

Wednesday, January 22, 1862

***INDIAN LEG.
COUNCIL
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 62.

THE Council met at Government House, on Wednesday, the 22nd January 1862.

PRESENT :

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

His Honour the Lieutenant-Governor of Bengal.

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

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

The Hon'ble Cecil Beadon.

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.

STATE GRANTS.

The Hon'ble SIR BARTLE FRERE moved for leave to bring in a Bill for securing certain grants of immoveable property made by the State. He stated that the Bill had been originally introduced into the late Legislative Council on the recommendation of the Lieutenant-Governor of the North-Western Provinces, and had been referred to a Select Committee, by whom a Report had been prepared. The Bill, as altered by that Committee, together with that Report, would be laid on the table, and circulated to the Members before its introduction at the next meeting of this Council.

The Motion was put and agreed to.

FOREIGNERS.

The Hon'ble MR. BEADON moved for leave to bring in a Bill to make further provision relating to Foreigners. The object of this Bill was to revive the Act XXXIII of 1857, which had expired in December last and to re-enact it for a further period of two years. The Bill would empower the Government to remove Foreigners from the country under certain circumstances and also to prohibit their travelling in India without a license.

The Motion was put and agreed to.

NEW COINAGE.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to provide for a new Silver and a new Copper Coinage. He stated that the object of the Bill was to legalize coin under the new Coinage, for which the dies had been received from England. That Coinage would be of the same denomination, standard

and weight as the coinage now in use ; but the title of the East India Company would be omitted from the obverse, as well as the designation in Persian now required by law. The name, title, and likeness of Her Majesty would appear on the obverse, and the name of the coin in English only. These changes would require the authority of a law. The copper Coinage would not require any alteration of a law in respect of any changes of this nature. But advantage would be taken of the opportunity to repeal old laws respecting the copper Currency, and to consolidate the whole law on the subject in one Act.

The Motion was put and agreed to.

PROTECTION AGAINST BAD COIN.

The Hon'ble Mr. Ritchie moved for leave to bring in a Bill for the better protection of the public against bad coin. He stated that, before the passing of the Penal Code, there were several laws relating to offences respecting the coin; but they were insufficient to meet all the devices which modern ingenuity had adopted for counterfeiting coin. The Penal Code had a chapter (No. XII) which provided for nearly every offence relating to coin, but no law had yet been passed touching the rights and duties of the public and the Government in respect of coin which ought to be withdrawn from circulation.

In England all false coin was absolutely forfeited to the Government, but no provision had yet been made in this country as to coin that was originally good but had become impaired. Doubts arose as to the right to break up both false coin and good coin that have been falsified. In some cases the offence by which the coin had been impaired had not been committed by the person in whose possession it was found, and it sometimes happened in this country that false coin was itself very valuable. In one case false Gold Mohurs had been seized, which were intrinsically worth more than the same number of Government Gold Mohurs, though they were less in value than the Gold Mohurs they were intended to imitate. In any such case the absolute forfeiture would be a hardship on an innocent holder. The Bill which he proposed to introduce would provide that all instruments used in making false coin should be forfeited; and that all clippings of coin, and all gold and silver in solution obtained by any operation upon coin, should be forfeited; and that all false coin should be forfeited when the offence of falsification had been committed by the holder, or the coin had been received without due caution, or the coin had been obtained without the payment of the full value. But where the holder was innocent, the coin would be only broken up and the material returned to him. The Bill would also provide for the case of false or impaired coin being tendered, and the right of a person to whom it was tendered to break it up. But provision would be made to meet the cases of dispute as to the coin being really false, and the provisions of the consolidating Statute of 1860 would be generally followed. Provision would also be made for withdrawing from circulation coin that had become below weight, though there should be no proof of any operation having been performed on it; and the Bill would provide for two offences which
were

were to be found in the Consolidating Statute, but not in the Penal Code; namely, the offence of having in possession, with guilty knowledge, filings or clippings of coin, or gold or silver in solution, obtained in the process, of some operation performed on coin, and the offence of having in possession, without lawful excuse or authority, more than five pieces of false coin, or coin that had become impaired. As to false coin, the offence was provided for by 9 George IV, chapter 74, by which the offence was made punishable by fine. But it was intended to extend the provision to genuine coin on which any illegal operation had been performed; and the law would be general, instead of being confined, as it was now, to Presidency Towns and to European subjects.

The Motion was put and agreed to.

EMIGRATION (FRENCH COLONIES).

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill for the amendment of Act XLVI of 1860 (authorizing and regulating the Emigration of Native labourers to the French Colonies). He stated that the object of the Bill was to adapt the law, under the Act XLVI of 1860, authorizing Emigration to French Colonies, to an additional Article of the Convention of 1860 between Her Majesty and the Emperor of the French, which had been signed in 1861. It was provided that, on the one hand, the Governor General in Council, if he thought that the emigrating labourers did not meet the protection provided by that Act, should have power to withdraw the privilege of contracting for such Emigration; and, on the other, that the Emperor of the French should in that case be at liberty to resort to the former manner of obtaining labourers on the Coast of Africa. The Convention also provided for its coming into operation on the 1st of July 1862, except as to Reunion, in respect of which Island it would come into operation at once. These alterations in the Convention rendered necessary an alteration in the law.

The Motion was put and agreed to.

BANK OF BENGAL.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill for the regulation of the Bank of Bengal. He stated that the object of this Bill was to provide a new Charter for the Bank of Bengal, in lieu of that contained in Act VI of 1839. Notice had been given under that Act by the Governor General in Council that the privilege of issuing Notes should cease from the month of March next; and the Currency Act had been passed, and an agreement entered into with the Bank for the transaction of a considerable part of the Government business in respect of the Currency and otherwise. The new Charter would provide for carrying that agreement into effect, and for making several other important alterations. The Capital of the Bank, which was now held in 2,675 Shares of 4,000 rupees each, would henceforth be held in 10,700 Shares of 1,000 rupees each, and this number might be increased to 21,400 Shares of that amount, and the Capital might be formed into stock, transferable in amounts of not less than 250 rupees. Some existing restrictions on loans would be removed, and power given to lend on goods, wares and merchandize, not of a perishable kind; to grant Post Bills; to transact Agency business on commission; and to buy Bills of Exchange for the

purpose of remitting funds to meet Bills or Letters of Credit granted to constituents. The Directors would also be authorized to agree to modified terms of remuneration for the transaction of Government business. There were other detailed provisions respecting the power of the Directors and the mode of conducting the business of the Bank.

The Motion was put and agreed to.

SUBSTITUTION OF PRESIDENCY BANKS FOR GOVERNMENT TREASURIES.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to substitute the Banks of Bengal Madras and Bombay, for the General Treasuries of the Governments of Fort William, Madras and Bombay, as the place for making payments by or to the Government. He stated that the object of this Bill was to place beyond doubt the legality of payments at those Banks of all sums now payable at the Treasury. No doubt could exist in most cases, but in others the Treasury had heretofore been particularly designated as the place of payment. The Act would come into operation at once with respect to the Bank of Bengal ; but as the agreements with the Banks of Madras and Bombay had not yet been signed, it would take effect in those Presidencies from the time that the Governor in Council should, in the Gazette, notify that the agreements had been signed.

The Motion was put and agreed to.

AFFIDAVITS, AFFIRMATIONS, &c.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to amend the law relating to affidavits, affirmations and solemn declarations. He stated that the object of this Bill was to effect a change in the law relating to affidavits and the like, and it would principally affect the Courts established by Royal Charter. At present the affidavits that could be received there must be sworn in the Court, or before Commissioners appointed for the purpose. This course involved much delay and expense, and much hardship was felt in respect of probates and letters of administration applied for by persons residing at a distance from the Presidency Towns. The law had been altered in England by an Act of William IV, empowering Magistrates to take affidavits ; and this law had been extended to Consuls, Ambassadors, and others in Foreign places. This Bill would contain provisions of a similar character, and would also provide for voluntary affidavits. Many such were taken as to the death of particular persons, the right of persons to receive particular sums of money, and the like, and were often acted on ; but it was doubtful if the oaths to such affidavits could be legally administered in this country, and the deponents were not liable to punishment for perjury. The law had been amended in England, and this Bill would extend a similar change to this country authorizing such affidavits to be taken, and rendering the deponents liable to punishment for false swearing.

The Motion was put and agreed to.

STAMP DUTIES.

The Hon'ble MR. HARRINGTON moved for leave to bring in a Bill to consolidate and amend the law relating to Stamp Duties. He stated that

he had introduced a Bill into the late Legislative Council in the month of August last, entitled a Bill " further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties)", which had been read a second time, and referred to a Select Committee in September. That Bill had been published in the Government Gazettes of the several Presidencies, and many valuable suggestions had been received. The Bill had been considered by the Select Committee, and was now ready to be considered with its amendments. It had been felt that the Stamp Act was in some respects too stringent, and that some modification of its provisions might be safely made. The scale of Stamp Duty also was found in some cases to be too high, and a reduction had been proposed. Schedule A would include some additional articles, which it was considered might fairly bear a Stamp Duty, but the main object of the Bill had been kept in view, namely, to afford relief to the mercantile community, and it was probable that the Bill would secure this object, and, at the same time, some increase rather than any diminution of the revenue.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON then proposed that the Rules should be suspended, in order that this Bill should at once be referred to a Select Committee. The passing of the Bill was desirable not only to afford relief to the community, but also for the purposes of revenue.

His Excellency THE PRESIDENT thought it both reasonable and advantageous that this Bill should be proceeded with, as proposed by Mr. Harington, under a suspension of the Rules. But he considered that it would be more in accordance with the Rules of the Council that the Bill should, in the first instance, be printed for the use of the Members, and that the motion should then be made.

The Hon'ble MR. HARINGTON said that he would proceed in the manner that His Excellency had suggested.

CRIMINAL LAW REPEAL.

The Hon'ble Mr. HARINGTON moved for leave to bring in a Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure. He stated that the object of this Bill was the repeal of those Acts and Regulations which had been superseded, and were virtually rescinded by the Indian Penal Code and the Code of Criminal Procedure. The number of such Regulations and Acts was between 200 and 300. This would show the extent of relief, alike to the Judicial officers of the Government administering the law, and to the public at large, which had been effected by the Codes which had lately occupied the attention of the Legislative Council. The Criminal Law and Procedure might for the most part be now comprised in one small volume.

The Motion was put and agreed to.

REGISTRATION OF ASSURANCES.

The Hon'ble MR. FORBES moved for leave to bring in a Bill to provide for the Registration of Assurances. He stated that the object of this Bill was to prevent forgery and fraudulent suits, by providing that no document respecting
immovable

immoveable property of more value than one hundred rupees should be given in evidence unless registered; and that no action should be brought, on any unregistered instrument relating to immoveable property of less value than one hundred rupees, after a period of two years from the time the cause of action arose; and that no action should be brought, on any unregistered instrument affecting moveable property, after three months from the time the cause of action arose. The Bill at present was restricted to the Mofussil, but its provisions might hereafter be extended to the Presidency Towns.

His Honour the LIEUTENANT-GOVERNOR of Bengal said that this Bill raised an important question respecting the division of business between the Council of the Governor General and the Local Councils. It was desirable that general laws should be similar through all India, yet that was not a matter of great importance. In every great province, however, there ought to be no incongruity. The question as to the duties of the Local Councils might be decided in one of two ways. The Local Councils might be restricted to laws called local laws but such laws were few and unimportant: in the last eight years the Legislative Council had passed very few of such laws; or the Council of the Governor General might pass only such laws as were manifestly of an Imperial character. In Sir C. Wood's Despatch (paragraph 10) he spoke of the legislative powers of the minor Presidencies being restored by the new Councils' Act, and the object of that Act seemed to be that great Imperial measures only should be taken up by the Governor General's Council. He spoke on behalf of himself and the other Presidencies, and thought that the 31st paragraph of Sir C. Wood's Despatch should be their guide. That paragraph referred to the 43rd section of the Councils' Act as indicating the measures to be reserved for the Imperial Council. This Bill did not fall within that category. Sir C. Wood in his 32nd paragraph indicated that the Council of the Governor General might legislate upon other topics, but that as a general rule it should not interfere with matters of local legislation. He was not opposed to a Registration Bill, but it was not necessary that the law of Registration should be the same in all parts of India. If a system of Registration were provided for England, as there was one for Scotland already, it might differ from the Scottish system, yet be equally effective for its own purposes. He was not prepared to suggest how the division of business should be made, but he thought it desirable that the subject should be considered.

His Excellency THE PRESIDENT stated that he agreed in most of the views stated by His Honour the Lieutenant-Governor, but he did not think that it was necessary, in dealing with the present motion, to deal with the point that had been raised. Parliament had substantially settled it in the 43rd section of the Councils' Act. Practical difficulties might arise as to the application of the principle which that section laid down, but such differences should be met as they arose. The division of business would not depend on the territorial limits of the districts affected by any Bill, but on its subject-matter. Some matters must be kept in the hands of the Governor
General

General in Council. Such were the Army, the Revenue, questions affecting the religions of the people, the Post Office, Patents, and the like. These were advisedly reserved. There might arise, on some of these heads, questions that would occupy ground on both sides of the line of demarcation, but the Governor General in Council would decide in each case what Council should proceed with the measure. The present Bill raised a question of that kind. At first sight it seems that this matter might best be taken up by the Local Legislatures, but this Council contained Members from other Presidencies, who were capable of speaking as to the expediency of proceeding with the Bill in this Council. At present it did not seem necessary to define the application of section 43.

The Hon'ble SIR BARTLE FRERE agreed as to the principle, with His Excellency ; but generally, as to the details, with the Lieutenant-Governor. Uniformity of registration was desirable throughout the country, but there might be room for local differences. The Bill should, in the first instance, be before the Council, in order that they might judge how far local requirements had been considered. That could not be determined until the Bill was before the Council.

The Hon'ble MR. HARRINGTON thought that the discussion should be confined to this Bill. If there had been local Councils when it was first drawn, the measure would probably have been left to them ; but the Bill having been already taken up by the Legislative Council, and the Local Governments having already expressed their sentiments on it, there seemed to be no objection to proceeding. At any rate the Bill could be passed for the North-Western Provinces and the Panjab, in which there were no local Councils.

The Hon'ble MR. ERSKINE said he would recommend proceeding with this Bill, even if it were now proposed for the first time ; for, if possible, such a measure should be a general one. It was partly a Limitation Law, and it was desirable to have uniformity in the Limitation Law of the country ; and as a Law of Evidence, providing what instruments should be receivable in evidence, it was desirable that the action of the Courts should be uniform. There was a want of uniformity in the Registration Law at home, but that was regarded as a matter of regret.

The Hon'ble MR. FORBES said that this Bill was part of the Civil Procedure ; and as an attempt had been made to provide a uniform Code of Civil Procedure, it was desirable that this portion should be uniform too.

The Hon'ble MR. RITCHIE said the question was confined to the leave to bring in the Bill. The Lieutenant-Governor thought that the Bill might trench on the line drawn by Parliament. It was important to keep that line distinct, but it was impossible beforehand precisely to define that line. Some cases would be very difficult to determine : the present case could not be determined till the Bill was introduced. The question would then arise, whether the alteration of the law was in principle, or in detail. Hitherto the law had postponed

poned unregistered to registered documents. This Bill would render unregistered instruments wholly inoperative. It might be a question if that principle could be adopted, or it might be adopted by this Council, and yet be found inapplicable to some part of India, for which a local Council might provide. In the meantime there could be no objection to the introduction of the Bill. There were sometimes conveyances of property situated in several Presidencies, and varied legislation might be inconvenient; and on the other hand there might be inconvenience in uniform legislation.

The Hon'ble MR. BEADON said that this was one of the subjects that Local Legislatures would have power to deal with, but this motion to bring in the Bill might nevertheless be agreed to, leaving the local Councils to determine whether they would take up the subject. This Bill could in any case be made applicable to other provinces.

• The Motion was put and agreed to.

COURTS OF REQUESTS (STRAITS).

The Hon'ble MR. FORBES moved for leave to bring in a Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore and Malacca. He stated that this Bill had been introduced into the late Legislative Council at the request of the Government of India, and its object simply was to extend the jurisdiction of the Courts of Requests in the Straits' Settlement to two hundred rupees.

The Motion was put and agreed to.

MUNICIPAL ASSESSMENT (RANGOON, ETC.).

The Hon'ble MR. FORBES moved for leave to bring in a Bill to extend certain provisions of Acts XIV and XXV of 1856 to the Town and Suburbs of Rangoon, and to the Towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners, and for levying rates and taxes, in the said Towns. He said that the object of this Bill was to extend Municipal Acts now in force in the Presidency Towns, with some slight modifications, to the Towns of Rangoon, Moulmein, Tavoy and Mergui.

The Motion was put and agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

The Hon'ble MR. FORBES moved for leave to bring in a Bill to extend 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). He stated that the object of this Bill was to extend the provisions of Act XXIII of 1840 to the Straits Settlement; but the Select Committee of the late Legislative Council had added a provision to enable a suit to be commenced in any one of the Supreme Courts against a defendant resident within the limits of any other such Court; but this was guarded by requiring a special order of a Judge.

The Motion was put and agreed to.

EMIGRATION (SEYCHELLES).

The Hon'ble MR. FORBES moved for leave to bring in a Bill relating to Emigration to the British Colonial Dependency of Seychelles. He stated that the object of this Bill was to extend to the Seychelles Dependency of the Colony of Mauritius the law which permitted Emigration. No change had been made in the law as applied to other Colonies.

The Motion was put and agreed to.

GOVERNMENT SEAL.

The Hon'ble Mr. ERSKINE moved for leave to bring in a Bill to amend the law relating to the use of a Government Seal. He stated that it had been found necessary at Bombay to use the Seal of the East India Company; and as a change in the law which rendered this necessary was required for that Presidency, it was considered desirable to frame a general enactment for all India, which he had to move to introduce.

The Motion was put and agreed to.

CUSTOMS LAW CONSOLIDATION.

The Hon'ble MR. ERSKINE moved for leave to bring in a Bill for the consolidation and amendment for the law relating to Customs Duties. He stated that this Bill had been prepared last year by a Committee appointed by the Government of India, and it had then been introduced into the late Legislative Council by desire of the Government, and had been referred to a Select Committee, and published. The Local Governments and Chambers of Commerce had been consulted, and various valuable suggestions had been received. He proposed to introduce the Bill again, and to circulate it with the papers that had been received.

The Motion was put and agreed to.

The Council adjourned till Wednesday, the 29th instant, at 11 A. M.

W. GREY,

Secy. to the Govt. of India, Home Dept.

CALCUTTA;

The 22nd January 1862. }