

Wednesday, March 12, 1862

***INDIAN LEG.
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DEBATES***

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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 12th March 1862.

PRESENT :

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

His Honor the Lieutenant-Governor of Bengal.

His Highness the Maharajah of Puttiala, K.S.I.

The Hon'ble Sir H. B. E. Frere, K.C.B.

The Hon'ble Cecil Beadon.

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

The Hon'ble S. Laing.

The Hon'ble W. Ritchie.

The Hon'ble H. B. Harington.

The Hon'ble H. Forbes.

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.

EMIGRATION (FRENCH COLONIES).

The Hon'ble MR. RITCHIE moved that the report of the Select Committee on the Bill to amend Act XLVI of 1860 (to authorize and regulate the Emigration of Native Laborers to the French Colonies) be adopted, and that the Bill be passed.

The Motion was put and agreed to.

ADMINISTRATION OF JUSTICE AT ADEN.

The Hon'ble Mr. RITCHIE postponed the introduction of the Bill to provide for the administration of Civil and Criminal Justice at Aden.

CRIMINAL LAW REPEAL.

The Hon'ble MR. HARRINGTON introduced the Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure, and moved that it be referred to a Select Committee, with instructions to report in one month. He stated that the Bill had already been six months before the public, and its further delay for the usual period therefore would not be necessary.

The Hon'ble MR. RITCHIE said that he felt that a great debt of gratitude was due to Mr. Harington for the great labor he had bestowed on this Bill. It

was sufficient to look at the schedule of the Bill to observe at once how large and important a task had been accomplished.

The Motion was put and agreed to.

SUCCESSION TO ESTATES (OUDE).

His Excellency THE PRESIDENT moved for leave to bring in a Bill entitled a Bill to provide for the succession to and the rights in respect of certain talookas and granted estates in Oude, and for the jurisdiction of the Courts of that Province in suits relating to land. He stated that, in moving for leave to introduce this Bill, it was necessary to explain the objects which the Government had in view. The Council would bear in mind some circumstances connected with the restoration of British Supremacy in Oude. In 1858 and 1859, after the Province had been recovered from rebellion and the authority of the Queen had been vindicated, many grants were made of lands which had previously been confiscated to Government. In some cases those grants were made to proprietors who had forfeited their rights, but to whom the favor of Government was extended, and who were permitted to re-enter upon their estates; in other cases, to proprietors who had remained in possession of their own estates and received additions thereto in consideration of their services; and in numerous instances, to persons who had had no previous connection with the soil of Oude, but who were brought into the Province there to receive the rewards which they had earned. The terms on which those grants were made were recorded, and a Summary Settlement was effected. The terms declared that each grantee had received a permanent, hereditary, and transferable right in his estate. The Governor-General, who was then exercising all the powers of the Governor-General in Council, sanctioned those conditions which the present Bill would now re-affirm. After the grants had been made, and by a subsequent order of the Governor General, the principle of succession by the rule of primogeniture in respect both of the talookas which had been restored and of estates newly granted, was introduced. The principle was affirmed but was not accompanied by any details. But as being an act of the Government of India done previously to the passing of the Indian Councils' Act of 1861, he believed that there could be no doubt of its having the full force of law. The present Bill therefore would only declare the principle more formally, and provide in detail for the manner in which the rule of primogeniture should take effect. It would provide that, in case of intestacy, the estate or talooka should go to the natural-born heir, that is, to the eldest son; that failing such heir, it should go to an heir by adoption; and failing an adopted heir, to the nearest collateral male heir: in default of all of these, it would provide that the estate should go to the widow for her life, and at her death, to such son as she might adopt according to the custom of her family: and lastly, if all these should fail, that the estate should pass to such persons as would inherit if this Act were not made law. The object in view was to combine the principle of primogeniture with other principles and usages traditional in this country and dear to the people. In the Province of Oude, the operation of the Hindoo and Mahomedan laws was peculiarly confused and conflicting—so much so that it might have been a question whether on that account alone some legislative interposition and

correction were not expedient. And, probably, it would not be contended thāt, such being the case, the introduction of a law of primogeniture, with the generally warm approval of the talookdars (the parties most concerned), was an unwise divergence from the laws which the English Government had found established there.

The Bill gave power to the Government to declare from time to time what estates should be considered as talookas or granted estates under the operation of the Act, and it provided that none of these estates, after enrolment on a list as such, should be liable to seizure or sale in satisfaction of decrees of Court, except under sanction of the Local Government confirmed by the Governor-General in Council. The placing of an estate on the list would be subjected to certain checks and precautions, which would prevent this being done without the knowledge or to the detriment of any who might have claims upon, or interest in, the estate. The removal of an estate from the list would also take place under precautions, and only with the consent of the Local Government and of the Governor-General in Council.

The Bill would also provide for the descent, in the same line as the landed estate, of such personal property as might fitly be recognized as heir-looms, upon application to that effect by the possessor. This provision would be gratifying to those legislated for, and would entail no inconvenience; but it formed no essential part of the Bill. The Bill further provided that disputed claims to succession or right of inheritance to the estates subject to the Bill should be determined by the Local Government, subject to the confirmation of the Governor-General in Council; thus giving the Government the charge of watching over these inheritances, and rendering their protection a matter of Governmental policy rather than of law. This as regards the estates on the talooka list: but the Bill went farther and dealt with suits of whatever description relating to the title to lands in Oude. In regard to these it restored the state of things subsisting in Oude prior to the introduction of Act VIII of 1859. Before that time all such suits were adjudicated by the Revenue Authorities, subject to appeal to the Chief Commissioner as Financial Commissioner. Act VIII had been understood to alter the procedure and to place such questions under the cognizance of the Civil Courts. There had been however doubts as to the operation of that Act in this respect, and it was therefore desirable that the law should be clearly defined. He deemed it far preferable that in a country in the condition of Oude, where our laws and system of legal procedure were not familiar to the people, where the settlement was still a summary and temporary one, and where the Government had yet to feel its way to a wise, encouraging, and beneficial settlement, questions relating to land should as far as possible, continue to be dealt with as revenue questions and not be brought within the scope of our Courts and Law. These were all the particulars of the Bill which it was necessary to mention. He laid it on the table in the hope that it would preserve to the people of Oude that without which no people could long prosper politically or socially,—an aristocracy connected with the land.

The Motion was put and agreed to.

WASTE LANDS.

✓ His Excellency THE PRESIDENT moved for leave to bring in a Bill entitled a Bill to provide for the sale of Waste Lands and for the redemption of the Land Revenue. He said that the Bill which he had now to propose was not inferior in importance to that which he had already submitted to the Council. The scope of it would need little explanation to the Council, all of whom were familiar with the Resolution of Government of the 17th October 1861, relative to the sale of Waste Land and the redemption of the Land Revenue. The Bill was in fact an embodiment of that Resolution. It had been in the contemplation of Government, as might be gathered from the last paragraph of the Resolution, that the first legislative action on this great subject should be taken by the Local Governments; and it must not be understood that the present Bill was introduced from any apprehension of a want of promptness or earnestness in the proceedings of those Governments. Quite the contrary. It had appeared to the Governor-General in Council upon further consideration, that it was desirable in itself, and that it would probably be convenient to the Local Governments, that a measure of such wide and Imperial application should start into law from the Governor General in Council. Even when this Act was passed, if the Local Governments desired to make modifications or additions in the application of the principles of the Resolution to their own Presidencies, the Act would create no difficulty in their way—though it might in some cases be necessary to revoke or suspend particular clauses of it with reference to particular parts of the country, in order that the true spirit of the Resolution might be carried out under the special circumstances of particular districts. The measure was designed to help the Local Governments, and to afford facilities and encouragements in carrying out the common object. One particular matter required notice. The Resolution of Government contemplated the security of the public creditor by the investment of the purchase-money of Waste Lands and money paid for the redemption of the Land Revenue. This Bill would charge the Currency Commissioners with that duty. No distinction was made in the Bill, any more than in the Resolution, between the two sources of Revenue; and it was his decided opinion that no such distinction ought to be made; though this was a point upon which some difference of view existed.

It was true that, hitherto, in India and in the Colonies, the proceeds of sales of Waste Lands had been carried to the Current Account of Income. Of the Colonies it was unnecessary to speak; but in India there was a special reason against this. For although at present Waste Lands in India yielded no Revenue, and although in selling them it could not be said that we parted with daily income, yet having regard to the Indian system of deriving Revenue directly from land, we most assuredly did part with dormant Revenue: and as our Civil administration extended over lands that now lay waste and needed no administration, new charges would come upon the Government. It might be confidently expected that the increasing prosperity of the country would enable us to meet such charges; but we should still be in the position of having sold, for an immediate price, a certain future income from

those lands, and therefore we ought to treat that price as Capital. For this reason, and also to guard against the possible objection of those who thought that they saw improvidence in the measure, and therefore did not regard it with favor, the Bill would provide for the investment, as Capital, of the whole proceeds, whether from redemption of the Land Revenue, or from sale of Waste Lands. He need not describe in detail the manner in which the Resolution of Government had been put into legal shape. The terms of the Resolution were known to all, and they were in no way altered in the Bill. He would only express an earnest hope that the Bill, in the shape in which it had been framed, or as nearly so as might be found expedient, would soon become the law of India.

The Motion was put and agreed to.

SCHEDULE TO BANK OF BENGAL ACT.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to annex a Schedule to Act IV of 1862 (for regulating the Bank of Bengal). He stated that the sole object of this Bill was to add to that Act Schedule A which had been inadvertently omitted.

The Motion was put and agreed to.

The Hon'ble MR. RITCHIE then applied to His Excellency the President to suspend Rules 15 and 16 for the Conduct of Business, in order that he might introduce the Bill.

His Excellency THE PRESIDENT declared those Rules to be suspended, and the Bill was accordingly introduced.

The Hon'ble MR. RITCHIE then applied to His Excellency the President to suspend the Rules subsequent to Rules 15 and 16, which related to the publication of a Bill and the referring of it to a Select Committee, with a view to enable him to move that the Bill be passed.

His Excellency THE PRESIDENT declared the Rules in question to be suspended, and the Bill was then passed.

INCOME TAX ASSESSMENT IN PRESIDENCY BANKS.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill for constituting certain officers of the Banks of Bengal, Madras and Bombay, respectively, *ex officio* Assessors of certain of the Duties payable under Act XXXII of 1860 (for imposing Duties on the Profits arising from Property, Professions, Trades and Offices). He stated that the object of the Bill was simply to substitute the Secretaries and other officers of the Banks of Bengal, Madras and Bombay for the Sub-Treasurers as Assessors for the Income Tax payable on the interest on Government paper which would henceforth be payable at the Banks.

The Motion was put and agreed to.

The Hon'ble MR. RITCHIE then applied to His Excellency the President to suspend the Rules 15 and 16 in order that the Bill might at once be

introduced. He stated that he would then move that the Bill be referred to a Select Committee, with instructions to report in a week. If the Committee did not hear that the agreement with the Bank of Bombay was agreed to, some alteration in the form of the Bill would be necessary.

His Excellency THE PRESIDENT declared Rules 15 and 16 suspended.

The Hon'ble MR. RITCHIE then introduced the Bill, and moved that it be referred to a Select Committee, with instructions to report in a week.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure—the Hon'ble Messrs. Ritchie, Harington, Forbes and Erskine.

On the Bill for constituting certain officers of the Banks of Bengal, Madras and Bombay, respectively, *ex officio* Assessors of certain of the Duties payable under Act XXXII of 1860 (for imposing Duties on the Profits arising from Property, Professions, Trades, and Offices)—the Hon'ble Messrs. Laing, Ritchie, Fitzwilliam and Cowie.

PROTECTION AGAINST BAD COIN.

The Hon'ble MR. RITCHIE moved that the Select Committee on the Bill for the better protection of the public against bad Coin be instructed to report in two months.

The Motion was put and agreed to.

PENAL CODE AMENDMENT.

The Hon'ble MR. RITCHIE moved that the Select Committee on the Bill to amend Chapter XII of the Indian Penal Code and to provide for certain offences against the Coin be instructed to report in two months.

The Motion was put and agreed to.

NEW COINAGE.

The Hon'ble MR. RITCHIE moved that the Hon'ble Mr. Erskine be added to the Select Committee on the Bill to provide for a new Silver and a new Copper Coinage.

The Motion was put and agreed to.

The Council adjourned till Wednesday, the 19th instant, at 11 A. M.

M. WYLIE,

Depy. Secy. to the Govt. of India,

Home Department.

CALCUTTA,
The 12th March, 1862. }