

Wednesday, November 26, 1862

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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 26th November, 1862.

PRESENT :

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honor the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir R. Napier, K.C.B.

The Hon'ble H. B. Harington.

The Hon'ble H. Sumner Maine.

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.

ABKAREE REVENUE LAW AMENDMENT.

The Hon'ble MR. HARINGTON moved for leave to bring in a 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). He said that the object of this Bill was to place Spirits manufactured in this country, and not adapted to human consumption, on the same footing as similar Spirits under the Customs Duties Bill lately introduced. The duty would be ten per cent. *ad valorem*, instead of the high rate per gallon which was now charged. The Bill also provided against frauds on the revenue.

The Motion was put and agreed to.

WORKS OF PUBLIC UTILITY BY PRIVATE PERSONS OR COMPANIES.

The Hon'ble MR. HARINGTON introduced the Bill to provide for taking 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, and moved that it be referred to a Select Committee. He stated that, in order to meet a difficulty which had been suggested by the Hon'ble Mr. Erskine when leave was moved for to bring in this Bill, provision would be made for the Local Governments making bye-laws, not inconsistent with the general provisions of the Bill, for giving effect to it, according to the peculiar circumstances of their territories.

The Hon'ble MR. ERSKINE said that, since he had made his former remarks on this Bill, he had taken an opportunity of reading it, and he willingly conceded that the Bill bore no marks of a desire to fetter local officers by details, or to limit their powers. It was not his intention to oppose the Bill, for he felt, as all the Council must, sympathy with its object. There were reasons in favor of regulating the encouragement of public enterprises by a general Bill, providing a simple Code of Procedure, giving to the Works of Public Companies the character and rights of Public Works, and securing their dedication to public purposes. But there might be objections elsewhere, as in the Bengal Government, which had a Bill before the Committee of its Council; and in Bombay, where the Committee of the Council had already reported, and he should be glad therefore if the Local Governments had an opportunity to be heard. There were some clauses of the Bill which were very important, and to which he might direct attention. In the first part of the Bill, there were several sections hardly fit for an enactment. They neither enlarged nor curtailed powers that already existed. But it might be desirable, for the benefit of persons at a distance, to make the Bill as complete as possible, and, if so, it might be desirable to add other provisions to it. Opinions might differ as to the extent to which the Bill should go. If lines of communication were sanctioned, it was necessary to provide for private interests, between the intervening points, giving way to the main object. But in the case of Jetties, Quays, and Gas Works, where it was not certain that the works might not as well be made in one place as another, there should be full inquiry, not only as between the Company and the public, but also as between the Company and individuals whose interests were affected. Section V provided that a preliminary survey might be authorized on a preliminary statement only, and this would authorize persons to enter on lands with the privileges of public servants, whom, under the Penal Code, it was unlawful to resist, while the persons so authorized were not amenable to Government discipline. This was a very large power to be exercised by Local Governments (the Commissioners of provinces for instance) in such cases as surveys of mines. Then, Section IX authorized the Government after three

months to declare a work provisionally registered. In other countries formidable processes had to be gone through to arrive at such a stage. He had no wish to embarrass promoters of public undertakings by technicalities, but here was no provision for inquiry into the rights of third parties, nor any provision for taking evidence. Yet the preliminary registration might be made final if the Government chose. The Bill also authorized the Government to give land of its own, or land which it had purchased for the purpose; and the Companies were not to be liable for the value of such land unless made so under the conditions imposed on them by Government. Were all the heads of Local Governments to have this authority? He would not enter into the question whether this Council had power thus to authorize grants of public property, but would ask if every Commissioner was to have the power contemplated. Section XXXIV raised the question whether Government were to determine what rights of way and other easements existed; but probably it was only intended that where such rights existed, Government should have power to order in what manner they should be secured. The power of making bye-laws under Section XLI was larger than the powers granted under the Railway Act. But as the penalty only extended to 50 rupees, it was doubtful if the sanction of the Governor-General in Council should be made necessary. That sanction as provided in Section XLIV, however, appeared to be justly required. With reference to Section XLV, prohibiting alienations of the property of Companies, he doubted if it might not unnecessarily tie up their hands and interfere with their power of obtaining loans. These were some of the points which he thought required mature consideration.

The Hon'ble Rajah DINKAR RAO said that, in his opinion, if the land were a grant, or hereditarily cultivated, the Government, in case the holder of it did not prefer to take the price in money, should give him in exchange, besides the price of his building, if there were any, another piece of land of the value of that taken. To the owner of a house a site, if required, might be given in addition to the price of the building. Wells and buildings for the convenience of travellers should be added to the works mentioned in Section II of this Bill. The Punch should be either three or five as the case might be. A provision should also be made that the officers of the Government should give their attention fully to the religious buildings.

His Honor THE LIEUTENANT-GOVERNOR said that a Bill for enabling Government to give its assistance to projects for making lines of communication had been introduced into the Bengal Council, and when its principle was considered, it was suggested that the measure might be extended to other

undertakings. The Select Committee, however, to whom the Bill was referred, had found so much difficulty in the matter, that they were prepared, as he (THE LIEUTENANT-GOVERNOR) understood, to report against the extension of the measure. There were therefore those who would doubt the expediency of so wide a measure as the present Bill. As, however, the subject had been taken up in this Council, the Bengal Council would not proceed with it. He agreed with what the Hon'ble Mr. Harington had stated in moving for leave to bring in this Bill, that it was not intended by Parliament that the Supreme legislature here should, except under special circumstances, legislate on subjects within the competency of local legislatures. With reference to this Bill, it was open to the objection that it vested in all the Local Executive Governments, all the powers that in England could be exercised by Parliament alone. Without saying that Parliamentary control, and Select Committees of Parliament, provided the best arrangement possible, it was doubtful if we should go to the other extreme, when the power we conferred was to be exercised by a single person without responsible advisers. It was well known that, even in Parliament, plausible projects were sanctioned, which unjustly invaded private rights, and some check should be provided against the same kind of thing here. It might be necessary that the head of the Local Government should be bound to submit the projects presented to him to some kind of Board or Committee of responsible advisers. For the rest, he concurred generally in what had fallen from the Honourable Mr. Erskine.

The Hon'ble MR. MAINE said that, although this Bill had been drawn by persons very conversant with the subject, some details might have to be reconsidered, and it might be necessary to curtail, in some measure, Section II. As to the principle on which the Supreme Council should legislate, it had been correctly stated by the Hon'ble Mr. Harington, that no subject should be taken up if it were within the competency of local legislatures, unless there were some strong and special reasons, and in this case all the Council appeared to be agreed that such reasons existed. The works that were contemplated by the Bill would be executed chiefly by English capital, and the knowledge in England of the Indian administration was not great. If this matter were left to local legislatures, doubts might arise at home of their power to legislate to the full extent required. Some of the greatest losses English capitalists had sustained, had arisen from their trusting to subordinate authorities, which proved not to have the power to give the privileges they had attempted to confer. Many of the powers in this Bill, certainly, might be given by a local legislature; but it was desirable to have a consolidated system of rules; and capitalists accustomed to meet with difficulties

elsewhere, would here find sufficient to guide them in the whole course of their undertakings.

The Hon'ble MR. HARINGTON said that he was gratified to find that the Lieutenant-Governor concurred in his opinion of the expediency of the Supreme Council legislating in this matter. The Council were indebted to the Hon'ble Mr. Erskine for the care and attention he had devoted to the Bill, and for the suggestions he had made. He (MR. HARINGTON) would not now follow him through them all, but would assure him that the whole of them should be carefully considered in Committee. And as the Bill would be published for the usual period, it could be considered by the Local Governments, whose suggestions or objections would be submitted to the Council. With respect to the scope of the Bill, it was doubtful if Section II did not go too far. But it was thought better not to draw the Bill, in the first instance, in too limited a form. It was only permissive in its character, and the Local Governments would select such projects only as were of public importance and benefit. As to the sanction of the Governor-General to the bye-laws, it might suffice to provide for the sanction of the Local Governments, if such were the wish of those Governments. There might be difficulty in giving effect to the suggestion of Rajah Dinkar Rao, but it was worthy of serious consideration.

The Hon'ble SIR R. NAPIER said that he thought the suggestions of the Hon'ble Mr. Erskine deserved much consideration, especially in reference to the protection of private rights. And considering the devoted attachment of the Natives to their hereditary landed rights, he thought that every effort should be made, as far as possible, to give effect to the suggestion of Rajah Dinkar Rao.

The Motion was put and agreed to.

STRAITS' SETTLEMENT POLICE BILL.

The Hon'ble MR. HARINGTON introduced the Bill to amend the Law for regulating the Police of the several Stations of the Settlement of Prince of Wales' Island, Singapore and Malacca, and moved that it be referred to a Select Committee with instructions to report in six weeks.

HIS HONOR THE LIEUTENANT-GOVERNOR said that he had no doubt of the propriety of giving the Magistrates in the Straits the powers that were exercised in the Presidency Towns over Punch-houses and the like, but he doubted as to the sections which provided that the members of the Police Force should be enrolled for definite periods, and should be liable to heavy

penalties if they left the Force earlier. The only reason stated for this enactment seemed to be, that the pay of the Police was not such as to induce men to continue in it; but the objection to the provision was, that enforced service was bad service, and he did not see why a provision of this kind, which had not been adopted in other parts of India, should be made for the Straits. In effect, it added to the Penal Code a provision as to abandonment of service. If this were the object, it were better to extend it to the whole body of Police throughout India.

The Hon'ble MR. HARRINGTON said that the penalties were taken from the existing Police Act, in which they were provided for resigning without notice. There did not appear to be any more objection to requiring a man to enlist in the Police for a definite period, than there was to requiring soldiers so to enlist. With respect to the pay, it might not be desirable nor possible to increase it, but the section could be considered in Committee.

The Motion was put and agreed to.

EMIGRATION (SEYCHELLES).

The Hon'ble MR. HARRINGTON moved that the Report of the Select Committee on the Bill relating to Emigration to the British Colonial Dependency of Seychelles be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON proposed that the Bill as settled by the Select Committee be passed.

The Motion was put and agreed to.

CUSTOMS LAW CONSOLIDATION.

The Hon'ble MR. ERSKINE moved that the amended Bill to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India be referred back to a Select Committee with instructions to report in three weeks, after considering the suggestions made by the several Local Governments and the Chambers of Commerce, since the former Report of the Select Committee, and the Bill as amended, were published. He said that the Bill as amended by the Select Committee had been published and circulated, and the opinions and suggestions of the Local Governments had since been received. He hoped to have been able to propose a series of amendments, in accordance with the views thus submitted to the Council; but

it was found that they would be so numerous that it would be better to have the Bill referred back to a Committee, and reprinted by them in a form showing the alterations. He hoped that this would not occasion any delay.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to provide for taking 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—The Hon'ble Messrs. Erskine, Ellis, Roberts and the Mover.

On the Bill to amend the law for regulating the Police of the several Stations of the Settlement of Prince of Wales' Island, Singapore and Malacca—The Hon'ble Messrs. Erskine, Fitzwilliam, Cowie, Ellis and the Mover.

On the consolidated Customs Bill—The Hon'ble Messrs. Harington, Fitzwilliam, Cowie, Ellis and the Mover.

The Council adjourned.

M. WYLIE,

*Deputy Secy. to the Govt. of India,
Home Department.*

CALCUTTA,
The 26th November 1862.