

Wednesday, February 25, 1863

**COUNCIL OF GOVERNOR GENERAL
OF
INDIA**

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

THE Council met at Government House on Wednesday, the 25th February, 1863.

P R E S E N T :

Major-General the Hon'ble Sir R. Napier, K.C.B., *presiding*.
His Honor the Lieutenant-Governor of Bengal.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K.C.B.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.
The Hon'ble R. S. Ellis, C.B.
The Hon'ble A. A. Roberts, C.B.

RELIGIOUS ENDOWMENTS.

The Hon'ble the LIEUTENANT-GOVERNOR of Bengal presented the Report of the Select Committee on the Bill to enable the Government to divest itself of the management of Religious Endowments. He said that the principal change which had been made was in defining more distinctly the two classes of Endowments to which the Bill was applicable. There were some Endowments, the Trustee or Manager of which was nominated by the Government, or in which the nomination of the Trustee or Manager was subject to the confirmation of the Government. And there were others in which the nomination was neither made by, nor subject to, the confirmation of Government. By the Bill as now framed it was provided that, where the Trustees or Managers had, up to the present time, not been appointed or confirmed by the Government, they should in future be left wholly free from Government control or interference, the Trustees exercising their functions and performing the trusts committed to them, subject only to the usual control of the Civil Courts. But where the Government had theretofore nominated or confirmed the appointment of Trustees, the Government should, once for all in the first instance, appoint a Committee to exercise all the powers theretofore exercised by the Government. When vacancies occurred in any of these Committees, the Government would have nothing to do with filling them up. The

vacancies would be filled up by election under rules framed by Government. If, when a vacancy occurred, delay was made in proceeding to an election, any party interested might apply to the Civil Court either to order an election to be made, or to appoint a new Trustee or Manager. It was unnecessary he should enter further into the details of the Bill, but he might remark that while the earlier Sections of the Bill affected only the Endowments to which the Regulations repealed by it related, Section XXII was of general application, and wholly dis severed Government from all future connection with these trusts in all parts of India. Nothing less than this would seem to mark the determination of the Government to rid itself of a burden which had been bequeathed to it by the former Rulers of India, and to abstain from all further concern with Religious establishments.

His Honor also applied to the Hon'ble the President to suspend the Rules for the Conduct of Business, and, on the suspension of the Rules, moved that the Report be taken into consideration.

The Motion being agreed to, His Honor moved the omission of the words "except the Settlement of Prince of Wales' Island, Singapore, and Malacca" at the end of Section XXIV.

The Motion was put and agreed to.

The Hon'ble MR. ERSKINE moved, in Section III, the omission of the words "in which at the time of the passing of this Act, the nomination of the Manager, Trustee, or Superintendent shall be vested in, or," and the substitution of the words "to which the provisions of either of the Regulations specified in Section I of this Act are applicable, and the nomination of the Trustee, Manager, or Superintendent whereof at the time of the passing of this Act is vested in, or may."

The Motion was put and agreed to.

His Honor the LIEUTENANT-GOVERNOR then moved that the Bill as amended be passed.

The Motion was put and agreed to.

WORKS OF PUBLIC UTILITY BY PRIVATE PERSONS OR COMPANIES.

The Hon'ble M ARINGTON presented the Report of the Select Committee on the Bill to provide for making land for works of Public utility to be constructed by private persons or companies, and for regulating the construction and use of works on land so taken. He said that the principal alterations proposed to be made in this Bill by the Select Committee were, the omission of some of the works specified in Section II of the Bill, as works of Public utility to which the

provisions of the Bill might be applied, and the giving power to the local Governments, before ordering a Public Work to be provisionally registered under the Bill, to appoint a Commission of Inquiry, in order to obtain full information on the subject of the projected work, and the grounds of any opposition that might be offered to it. It was thought that the works proposed to be omitted were not of a nature to require general legislation, such as that designed in the Bill, and that the Report of a Commission of Inquiry, appointed as proposed, would assist the local Government in coming to a decision as to whether any work proposed to be constructed under the Bill was of sufficient public importance to justify the application of the provisions of the Bill to it. The other alterations proposed by the Select Committee related chiefly to matters of detail, and did not affect the principle of the Bill.

The Hon'ble MR. HARRINGTON applied to the Hon'ble the President to suspend the Rules for the Conduct of Business, and on the Rules having been suspended, moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble the LIEUTENANT-GOVERNOR, with reference to the proviso at the end of Section XXVIII, wished to ask the Hon'ble Member whether that would have the effect of preventing Government from taking land by private purchase without having recourse to Act VI of 1857.

The Hon'ble MR. HARRINGTON said that the proviso alluded to in Section XXVIII would not, in his opinion, prevent the local Government from privately purchasing any land required for any work of public utility under the Bill.

The Hon'ble MR. HARRINGTON moved the substitution of the word "district" for "country," in line 24 of Section IX; also the insertion of the words "of India" before the word "in," in line 6 of Section XLVII; and of the words "of such work" before the word "to," in line 8 of Section LI.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON also moved that the Bill as amended be passed.

The Motion was put and agreed to.

PARTITION OF ESTATES.

The Hon'ble MR. HARRINGTON moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Partition of Estates paying Revenue to Government be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

RECOVERY OF RENT (N. W. P.)

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to amend Act X of 1859 (to amend the law relating to the Recovery of Rent in the Presidency of Fort William in Bengal), so far as it relates to the territories under the Government of the Lieutenant-Governor of the North-Western Provinces, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON then said he did not propose to move the amendment to this Bill, of which notice had been circulated. The Clause proposed to be added to Section 1 of the Bill was intended to apply only to advances made by Zemindars and others in receipt of the rent of land, and to ryots and other under-tenants for the purchase of seed, bullocks, and the like; but it had been suggested that the Clause as worded would embrace many other classes of advances in respect of which disputes constantly arose, and that it would not be right to exclude such disputes from the cognizance of the Civil Courts. As the extent to which this Clause might properly be carried deserved further consideration than he (Mr. Harington) had been able to give to the subject he thought it would be better for the present not to disturb the existing law and practice. He would move that the Bill be passed as amended by the Select Committee.

The Motion was put and agreed to.

RECORDERS' AND SMALL CAUSE COURTS (BRITISH BURMAH).

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to constitute Recorders' Courts for the Towns of Akyab, Rangoon, and Moulmein in British Burmah, and to establish Courts of Small Causes in the said Towns, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

ABKAREE REVENUE LAW AMENDMENT.

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to amend Act XXI of 1856 (to consolidate and amend the law

relating to the Abkaree Revenue of Fort William in Bengal) and Act XXIII of 1860 (to amend the said Act XXI of 1856) be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON then said that, before moving that this Bill be passed, he wished to observe that the Bill, as originally framed, applied only to the Presidency of Bengal. In introducing the Bill he stated that, after consulting his Colleagues, the Hon'ble Mr. Erskine and the Hon'ble Mr. Ellis, he had come to the conclusion that it would be better to leave the Legislatures of Madras and Bombay, after obtaining the consent of His Excellency the Governor General (which was rendered necessary by the character of the legislation), to legislate for their respective Presidencies. But on the publication of the Bill, communications were received from the Governments of Madras and Bombay, which led the Select Committee on the Bill to alter it to the form in which it now stood. The Governments of Madras and Bombay stated that, with some slight modifications, the Bill would be adapted to those Presidencies, and the only objection pointed out by the Government of Madras to the extension of the Bill to that Presidency was, that it might interfere with the consolidation of the general Abkaree Laws of the Presidency, which was in contemplation. He (Mr. Harington) however imagined that, whenever the Madras Legislature felt disposed to undertake the task of consolidating and amending the Abkaree Laws of the Presidency, they would find no difficulty in embodying the provisions of the present Bill in any Bill brought in for the purpose. In the meantime he thought there would be a convenience in the present Bill being made applicable to Madras as well as to the rest of India.

The Hon'ble MR. ERSKINE moved the omission, in the first four lines of Section II, of the words "or other Chief Revenue Authority by whatever name such Authority is called," and the substitution of the words "or other Authority specially authorized in that behalf by the local Government." And in Section III the omission of the words "Chief Revenue" before the words "Authority" in line 4.

The Hon'ble MR. HARINGTON expressed his concurrence in the amendments proposed.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON also moved that the Bill as amended be pas

The Motion was put and agreed to.

MERCHANT SEAMEN.

The Hon'ble MR. HARRINGTON moved that the Report of the Select Committee on the Bill further to amend Act I of 1859 (for the amendment of the Law relating to Merchant Seamen), be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

MUNICIPAL ASSESSMENT (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to authorize the extension of the term of Office of the Municipal Commissioners in the Settlement of Prince of Wales' Island, Singapore, and Malacca, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

REGISTRATION OF ASSURANCES.

The Hon'ble MR. ELLIS moved that the Report of the Select Committee on the Bill to provide for the Registration of Assurances be taken into consideration. He said that he trusted that, in connection with this Bill, he might be allowed to remind the Council of the very great service rendered by a late Member of this Council, Mr. Forbes, in originating legislation on this important subject, and in taking a leading part in framing the Bill which was now before the Council. So far back as in 1857, Mr. Forbes urged on the Madras Government, the necessity of a legislative enactment to establish throughout the Indian Empire offices for the registration of all documents, and to provide that unregistered documents should not be admitted as evidence in any Civil Court of Justice. The main object of such a measure was to check the monstrous system of perjury and forgery which had prevailed, and continue to prevail, in all parts of India, in connection with Civil Suits, and which had done so much to bring our Courts into disrepute. The enquiries suggested by Mr. Forbes obtained, from those most competent to form an opinion, a complete confirmation of what Mr. Forbes had

advanced in respect to the existence, throughout India, of these evils, and the Sudder Court at Madras prepared the draft of a law on the subject, which was the foundation of the Bill with which Mr. Forbes' name was so honourably identified, and which was now before the Council. The delay that had occurred in bringing this very important measure to completion was not, he (Mr. Ellis) thought, a matter for regret. The Bill had passed through three Select Committees, and, in its earliest stage, had the advantage of the opinion and suggestions of the learned Chief Justice. The Select Committees had also, in framing this measure, the invaluable assistance of the late Mr. Ritchie, and of so accomplished a jurist as his (Mr. Ellis') Honourable friend Mr. Maine. What was contemplated and hoped by the originator of this Bill. Mr. Forbes, had accordingly taken place, and while the principles on which the original Bill was based had been preserved, many most important additions and alterations had been made in the Bill. The Select Committees had received most valuable communications on the subject of registration from the several local Governments, who had also forwarded the opinions of many public Officers of great experience in the administration of Justice, Throughout the country there had been the greatest unanimity as to the necessity of some such legislative enactment as that which was now before the Council. It was evident that the laws regarding registration at present existing had proved inoperative: this arose chiefly because the compliance with these laws remained optional, and also, partly, because the machinery for registration was cumbrous, and had not given that facility for registration which was essential if the system was to become popular. Although there was this unanimity of opinion as to the necessity of radical alteration and amendment of the present laws relating to registration, there was a considerable conflict of opinion as to the extent to which registration should by law be made compulsory by the exclusion of all unregistered documents as evidence in the Civil Courts. There was a great preponderance of opinion as to making the registration of all Instruments relating to immovable property above 100 Rupees in value compulsory, but those who were in favour of making all registration compulsory urged, that the same reasons which applied to making registration of Instruments referring to landed property compulsory, applied with very nearly equal force to transactions relating to moveable property; and it was argued that, even if the measure proposed should entail some hardship and vexation in respect of bonds on the poorer class of borrowers, it would be infinitely less than the ruin to which they were exposed by the present state of the law. On the other hand, to the proposed compulsory registration it was objected, that if not really and fully carried out, the effect would be to invalidate a large proportion of the Deeds on which the transactions of the country were founded; and in the absence of a sufficient machinery, this would doubtless be an overwhelming objection. It was also argued that the compulsory registration of all transfers of moveable property would operate as a check upon trade, and would seriously interfere with the ordinary transactions of life. It had been the duty and the anxious care of the Select Committees to which the Bill had been referred, to preserve the principles which, it was hoped, would

make this measure a most valuable addition to the laws of this country, and, at the same time, to guard against the serious evils which might result from a too sudden introduction of a measure of radical reform in the matter of registration. It was felt that the Act would have to be applied to many and very different countries, and to people who would be slow to inform themselves of a new law, or to realize at once the very great advantages which might be reasonably expected to result from this measure. With the permission of the Council, he (Mr. Ellis) would briefly state the most important provisions contained in the Bill now before the Council. The registration of all Deeds of Gift relating to immoveable property was rendered compulsory, by excluding all such Deeds executed after the passing of this Act, if unregistered, from being received in evidence by the Civil Courts of the country. So also the registration of all Instruments, not being leases for less than one year, relating to immoveable property of more than 100 Rupees in value, was made compulsory. The Instruments, the registration of which was, by the Bill, permissive were Instruments relating to immoveable property of less than 100 Rupees in value, leases for periods not exceeding one year; and Instruments of various descriptions relating to moveable property. Provision was also made for the registration on certain conditions, of Instruments executed before this Act should come into force. But the Bill, while leaving the registration of these Instruments permissive, provided that there should be a limit to the time allowed for bringing actions on Instruments, the registration of which had been provided for permissively, in the Bill, but which, after the Bill became law, should not have been so registered. No action would, after the Bill became law, be entertained, unless such action should, if it related to immoveable property, be brought within two years; or if it related to moveable property, within six months from the date when the cause of action arose. It was hoped that this limitation would have the effect of making the registration of such Instruments very general, while at the same time no undue stress would be laid upon the public, who might with justice complain, if suddenly, and without sufficient preparation, the registration of all Instruments whatsoever had been made compulsory; and he (Mr. Ellis) believed, a most valuable addition had been made to the Bill by the Sections which provided that registered Bonds for the payment of money not exceeding the sum of 100 Rupees might be enforced without the expense and delay attending a Regular Suit, and also that registered Bonds for the payment of sums exceeding 100 Rupees should in like manner be enforced, provided that the parties to such Bonds, at the time of their registration, had signified and recorded their assent to those Bonds being enforced in this manner. This summary method of enforcing such Bonds would very greatly and most advantageously diminish the number of Suits for small amounts which now occupied the Civil Courts of the country; would save much time and expense to Suitors, and would, while affording all reasonable protection to alleged debtors who were enabled to show cause against the issue of execution, greatly facilitate the recovery of debts. Many of the alterations in the Bill were of such great importance that, however anxious the Select Committee might have been to hasten the promulgation of a law so urgently required, they had consid-

ered it more prudent not to recommend that the Bill should at once be passed. They considered it very desirable that this Bill, in its present complete form, should again be published, so that the local Governments and the public generally, who were so deeply interested in a law of this nature, should be well acquainted with its provisions, and that opportunity should be afforded for the expression of public opinion on the whole Bill as it now stood. The delay as to the time at which the law would actually come into force throughout the whole of India would not, by this postponement, be as great as might at first sight appear. If the Bill were to be now passed, it would have been necessary to leave it to the local Governments to determine the date at which the Act should come into force in each Territory, and as the arrangements to be made for the thorough organization and establishment of Registration Offices would have been attended with more difficulty in some than in other parts of India, the Act would have come into force irregularly at different times in the several parts of India. It was proposed in the Bill as it then stood, that the Act should come into force throughout the whole of India simultaneously on the 1st May 1864, or in a little more than a year from the present time. The Committee had also had under their consideration the advantage which would result if the provisions of the Act were extended to the local jurisdiction of all Courts established by Royal Charter, whether in the Presidency Towns, or in the Straits' Settlement; but they felt that it would be very desirable to obtain, on this subject, the opinions of the Judges of those Courts. The delay in the passing of the Bill would, it was hoped, enable the Committee to recommend the removal from the Bill of those Sections by which it was provided that the Act should not apply to unregistered Instruments relating to immoveable property situate within the limits of the jurisdiction of Courts established by Royal Charter, and would thus render the Act universally applicable throughout India.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS then moved that the Bill be re-published as recommended by the Select Committee.

The Motion was put and agreed to.

WASTE LANDS BILL.

The Hon'ble MR. HARRINGTON introduced the Bill to provide for the speedy adjudication of claims to Waste Lands. He said that, since he obtained the permission of the Council to introduce this Bill, he had had the advantage of conferring with several of his Hon'ble Colleagues on the subject of the Bill, and the result had been that many important alterations had been made in the Bill

as originally drawn. He (Mr. Harington) thought these alterations were great improvements, and that they would be generally concurred in:—*first*, the period of the advertisement mentioned in Section I of the Bill had been extended from thirty days to three months. It was considered by the Hon'ble Rájah Deo Narain, and the Hon'ble Rajah Dinkur Rao, that if the shorter period were retained, many persons having an interest in the land proposed to be sold or otherwise disposed of might be prevented, by absence or other cause, from hearing of the advertisement in time to admit of their appearing to prefer their claims or objections; and that injustice might in consequence often be done. These objections, coming from such a source, were entitled to much consideration. In Section V words had been introduced, giving the Collectors or other Officers power to extend the time within which persons intending to contest, by a Regular Suit, orders rejecting their claims or objections, should notify such intention; and the period allowed in Section XVIII for instituting a suit for compensation after any land had been sold or otherwise disposed of on account of Government, had been enlarged from twelve months to three years. In Section VI, the word "persons" had been substituted for the word "Judges" in order to show clearly that the Local Governments were not to be considered as restricted to official persons in constituting a Court under the Section. The Local Government would no doubt deem it advisable, that one or more of the persons appointed to be Judges of such Courts should be persons not in the service of Government.

The Hon'ble MR. HARINGTON then applied to the Hon'ble the President to suspend the Rules for the Conduct of Business, and on the suspension of the Rules, moved that the Bill be taken into consideration.

The Hon'ble MR. COWIE said that, from the nature and objects of this Bill, it undoubtedly ought to have been subjected to public criticism by publication in the Gazette in the ordinary way. But being introduced at this very late period of our legislative year, the result of such publication would have been to postpone the passing of the Bill for several months; and believing that those interested or likely to be interested in the purchase of Waste Lands would much prefer the passing of such a Bill at once, he would offer no objection to the measure, though he thought it right to point out this departure from the usual wholesome rule of publication.

The Hon'ble MR. HARINGTON expressed his entire concurrence in what had fallen from the Hon'ble Mr. Cowie. The Bill would have been brought in on a very much earlier date; but before it was introduced it was thought advisable to consult the various local Governments upon its provisions. The replies of some of these Governments had only lately been received, which had caused the delay that had taken place in the introduction of the Bill, and which the Government very much regretted.

The Hon'ble the PRESIDENT said he quite concurred in the remarks of the Hon'ble Mr. Cowie, and he thought it would have been much better if the Bill could have been brought forward in time for being published, but considering the important interests awaiting a decision, it was very desirable that the Bill should be passed without further delay. In regard to the extension of the period during which claims might be submitted for possession of the land, it must be remembered that on one side the interests of the intending purchaser and Government were identical, the one in obtaining the land, the other in bringing it under cultivation, and their influence would be much weightier than that of any probable claimants: the Government therefore could not be too careful in guarding the rights of any just claimants. It would be the duty of the Executive Government to make it thoroughly known in every part of the country, that Waste Lands were under sale, and in the instructions for the composition of the Courts of Adjustment, to convey their desire that the interests of all parties should be fairly represented.

The Hon'ble SIR CHARLES TREVELYAN said, it occurred to him to suggest the adoption of a practice which was found very useful in Ceylon, and was likely to prevent lands which had rightful owners being offered for sale by the Government. The practice he referred to was, that all lands which were supposed to belong to the Government, and were considered suitable for sale, were surveyed and their boundaries marked out beforehand, so that there always was a stock of land ready prepared for the market. This previous survey and demarcation of the land was a matter of local notoriety, giving all who were interested an opportunity of coming forward before the lands were offered for sale at all; and moreover, it prevented persons who were desirous of purchasing lands from being subjected to any unnecessary inconvenience or delay. The adoption of a simple expedient like this in India would let the public know what lands were available and would enable intending settlers to make their arrangements much more easily than they could at present. Although the land rules in Ceylon presumed that a special preliminary application was made in reference to each lot of ground, requesting that it might be surveyed and the boundaries marked out previously to its sale, and that a regulated advance was made for the expenses, which was to be returned if the land was not knocked down to the applicant; the actual fact was, that the lands available for sale by Government were all first surveyed and demarcated, and then advertised from time to time, after which intending purchasers chose for themselves.

His Honor the LIEUTENANT-GOVERNOR said that the following steps had been taken in Bengal with reference to the survey and measurement of Waste Lands. It had been found as yet impossible to undertake a general survey of all the districts in which Waste Lands were situated. Such a survey could not be commenced in Assam until some of the survey parties now employed in Bengal

were available. But even in Assam, surveyors had been sent to survey and mark off all such lands as had been applied for by purchasers. In Cachar, where demarcation preparatory to a general survey had commenced, the Officers engaged in the operation were instructed first to survey and lay down the boundaries of all lands actually granted and sold, and then, as to the remainder, to divide them off in blocks of convenient size, with distinct landmarks, natural where they were to be had, and pillars built of masonry if natural boundaries did not exist. In Darjeeling, which consisted chiefly of Waste Lands, a topographical survey had been completed some time ago, and a map was now in the possession of the Superintendent, showing the position of the various streams and spurs of mountains. This map was accessible to intending purchasers, and on reference to it, any land applied for could be approximately marked off and disposed of under the rules for the sale of Waste Lands. Occasionally, uncertainty as to the exact boundary might arise from deficiencies in the map, or rather from its not being fully understood by those using it; but in any such case the matter was practically settled without difficulty by the Superintendent, the purchasers being willing to abide by his decision.

The Hon'ble SIR CHARLES TREVELYAN explained that, in the observations which he had made, he had not contemplated that all the Waste Lands of a Province should be surveyed and marked out in anticipation. Certain parts of a district were usually peculiarly suited for early settlement, as being the most eligible. What he meant to suggest was, that each Local Government should ascertain what lands were more immediately desirable for settlement, and should have them surveyed so as to prepare a stock of land beforehand ready for the market; all questions of title, boundary, and the like would thus be settled before the sale. He thought it was hardly becoming that any land should be brought by the Government into the market, the right to which might be reasonably questioned. The Bill before the Council was quite in harmony with the practice to which he had referred, and he had made these suggestions only because he thought they were likely to be of public utility. In India, an intending purchaser often did not know where Government lands suited to his purpose were to be found. In Ceylon, although the law was much the same as here, in practice all the land was surveyed and mapped out beforehand, and intending settlers became aware by the Government advertisements what lands were to be had, and waited till the next periodical sale.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON then moved that the Bill be passed.

The Motion was put and agreed to.

MASTER'S OFFICE, HIGH COURT.

The Hon'ble MR. MAINE introduced the Bill to make provision for the speedy and efficient disposal of the business now pending in the Office of the Master of the High Court of Judicature at Fort William in Bengal. He said that, before he asked the President to suspend the Rules, the Council would expect him to say something of the additions made to the Bill since the description he gave of it at the last sitting. They would recollect that he moved for a Bill limited to the High Court of Calcutta, but the Hon'ble Mr. Harington had suggested that some such measure might be required at Madras and Bombay. The Government had been in telegraphic communication with the Governments of Madras and Bombay, and the answer of Bombay had been, that they would be glad to have such a measure; of Madras that they did not require it. In that state of things, he proposed to follow a legislative precedent of last year, to make the Bill primarily applicable to Bengal, but as in Act XVIII of 1862, to give the Governors in Council of Madras and Bombay a power of extending it to the High Courts of those Presidencies. The other additional Clauses had been inserted with the full concurrence of the Chief Justice and other Judges of the High Court at Calcutta. Act V of 1840 had substituted solemn affirmations for the old mode of swearing Hindoos and Mahomedans by the Ganges water and the Koran, but it was confined to the Mofussil; it would now be extended to the High Courts exercising original jurisdiction, and some words would be added embracing affidavits. Sections X and XI had reference to the system of signing and serving process introduced by the Code of Civil Procedure. Under that Code, judicial process issuing from the High Court when exercising original jurisdiction was signed by the Judge, and served by a particular Officer of the Court. It was found, however, in Calcutta, that there was evil in distracting the attention of the Judge while engaged on important judicial business, by compelling him to go through the formal act of signing process; and indeed the Small Cause Courts' Act allowed process to be signed by the Clerk of the Court. The system, again, of serving writs by the Officer of the Court was more adapted to the Mofussil, where individuals were (so to speak) further apart from each other, and were easily identified, than to great cities like Calcutta and Bombay, where the serving Officer had much difficulty in identifying the person upon whom service was to be effected. Moreover, this Officer had inconsistent duties. He was at once expected to be abroad serving writs, and in Court proving the service. There seemed therefore to be strong reason for reverting to the English practice of allowing process to be served by the parties or their attorneys. These changes were strongly recommended by Sir Mordaunt Wells, the Judge who had been most concerned with that part of the original jurisdiction which had most to do with the matters adverted to. It was well known to all who had watched the working of the new system, that Sir Mordaunt had most faithfully carried out the application of the Code of Civil Procedure to the High Court; and to his energy and assiduity was attributable, in great measure, the really extraordinary

despatch of business (as it appeared to an English Lawyer) in that branch of jurisdiction. The recommendation of this Judge, concurred in by the Chief Justice, would doubtless have much weight with the Council.

The Hon'ble MR. MAINE then moved, under the suspension of the Rules, that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT said he was sure that the Members of this Council would join him in congratulating their Hon'ble Colleague, Mr. Harington, on the mark of confidence, and of the sense of the valuable services he had rendered to the Government, shewn by the Governor-General in appointing him to be Lieutenant-Governor of the North-Western Provinces. Whilst regretting the loss of Mr. Harington's valuable assistance, they heartily rejoiced, and wished him every honour and success in his new appointment.

The Hon'ble MR. HARINGTON expressed his grateful acknowledgments to the Hon'ble the President for the manner in which he had noticed his (Mr. Harington's) services in that Council, and his appointment to the Office of Lieutenant-Governor of the North-Western Provinces, which His Excellency the Viceroy had done him the honour to confer upon him.

The Council adjourned.

M. WYLIE,

Depy. Secy. to the Govt. of India,

Home Department.

CALCUTTA,

The 25th February, 1863. }