entered as mortgaged, and you would be obliged to deal with the mortgagee as you would with the owner. That was the reason why, in this and other Bombay Acts, mortgagees were treated in a manner which might appear strange to those who had to deal with mortgagees as they were found in other parts of India.

As regards the 4th Section, he was, as far as his own opinion went, prepared to concur with the Honorable and learned Vice-President and give an option. The Bill in this respect was drawn as it was strongly recommended by the Bombay Government, but this was one of the points which struck him as open to objection. Reference had been made to Bombay on the subject, and should the Bombay Government not lay great stress on its first recommendation, he should certainly feel disposed to vote with the Honorable and learned Vice-President on that point. It was not, however, such a severe provision as might appear. It was one of the anomalies and hardships connected with former proceedings under the original Act, that the only succession recognized was that formally approved by the ruling power. It so happened that there was a vast number of successions to which recognition was required by usage and which had been virtually and tacitly recognized either by the native Government or by ourselves in the early part of our rule in the country, but not in the formal and authoritative

manner which was required by our later Regulations. We had, however, recognized no other successions, and in so doing it was very generally held that we had overstrained the rights of Government, and he believed this provision would be accepted as a very great boon by those whose cases would be adjudicated. But if it was wished, he concurred with the Honorable and learned Vice-President that an option should be given.

He was not sure if he perfectly understood the objection taken by the Honorable Member for Bengal to the second Clause of Section VI, in which, as he understood him, he seemed to imply that the title granted after enquiry would not be as perfect as might be reasonably expected when compared with the other titles to be given under this Act. But he (Sir Bartle Frere) believed this Clause would secure to the grantees all that they could now possess by the existing law and usage, and they would be left in the same position as under the Act which it was proposed to alter. He thought it was not unreasonable that a man, after having claimed enquiry and objected to a compromise, should not be in a better or even in as good a position as if he had accepted the compromise.

With regard to the 7th Section also, he concurred in much of what had fallen from the Honorable and learned Vice-President, and he thought that what he said would meet the objection taken by the Honorable Member for Bengal. One great object of this Clause was, he believed, to take away all possible ground for delay on the part of the rent-free landholder.

There was then the 13th Section, which required the Collector, whenever he had reason to believe that lands were held exempt from payment of land revenue, and that there had not been any formal adjudication upon the title to such exemption, to serve a notice upon the holder, requiring him to state whether or not he demanded an enquiry. On that point also, he believed the explanation given by the Honorable and learned Vice-President was the correct one. It was one of the

evils of the Act which we were amending, that cases came up, not in order according to the districts to which they belonged, but as the question regarding that particular grant happened to be started. This Clause provided that the Collector should systematically send a notice to all parties within his jurisdiction whose property would be subjected to enquiry, and that the enquiry should proceed systematically and regularly through the whole country. In the 13th Clause of the 13th Section, there was a provision requiring books or accounts of revenue to be produced from proper custody. He might explain that, when we took possession of the country a great portion of the Government accounts were in the private custody of the Government officers. The duties of Government had in a great measure been carried on by hereditary officers who had in their hands a great portion of the State accounts, besides a large Record-Office at Poonah, in which the greater part of the accounts in the Peishwa's possession was deposited. He did not know if it had been possible, when we first took possession of the country, to secure all those records; but certainly no adequate steps were taken for the purpose, and officers enquiring into Enams had constantly been met with documents produced from private records, bearing seals of the earlier Peishwas, which there could be no doubt were forgeries. These forgeries it appeared had been carried on to a very great extent; and soon after these enquiries were commenced, he thought about 1840, it was found necessary to establish a separate agency for collecting, compiling, and marking those records of the former Government which were of a character to be relied on in these enquiries. This Clause restricted the evidence of such documents to those produced from the regular Record-Office which was placed under Officers of responsibility.

The Honorable Member for Bengal also referred to the provision regarding the revenue survey, and enquired whether there was any prospect of its speedy settlement. He (Sir Bartle

Frere) might mention that the survey had been almost completed in the Deccan, and in the Southern Mahratta country. It was in progress in the Concan, and it had been more or less carried out in other parts of the Bombay Presidency.

He would not at all object to the reservation with which Honorable Members voted for the second reading of this Bill. There were provisions in it to which he himself entertained objections. But he knew that the matter had been considered by that large-hearted and liberal-minded statesman now presiding over the Government of Bombay, and the present Bill had been brought in with the single-minded intention of doing at least as much for the protection of private rights as for increasing the Government revenue. It was Sir George Clerk's intention to introduce a measure which would put an end to the discussion and irritation which had been going on for several years past and which had had an injurious effect on his Presidency. It was the nature of all compromises to be imperfect. He had no doubt, however, that on many of the points which had attracted the notice of Honorable Members, the Government of Bombay would have gone further had it not been fettered by several years of administration of a different system. He trusted that he had not damaged the Bill by offering these observations in the absence of his Honorable friend the Member for Bombay. But his Honorable friend was himself so anxious that it should be brought as early as possible before the Council, that, unless a strong desire had been expressed by the Council, he would not have wished the second reading to be postponed.

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

GOVERNMENT SEAL.

SIR BARTLE FRERE (in the absence of Mr. Erskine) moved the second reading of the Bill "to amend the law relating to the use of a Government Seal."

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

STAGE CARRIAGES.

Mr. HARINGTON moved that the Bill "for licensing and regulating Stage Carriages" be read a third time and passed.

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

SUGAR DUTY, (N. W. P.)

Mr. HARINGTON moved that the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)" be read a third time and passed.

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

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Verbal alterations were made in Section 269.

An amendment was made in Section 273 (on the Motion of Mr. Harington) dispensing with the concurrence of the Judge in a verdict of guilty by a specified majority of the Jury.

Sections 274 to 276 were transposed so as to stand before Section 280, after verbal amendments in Section 274, and after the omission of the following Clause in Section 275, on the Motion of Mr. Harington:—

"Persons who are unable to understand the language in which the trial is conducted."

Mr. HARINGTON then moved the introduction of the following new Section after Section 289:—

"The Judge shall not allow any person to serve on the Jury unless such person understands the language in which the evidence is given or interpreted."

Agreed to.

Verbal amendments were made in Section 292.

The postponed Section 294 was passed after a verbal amendment; and the two following new Sections were introduced after Section 294, on the Motion of Sir Charles Jackson:—

“ In any trial by jury, if the accused is found guilty by a majority consisting of a less number of the Jury than is specified in that behalf in Section 273, or if the accused be found not guilty by a majority consisting of a less number of the Jury than is therein in that behalf specified, the Jury shall be discharged; and in any such case as aforesaid there shall be a new trial before a Jury consisting entirely of other Jurors, and the accused may be remanded or held to bail for such new trial. If on any new trial by Jury the accused shall not be found guilty by a majority consisting of such a number as aforesaid, he shall be acquitted.

At the close of the trial and after the Judge has summed up the evidence as hereinafter provided by Section 313, the Jury may retire to consider their finding, and it shall be the duty of an officer of the Court not to suffer any person to speak to or hold any communication with any Member of such Jury. In any case in which a Jury shall be prepared to deliver their finding, the Judge shall ask the Jury whether they are unanimous; and if the foreman or one of the Jury shall declare that they are not unanimous, the Judge may require such Jury to retire for further consideration. If, after such a period as the Judge shall consider reasonable, the foreman or any one of the Jury shall declare that they are not unanimous, the Jury may deliver their verdict.”

MR. FORBES said that, in rising to move the introduction of the additional Chapter of which he had given notice, he must first explain to the Committee the circumstances under which it was that the first Section of the Chapter was identically the same as the one which the Committee rejected only two or three weeks ago. However much he might himself regret that the strongly expressed wish of the Government of Madras upon a question which concerned its own Presidency only and was a matter of entire indifference to the rest of India, inasmuch as the Courts to which the point in question referred had no existence but in Madras, had not been assented to by the Council, he still should not be so wanting in respect to the Council as to waste their time in re-discussing a point

which they had only two or three weeks ago decided by a large majority, and his reason for again bringing forward the first of the three Sections of which he had given notice was that, although it was the Section on which the Committee had formerly divided, it was not the one which contained the principle on which the division had been come to. Honorable Members would perhaps remember that the principle on which they divided was whether the Subordinate Criminal Courts in Madras should follow the procedure laid down for the Courts of Session as the Madras Government wished and as had always hitherto been the practice, or that laid down for the Magistrates as was now for the first time proposed; and if they would look at the first of the three Sections which he now proposed to move, they would find that it had no reference to procedure whatever. The division on the last occasion was in fact rather premature and would have been more regular if it had been taken on the third instead of the first of the three Sections of which the proposed Chapter consisted. *craple*

He would now briefly explain that the first Section provided only that the Subordinate Criminal Courts should continue to exercise their present jurisdiction, and made no change whatever in the present law; the second Section provided for the committal of cases to these Courts by the Subordinate Magistracy precisely as at present, and the third Section prescribed the procedure to be followed by these Courts in the trial and disposal of cases. In the last Section the Committee would find that he had adopted the principle of the resolution to which they had come on the last occasion of this question being before them, and had substituted the procedure of the Magistrate for that of the Sessions Court, and had, he hoped, thereby removed all the objections which had been urged against the present proposition.

The Chapter was as follows:—

“ 1. The Subordinate Judges and Principal Sudder Ameer in the Presidency of Fort Saint

George shall continue to exercise under this Act, subject to the provisions of Act XLV of 1860 (The Indian Penal Code), the Criminal Jurisdiction which they are competent to exercise under any law for the time being in force, and shall have the same powers of punishment as are given by this Act to an Officer exercising the powers of a Magistrate.

2. Subordinate Magistrates of the first and second class in the Presidency of Fort St. George shall commit to the Court of Session any persons charged with offences triable exclusively by that Court, or shall, under such orders as the Sudder Court shall from time to time issue, either commit to the Subordinate Judges or Principal Sudder Ameen the cases of persons accused of offences triable by such Subordinate Judges or Principal Sudder Ameen or refer such cases for the orders of the Magistrate of the District or other Officer exercising the powers of a Magistrate. If the case be referred to the Magistrate of the District or other Officer as aforesaid, such Magistrate or other Officer shall examine the parties as if no proceedings had been held in any other Court, and may, if it appear necessary, recall and examine any witness who shall already have given evidence, or may call for or may take any further evidence. It shall be competent to such Magistrate or other Officer to pass such order, or to proceed in the case, as he might have done had the case been tried by himself in the first instance.

3. In cases committed for trial before the Subordinate Judges or Principal Sudder Ameen, they shall be guided by the Rules contained in this Act for the trial of cases before the Magistrate which are hereby made applicable to such cases. The Subordinate Judges and Principal Sudder Ameen may commit any case to the Court of Session in which the evidence is such as to warrant a presumption that the accused person has been guilty of an offence calling for a more severe punishment than such Subordinate Judges or Principal Sudder Ameen are authorized to adjudge."

After some discussion, the Chapter was passed with the substitution of the words "proceed as prescribed in Sections 239 and 240 of this Code" for the words "examine the parties as if no proceedings had been held in any other Court, and may, if it appear necessary, recall and examine any witness who shall already have given evidence, or may call for or may take any further evidence" in Section 2, and subject to further consideration on the amendment of those Sections.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

Committee of the whole Council on 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."

Committee of the whole Council on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

STAGE CARRIAGES, AND SUGAR DUTY (N. W. P.)

MR. HARRINGTON moved that Sir Bartle Frere be requested to take the Bill "for licensing and regulating Stage Carriages," and the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)," to the Governor-General for his assent.

Agreed to.

SETTLEMENT OF ENAMS (BOMBAY.)

SIR BARTLE FRERE moved that the Bill "to facilitate the adjustment of unsettled claims to exemption from the payment of Government Land Revenue in the Presidency of Bombay exclusive of Sind, and to regulate the succession to and transfer of lands wholly or partially exempt from the payment of such Revenue" be referred to a Select Committee, consisting of Mr. Forbes, Sir Charles Jackson, Mr. Seton-Karr, and Mr. Erskine.

Agreed to.

GOVERNMENT SEAL.

SIR BARTLE FRERE moved that the Bill "to amend the law relating to the use of a Government Seal" be referred to a Select Committee, consisting of Mr. Forbes, Mr. Seton-Karr, and Mr. Erskine.

Agreed to.

NOTICES OF MOTION.

SIR BARTLE FRERE gave notice that he would, on Saturday next, pro-

ceed with the Bill "for imposing a Duty on Arts, Trades, and Dealings, and to require dealers in Tobacco to take out a License," and the Bill "to provide for a Government Paper Currency," and also that he would, on the same day, move the first reading of a Bill to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices).

MR. HARINGTON said, with reference to that part of the notice of the Honorable Member of Government which related to the Currency Bill, he hoped that, in the event of the Government having it in contemplation to propose any alterations in the Bill as settled in Committee of the whole Council, the proposed amendments would be printed and circulated to Honorable Members in sufficient time before Saturday next to admit of their being fully considered.

SIR BARTLE FRERE said that the suggestion of the Honorable Member would be adopted.

The Council adjourned.

Saturday, July 13, 1861.

PRESENT :

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

Hon'ble Sir H. B. E. Frere.	C. J. Erskine, Esq., Hon'ble Sir C. R. M. Jackson,
Hon'ble Major-Genl. Sir R. Napier,	and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.
H. Forbes, Esq.,	

STAGE CARRIAGES ; AND SUGAR
DUTY (N. W. P.)

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "for licensing and regulating Stage Carriages" and the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

CUSTOMS (STRAITS SETTLEMENT).

THE CLERK reported to the Council that he had received by transfer

from the Home Department a communication from the Governor of the Straits Settlement, regarding the frequent departure of vessels from Ports in that Settlement without Port clearances, and forwarding a draft Act to be substituted for Regulation III. 1833, with a view to prevent the evil.

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

COURTS OF REQUESTS (STRAITS
SETTLEMENT).

THE CLERK reported that he had received by transfer from the Home Department a communication from the Straits Government, regarding the extension of the powers of the Courts of Requests in that Settlement.

MR. FORBES moved that the communication be printed and referred to the Select Committee on the Bill on the subject.

Agreed to.

RECOVERY OF RENT (BENGAL).

THE CLERK reported a further communication from the Government of Bengal to the address of Mr. Seton-Karr, forwarding a copy of a correspondence relative to the difficulty experienced by Zemindars, under Act X of 1859, in the measurement of lands.

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill to amend that Act.

Agreed to.

SALTPETRE.

THE CLERK reported a further communication from the Government of Bengal to the address of Mr. Seton-Karr, regarding the proposed taxation of salt obtained in refining saltpetre.

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill to which it related.

Agreed to.