

Wednesday, February 18, 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 and 25 Vic., cap. 67.

THE Council met at Government House, on Wednesday, the 18th February, 1863.

PRESENT.

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 W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Sing 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.

RECOVERY OF RENT (N. W. P.)

The Hon'ble MR. HARINGTON presented 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.

RECORDERS' AND SMALL CAUSE COURTS (BRITISH BURMAH).

Also 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.

ABKAREE REVENUE LAW AMENDMENT.

Also 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).

MERCHANT SEAMEN.

Also the Report of the Select Committee on the Bill to amend Act I of 1859 (for the amendment of the law relating to Merchant Seamen).

REGISTRATION OF ASSURANCES.

The Hon'ble Mr. ELLIS presented the Report of the Select Committee on the Bill to provide for the Registration of Assurances.

WASTE LANDS BILL.

The Hon'ble MR. HARRINGTON moved for leave to introduce a Bill to provide for the speedy adjudication of claims to waste lands. He said that this Bill had become necessary, or, if not absolutely necessary, that the present legislation was considered to be very desirable, in consequence of the measures which had lately been adopted, and which were being carried out, for the disposal of waste lands which were believed to be the property of Government. Those measures had for their object the bringing into cultivation of the waste lands situated in different parts of the country, by the sale of the lands to European and other Capitalists who were willing to invest their money in the purchase of the same. But it must be obvious, that intending purchasers would hesitate to invest their capital in waste lands, unless, at the time of sale, their right to the land sold was secured to them in such a manner as not to admit of the title being afterwards called in question by persons who claimed an interest in the land, and it was with the object of providing means for the early disposal of such claims, which, though unknown to the local authorities, might still exist in respect to land proposed to be sold or otherwise disposed of on account of Government, that the present Bill had been framed. The words "otherwise disposal of" had been introduced into the Bill in addition to the word "sold," because the Government might consider it for the interests of the public to construct public buildings on some of the waste lands in their possession, or to plant a portion of such lands with trees, the wood of which might be useful at some future time for Railway and other purposes, and it was thought that there would be a convenience in so framing the provisions of the Bill that it would apply to all claims to waste lands whether proposed to be sold or otherwise dealt with. The present Bill was the only legislation considered immediately necessary in connection with the measures for the disposal of waste lands already referred to. As suggested at the commencement of these remarks, there might be no absolute necessity for the present Bill. It was not necessary to declare by law that persons who considered that they had claims to any land proposed to be sold or otherwise disposed of as waste, or who objected to the sale or other disposition of such land, had a right to prefer their claim or objection in the ordinary Courts of law. That right was clearly already possessed by such persons, and they could neither be deprived of it by an order of the Executive Government, nor would it be just to prevent their exercise of the right in some way. But the

consequence of leaving such claimants or objectors to the remedy of a regular suit under the General Regulations, to be followed by the usual regular and special appeals, would be to give them the full period of limitation, extending, it might be, in some cases, to twelve years, and indefinitely, or for a very considerable period to delay the final decision of the case, during which interval the land might remain waste, or if the purchaser expended any capital in its improvement, he would do so at very considerable risk. The public interests would seem therefore to require that these classes of claims and objections should be treated exceptionally, and that some special provision should be made for their speedy determination. The object of the present Bill, as already noticed, was to make such provision. The Bill gave to all Collectors or other Officers exercising the powers of a Collector in districts in which any waste lands might be situated, jurisdiction summarily to hear and determine claims and objections of the nature of those to which the Bill applied, if preferred within a certain period. Either of the parties, if dissatisfied with the Collector's decision—that is, the claimant or objector on the one side, and the Government, as representing the public, on the other side—would be at liberty to bring a regular suit to contest the decision before a Court to be constituted for the purpose. The Court would consist of three Judges. It was proposed that the decisions of the Court should be final, but the Court would be at liberty to state any point of law, or usage having the force of law, arising in the case, for the opinion of the High Court of Judicature, or, where there was no such Court, of the highest Civil Court of Appeal in the Territory in which the land in dispute was situate. The Bill further provided for the cognizance by the Courts constituted under the Bill, of claims and objections which, for any sufficient reason, might not have been preferred to the Collector within the time allowed, but which might be brought in the Court within a period fixed in the Bill. When, however, the lands might have been sold or otherwise disposed of on account of Government, the claimant or objector, though he should succeed in establishing his claim or objection, would not be entitled to the possession of the land; in such case he would receive pecuniary compensation. It had been objected that the time allowed for persons preferring claims and objections under this part of the Bill was too short, and that, although it might be quite proper, looking to all the attendant circumstances, that the claimant or objector should not obtain possession of the land which might have passed into other hands, or been disposed of in such a manner as to preclude its being given up without great public loss or injury, there seemed no sufficient reason why such persons should not be allowed the full period of limitation for preferring their claims or objections, which was provided by the existing law. There might be some force in this objection, and he (Mr. Harington) should be ready to consider any proposition that might be made for enlarging the period allowed for instituting a suit under Section X of the Bill. Lastly, the Bill provided for compensation being given by Government to any claimant or objector who might have been prevented from preferring his claim or objection either to the Collector

or to a Court competent to hear the same, within the time allowed, should the Government consider the claim to be a just one. These were the principal provisions of the Bill. The Bill had been framed after consultation with the several Governments. Many of the suggestions received from those Governments had been adopted, or the provisions of the Bill had been so altered as to meet objections taken by the local Governments to the Bill as originally framed. As only waste lands, of which it was believed that there were no claimants, were proposed to be sold or otherwise dealt with, it might be hoped that the claims cognizable under the Bill would not be very numerous. He (Mr. Harington) thought that the Bill, as framed, would be found to contain suitable provisions for the determination of all claims and objections that might arise in the disposal of waste lands, so as to afford ample protection to the public on the one hand, against unfounded claims, and to *boná fide* claimants and objectors on the other hand, or claimants or objectors who really had an interest in the land proposed to be sold or disposed of in some other manner.

The Motion was put and agreed to.

PEONS' BILL.

The Hon'ble MR. HARINGTON also moved that the Report of the Select Committee on the Bill to consolidate and amend the Law relating to the employment and remuneration of Peons for the service and execution of Civil Process in the Courts of the North-Western Provinces of the Presidency of Fort William in Bengal be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON then said that he had to move the amendments of which he had given notice in the following terms:—

That Sections XI and XII be transposed, and that the following words be added to Section XI when so transposed:—“ And in any place not subject to the “ General Regulations to which the provisions of this Act extend, or shall here- “ after be extended, as provided in the last preceding Section, the Judges of the “ principal Courts of Original Civil Jurisdiction in such place shall be the Judges “ to fix the number of Peons necessary to be employed in such Courts, and in “ any Courts subordinate to such Courts, as provided in Section II of this Act, “ and subject to the approval therein mentioned.”

He said that the Act might extend to Territories in which there were no Zillah Judges, and the proposed amendment was necessary to show by what Officers the power of fixing the number of Peons in those Territories was to be exercised.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

MAHOBIA AND JEITPORE BILL.

The Hon'ble MR. HARINGTON also moved that the Report of the Select Committee on the Bill to bring the Pergunnahs of Mahoba and Jeitpore, in the District of Humeerpore, under the operation of the General Regulations, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON then proposed the amendment of which he had given notice, that the following Section be added to the Bill :

“This Act shall take effect from such date as the Lieutenant-Governor of the North-Western Provinces shall fix by an order to be published in the official Gazette.”

He said that this amendment was proposed in consequence of a communication from the Lieutenant-Governor of the North-Western Provinces, who stated that some time must transpire before the necessary arrangements were completed for giving effect to the Bill, and that in the meantime the existing system of administration must be continued.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON then moved that the Bill as amended be passed.

The Motion was put and agreed to.

HIGH COURT (BOMBAY) BILL.

The Hon'ble MR. MAINE 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 to empower Judges of the High Court and other Authorities at Bombay to direct convicts to be imprisoned either in the House of Correction or the Common Jail, be taken into consideration. He said that, as this Bill had reference solely to the custody of prisoners in Bombay, and as it had been thoroughly considered in the Local Council, he did not suppose that this Council would consider it necessary to delay its passing.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

MASTER'S OFFICE, HIGH COURT.

The Hon'ble MR. MAINE moved for leave to introduce a 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 of Fort William in Bengal, the object of which was to wind up the business in the Master's Office. That Office was the Department of the former Supreme Court on its Equity side, in which its administrative business was chiefly conducted, and to which certain questions, particularly questions of fact, were referred for investigation. The Office of Master in Equity had been abolished in England; and in India, under the altered system of the Court since the fusion of the Supreme and Sudder Courts, it might be said only to survive for the purpose of winding up the business which was before the Master at the moment of the amalgamation. In order to dispose of this, it was necessary that the Master should be armed with additional powers to enable him to bring the matters before him to a conclusion. How urgently such powers were required might be inferred from the fact, which he (Mr. Maine) believed he was correct in stating, that there were some suits still pending in the Master's Office, in which no step had been taken for twenty years, not from any default on the part of that Officer, but from the unwillingness of the parties to proceed. When the Master's Offices were abolished at home, it was necessary to invest those functionaries with powers to compel parties to proceed, and, if necessary, to proceed without them. The Bill followed the English precedent, and had been drawn with the approval of the Chief Justice, so that he trusted that the Council would not object to pass the Bill at the next Meeting.

The Hon'ble MR. HARRINGTON said that similar provisions to those contained in the proposed Bill might be necessary in respect to the Master's Offices attached to the High Courts at Madras and Bombay, and as the Local Legislatures had no power to legislate on any matter of procedure in the High Courts of Judicature, he would suggest that the Bill, instead of being restricted in its application to the High Court at Calcutta, should extend to the High Courts at the other two Presidencies also.

The Hon'ble MR. MAINE said, that he would ask for leave to introduce the Bill with a more enlarged title, "for the speedy and efficient disposal of the business now pending in the Office of the Masters of the High Courts of Judicature at Fort William in Bengal, Madras, and Bombay." If he found that it should be confined to the Court here, it would be easy to correct it before it passed.

The Motion was put and agreed to.

The Council adjourned.

CALCUTTA,

The 18th February, 1863. }

M. WYLIE,

Depy. Secy. to the Govt. of India,

Home Department.