

Wednesday, 20th June, 1860

# PROCEEDINGS

OF THE

# LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

The Council was accordingly adjourned by the Vice-President at half past 11 o'clock, till Wednesday, the 13th instant, at 11 o'clock.

*Wednesday, June 13, 1860.*

PRESENT :

The Hon'ble Sir Henry Bartle Edward Frere.

No other Member of the Council was this day present, and the Council was adjourned till Saturday the 16th instant.

*Saturday, June 16, 1860.*

PRESENT :

The Hon'ble Sir Henry Bartle Edward Frere.

H. B. Harington, Esq., | H. Forbes, Esq.,  
and  
A. Sconce, Esq.

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws.

The Council was adjourned at half-past 11 o'clock till Wednesday evening the 20th instant, at 7 o'clock.

*Wednesday Evening, June 20, 1860.*

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*,  
in the Chair.

The Hon'ble Sir H. B. | H. Forbes Esq.,  
E. Frere, | A. Sconce, Esq.,  
Right Hon'ble J. Wil- | and  
son, | Hon'ble Sir M. L.  
H. B. Harington, Esq., | Wells.

INCOME TAX.

THE CLERK presented to the Council the following Petitions :—

A Petition of Native Inhabitants of Bombay concerning the Bill "for imposing Duties on profits arising from

Properties, Professions, Trades, and Offices."

A Petition of Proprietors of permanently settled estates in Bengal, Behar, and Orissa against the same Bill.

A Petition of Inhabitants of Patna, against the same Bill.

A Petition of Zemindars of Shahabad, against the same Bill

A Petition of Maharajah Mohisar Bux Singh Bahadoor, of Shahabad, against the same Bill.

A Petition of Maharajah Moheshur Sing Bahadoor, of Tirhoot, concerning the same Bill.

A Petition of Rajah Puhladh Sein, Proprietor of the Raj of Ramnagar, Purgunnah Bujhoon Surkar Chumparun, concerning the same Bill.

A Petition of Ram Coomar Singh, of Shahabad, against the same Bill.

A Petition of Ramessur Bux Singh, of Shahabad, against the same Bill

A Petition of Mothoorah Persaud Parrey, of Shadabad, against the same Bill,

A Petition of Syad Shumsher Alee and others, of Tirhoot, concerning the same Bill.

A Petition of certain Residents and Inhabitants of Tipperah, employed under Government, against the same Bill.

Mr. Wilson moved that the above Petitions be printed.

Agreed to.

PARSEES.

THE CLERK also presented a Petition from Modee Roostumjee Khorshedjee and others of Surat, concerning the Petition of the Parsees of Bombay, submitting the draft of a Code of Laws for the Parsee Community.

SIR BARTLE FRERE moved that the Petition be printed.

KOONCH AND CALPEE.

MR. HARRINGTON presented the Report of the Select Committee on the Bill "to remove the Pergunnahs of Koonch and Calpee, in Zillah Jaloun, from the operation of the General Regulations."

## ARMS AND AMMUNITION.

Mr. HARRINGTON also presented the Report of the Select Committee on the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)." He said, in presenting this Report, he would, with the permission of the Council, offer a few remarks explanatory of the alterations which the Select Committee recommended should be made in the Bill to which it related. Those alterations were very considerable, and some of them were of a very important character, and it was on that account that, instead of following the usual course of presenting the Report of the Select Committee without any comment, he was anxious, at the present stage, to explain the nature and extent of the changes proposed by the Select Committee and the grounds of their recommendations. In doing this, he trusted that he should be consulting the convenience of the Council.

Honorable Members would recollect that the Bill, as read a second time, proposed merely to make perpetual Act XXVIII of 1857, commonly called the disarming Act, without any modifications. From the copy of the Bill containing the alterations proposed by the Select Committee, which would be circulated to Honorable Members with a copy of the Report just presented, it would be seen that the Select Committee were of opinion that Act XXVIII of 1857 should be entirely remodelled, and, as he had already intimated, very materially altered.

He would not refer particularly to the debate which took place on the motion for the second reading of the Bill, or to the opposition which was then offered to some of the provisions of the Bill. The Honorable and learned Judge (Sir Charles Jackson) from whom that opposition chiefly proceeded, and who alone, if he recollected aright, voted against the motion for the second reading, was not now present, and he would not therefore have

an opportunity of answering anything which he (Mr. Harrington) might say on the subject of that opposition. Suffice it then to remark that what had fallen from the Honorable and learned Judge on the occasion referred to, as well as from other Honorable Members, had been carefully considered by the Select Committee, and some of the alterations proposed in the Bill by the Select Committee were traceable to the objections taken by the Honorable and learned Judge and others to Act XXVIII of 1857 as in force at the present time. The only other remark which he would make in connection with the debate which took place on the motion for the second reading of the Bill had reference to an objection which had been very generally urged in respect to Act XXVIII of 1857, namely, that it applied to Europeans as well as natives. It was contended by those who entertained this objection that, looking to the circumstances of the country, to the objects which must be had in view in introducing a law into India relating to the use of arms and ammunition, to the relationship in which the European residents stood to the natives, to the position and character of the former, and to recent events, it was not politic, necessary, or proper that an Indian disarming Act should extend to Europeans, but that its operation should be confined to the natives. Admitting that there might be some force in the objection, he continued of the opinion which he had all along held that class legislation of the nature of that proposed was very undesirable, and that it should be avoided if possible. It must be scarcely necessary for him to remark that if the European population only had to be considered, no Bill such as that now proposed could be necessary. He freely acknowledged that, as a class, the European and American population of India might safely be exempted from the operation of the present Bill—but so might large classes of the natives also—and it was the extreme difficulty of making a selection or drawing a distinction which should not be open to the charge of partiality or

invidiousness, which had hitherto prevented him from attempting it. The present Bill, as recommended to be amended by the Select Committee, did not propose to make any distinction. Equally with Act XXVIII of 1857, it applied to all classes, but the Bill had been so framed that its proposed application to Europeans equally with natives could not, he thought, be objected to on any reasonable grounds, the more particularly as the Local Governments would still have the power of exempting Europeans from the operation of the only part of the Bill which might perhaps be deemed vexatious and harassing by that class of the community, and derogatory to their national character.

The Select Committee did not consider any alteration necessary in the title and preamble of Act XXVIII of 1857, and they had accordingly proposed that both should be adopted, word for word, in the new Act.

The Select Committee proposed to omit Section I of Act XXVIII of 1857, which required that in places to which that Section was extended, written notices of the possession of Arms should be given to the Magistrate. They also proposed to omit Section XXIV, which authorized a general search for arms, ammunition, &c., in any District.

As regarded the latter Section, he (Mr. Harington) was compelled to say that what he had heard since the Bill was last before the Council had satisfied him that in practice this Section had led to a great deal of oppression, and had proved in the hands of the Native Police a powerful and fruitful means of bribery and corruption, if not of something worse, and he was decidedly of opinion that the Section should not be retained as part of a permanent disarming Act, unless its enforcement could be entrusted to a much greater extent than was now the case, to European Agency, which, looking to the great and pressing demand for agency of that description at the present time in other Departments, was simply impossible.

Sections I and V Act XXVIII of 1857 left it to the Executive Govern-

ment to determine to what places those Sections should be extended. Section XXVI, which applied to the manufacture, use, or possession of cannon, howitzers, and mortars was of the same exceptional character as regarded its application. The Select Committee proposed that the new Act should be of general application, though they would reserve to the Executive Government the power given in Section XXXIV of Act XXVIII of 1857, of withdrawing from time to time from the operation of all or any of the provisions of the Act any part of any District, and in like manner as occasion should require to subject the same again to all or any of the provisions of the Act. The Select Committee considered that this would be quite sufficient.

In lieu of Section XXVI Act XXVIII of 1857 the Select Committee proposed that the manufacture in India, or the importation into India, of cannon, howitzers, or mortars should be prohibited under a heavy penalty, unless the manufacture was authorized or the importation licensed by the Governor General of India in Council, or by some person specially authorized by the Governor General of India in Council in that behalf. The effect of this provision, if adopted, would no doubt be to restrict the manufacture of cannon, howitzers, and mortars to the Government Foundries, and their importation for Government use, and it seemed proper that it should be so. Permission might be given by the Government, on the payment of a fee, to any person to possess cannon, howitzers, or mortars. It was probable that this permission would be very sparingly accorded.

The Select Committee had thought it proper to recommend that the written notice of the possession of arms required by Section I Act XXVIII of 1857 should be discontinued. The compilation of a register of such notices, which would still be absolutely necessary if the Section were retained, entailed great labor upon the officers of Government, and the requisition was very harassing to the people without being attendant with any commensu-

Mr. Harington



rate benefit. The rule also gave rise to every kind of evasion. The Select Committee believed that the object in view in this and other Sections might be attained much more effectually and in a much simpler manner by enacting that no person should manufacture or deal in arms of a certain description, or in percussion caps, sulphur, gunpowder or other ammunition, and that, with certain exceptions, no person should go armed or carry arms without a Government license, which should be obtainable on payment of a small fee, and that whenever a Magistrate should have reason to believe that any person residing within the limits of his jurisdiction had collected any arms of the description mentioned in Section V of the Act, or percussion caps, sulphur, gunpowder, or other ammunition for any unlawful purpose, or that any such person had a larger quantity of such arms, percussion caps, sulphur, gunpowder, or other ammunition in his possession than in the judgment of the Magistrate could be left in the possession of such person without danger to the public peace, it should be lawful for the Magistrate, having first recorded the grounds of his belief, to cause a search to be made of the premises occupied by such person, or on which the Magistrate might have reason to believe such arms, percussion caps, sulphur, gunpowder, or other ammunition were to be found, and to seize and to detain the same in safe custody for such time as he might deem necessary, the search in such case being conducted by the Magistrate in person or by a Joint or Deputy Magistrate, or by a European Assistant. Provisions to this effect had been introduced into the Bill by the Select Committee. The local Government had at the same time been empowered specially to exempt any persons it might think proper, other than those specified, from the operation of the Section relating to the carrying of arms. This was the Section which, in his preliminary remarks, he had suggested might possibly be deemed harassing and vexatious by the European community.

Having thus briefly mentioned the principal alterations proposed by the Select Committee in the Bill, he would not further occupy the time of the Council, but would conclude by giving notice that on Saturday next he should move that the Bill amended as proposed by the Select Committee should be referred to a Committee of the whole Council.

#### UNIVERSITIES.

SIR BARTLE FRERE, in moving the second reading of the Bill "for giving to the Universities of Calcutta, Madras, and Bombay, the power of conferring degrees in addition to those mentioned in Acts II, XXII, and XXVII of 1857," observed that there was only one point on which he need trouble the Council with a brief explanation. It had been stated that this was a Bill calculated to degrade the Universities, and to lower the standard of education in India. He could not imagine how such an impression could have been formed of the measure—for what was the object and history of the Bill? The Acts creating the Universities strictly defined the degrees which the Universities could legally confer. But on commencing to work these Acts, the governing bodies of the Universities discovered that the utility of the institution would be greatly limited, unless they had power to confer other degrees, and as the Act did not permit them to do so, they applied to Government to move the Legislative Council to enlarge their powers so as to enable them either to confer the particular degrees which the Senate then thought desirable, or such other degrees as the Senate with the approval of the Governor General in Council should from time to time appoint.

It was considered by the Government of India that the latter was the preferable course, and consequently the present Bill was drawn in general terms, so as to enable the Universities to confer such degrees as they might think necessary, other than the degrees expressly provided for in the Acts constituting the Universities. He failed to see how it was possible that

such enlargement of the powers of the Universities could degrade those bodies or tend to lower the standard of education.

He could have understood, even if he had not concurred in, the objection if applied to any alteration in the constitution of any ancient University. It might be said, with some show of reason, that these bodies had existed for ages, their statutes were the result of the accumulated wisdom of ages; depart from them in the slightest degree, you impair the value of the stamp which the University degree affixed to attainments of a certain standard. This might have been said, and has been said very lately, in the case of our two most celebrated Universities, but were Oxford and Cambridge deterred by the threatened evil? Certainly not. During the past five or six years the most extensive and fundamental changes had been made in many parts of the constitution of both Universities, and at Oxford especially, the more conservative of the two, measures had been taken to extend some portion of the advantages of an University degree, conferred under a name heretofore unknown to either University, on scholars who had, previous to examination, had no connection whatever with the University.

He was not now offering an opinion on the propriety of this move at our English Universities. He was simply pointing out the truth that even the oldest and least changeable of our Universities found it absolutely necessary to alter their laws and to vary their degrees in order to suit the changed circumstances of education and to meet the altered wants of those classes for whose benefits the Universities were designed.

What was there then in our Universities which should exempt them from the necessity of making even fundamental changes in their constitution, if it was clear that such changes were beneficial? It was barely two years since the Acts which formed the charters of the Universities were passed, and they could not therefore claim exemption from change on the score of antiquity, nor could it be expected that they should

have been formed, at their first institution, on so perfect a model as to preclude all necessity for subsequent improvement or alteration.

But who should judge whether any change would be beneficial or necessary? He believed that the decision could not be left in safer hands than where the Bill proposed to put it by entrusting it to the Senate or governing body of the University. Be it remembered that it was that body which had asked for this Bill; and in bringing it in, the Government simply gave effect to the wishes of that body.

He believed that the Senates of the Universities were infinitely better able to judge of such matters than any Government or legislative body possibly could be. He held it essential to the vitality of any University to give it the largest possible power for self-government. He did not say it was impossible that such powers might be abused, for he believed they could never ensure the exercise of any power to do good without having some power to do harm, but he was quite sure the power could not be placed in better hands than those of the highly qualified bodies which now formed the Senates of the three Universities.

He could see nothing in the suggestions of the governing body of the Calcutta University or of either of the others to lead him to apprehend any indiscreet or unnecessary exercise of the powers which it was proposed to entrust to them. Taking their recommendation as an index of the mode in which they would probably exercise the desired powers if they had them, we found that they suggested three degrees beyond those specified in the Act of 1857. These three were Doctor of Law, Licentiate in Law, and Licentiate in Civil Engineering.

Now he did not suppose that any objection would be raised to giving the Universities the power to confer the degree of Doctor of Laws, or that any one would accuse the Senate of a desire to degrade the University by conferring such a degree. It was, he imagined, to the proposition for creating the degrees of Licentiate of Law and Licentiate of Civil Engineering that exception was

*Sir Bartle Frere*

taken. But how stood the case? Why should not the University confer the degree of Licentiate in Law and Civil Engineering as well as that of Licentiate in Medicine, which was already provided for by the Act? It was in the two departments of Law and Civil Engineering that the stamp of an University degree was calculated at the present time to be of most practical benefit, and what was the consequence of having no degree lower than those of Bachelor of Laws, and Master of Civil Engineering? Why, that in the present state of education either the degree would seldom or never be taken, or there would be a continual pressure on the examiners to lower the standard, so as to admit men who had not attained the standard fixed for Master or Bachelor's degrees. It was surely preferable to maintain the high standard of those two degrees, and to permit the University to stamp an inferior but still highly useful amount of attainment with a mark of inferior value. It was this the University desired to do, and in the reason the Senate assigned for such wish he saw grounds for confidence that, whether they used the powers the Bill would confer on them to create sub-degrees or not, their action would be guided by an intelligent adaptation of their means to existing circumstances, and that the powers sought for could not be placed in better hands.

The Motion was carried and the Bill read a second time.

#### SUCCESSIONS.

The Order of the Day being read for the third reading of the Bill "for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons"—

Mr. HARRINGTON said, before moving the third reading of this Bill, he must ask the Council to allow it to be recommitted to enable him to move the omission of a Section which, in consequence of the amendment made by the Council at large, on the recommendation of the Select Committee, in Section VIII of the Bill, had become

redundant. Section XXI was the Section to which he alluded. The last Clause of Section VIII as ordered to stand part of the Bill, declared that "in such case the certificate shall describe the securities in respect of which such powers are given, and such powers shall not be vested by the certificate except by express words." The same provision was repeated in Section XXI, for which there could be no occasion, though, if that Section were struck out of the Bill, it would be proper to insert the words "and shares" after the word "securities" in line 10 of Section VIII; and if the Council would allow the Bill to be recommitted, he (Mr. Harrington) proposed to move the insertion of those words before making the motion for the omission of Section XXI.

Agreed to.

The proposed amendments were severally carried; and the Council having resumed its sitting, the Bill was reported.

Mr. HARRINGTON then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

#### STAMP DUTIES.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to consolidate and amend the law relating to Stamp Duties," the Council resolved itself into a Committee for the further consideration of the Bill.

Mr. SCONCE asked for the permission of the Council to go back to Section XIII, for the purpose of proposing the introduction of the following Clauses after Clause 6:—

"The cost of transmitting all deeds, instruments, and writings required to be stamped under this section and the cost of registering the same at the Post Office for transmission, shall in all cases be borne by the party applying to have such deeds, instruments, and writings stamped."

"The Government shall not be responsible for any loss or damage which may occur in respect of any deed, instrument, or writing entrusted to the Collectors of Stamp Revenue, and no person employed by the Governments

in the Stamp Department shall be responsible for any such loss or damage, unless that person shall wilfully, fraudulently, or by gross negligence cause such loss or damage."

MR. HARRINGTON said, he doubted whether the new Clauses just proposed by the Honorable Member for Bengal were really necessary. He thought that the Post Office Act and the Rules issued from that Department fully provided for the case intended to be met. He threw this out merely as a suggestion. He had no intention of opposing the motion.

SIR BARNES PEACOCK said, as he understood it, the Post Office Act merely protected the Post Office. The question now was who should be liable for any loss or damage caused wilfully, fraudulently, or through gross negligence. Suppose in transmitting a deed from the Stamp Office to the Post Office, the deed were to be lost. The Post Office Act would not protect such a case, nor also the case of the Post Office being burnt down. With regard to the first Clause proposed by the Honorable Member for Bengal, he thought that, even if the Post Office rules were sufficient for the purpose, there would be no harm in making express provision for it in this Bill.

MR. SCONCE said, his proposed amendment, instead of weakening the Post Office Act, would only tend to strengthen it and make it more complete. The amendment required that the Collector should not stamp a document unless the party applying paid all the necessary charges.

SIR BARTLE FRÈRE said, unless a packet was prepaid it might not be received at the Stamp Office, and at any rate it could not be registered without being prepaid. He knew there was a proposition before Government to amend the Post Office Act with a view to making it more complete in this respect, and he had just been reminded that the amendment before the Council was proposed at the instance of the Government with reference to a case in which a party gave a bond to the Collector, who was required by law to send it to the Superintendent of Stamps for the

purpose of being stamped, while the owner declined to pay the Registry fee.

The Clauses were then severally put and agreed to.

MR. WILSON said, he would now call the attention of the Council to Schedule A. In Article 1 he proposed to add a provision for a uniform Stamp Duty upon agreements for loans by Bankers made for short periods upon the deposit of notes or other securities of the Government of India. It appeared that a very large portion of Banking business was carried on by means of loans obtained on the deposit of Government Securities, and the Bill, as it now stood, contained no provision in respect of such loans, which would therefore come under the general head of Bonds. It was very desirable, however, that transactions of this kind, which had hitherto been entirely free from Stamp Duty, should have some facility given to them with as little sacrifice of Revenue as possible; and therefore he proposed the addition of the following Clause to the Article:—

"Agreements for loans by Bankers made for short periods not exceeding three months upon the deposit of notes or other Securities of the Government of India, with or without a deposit of the acceptance or Promissory Note of the borrower, provided that no such agreement is drawn in the form of a Bond or of a Bill of Exchange or Promissory Note, or in any such way as would render it a negotiable instrument passing by endorsement, for whatever amount, in case such loan shall not exceed one month; the uniform stamp of ..... 2 Rupees.  
And in case such loan is for a period exceeding one month or not exceeding three months ..... 4 Rupees."

SIR BARNES PEACOCK said, before putting this motion, it appeared to him that it was not fair to persons requiring small loans. We could not shut our eyes to the fact that many persons went to Banks for the purpose of speculating in Government Securities. He saw no reason why an honest trader, requiring a small loan, say of 500 Rupees, if he were unable to deposit Government Paper as Security, should have to pay a

proportionally larger amount of Stamp Duty than a person who, on the deposit of Notes of the value of one lakh of Rupees, could borrow 80,000 Rupees for the purpose of speculating in the Government Securities of the day, gambling in Opium, and the like. He (Sir Barnes Peacock) thought it was very unfair that persons holding Government Securities should be more favored than those who possessed other descriptions of Securities. He believed that it was the rule for Banks not to advance money upon personal security. He did not see why a man who could obtain a loan from a Bank on the deposit of Government Paper should be placed on a better footing as regards payment of Stamp Duty, than the small trader. This appeared to him to be giving a bonus to large dealers, over persons probably much more honest than themselves, for the purposes of speculating in Government Securities. &c.

Mr. WILSON said, he thought that his Honorable and learned friend would see a wide distinction between the two cases. The practice in England was for parties to raise loans on the deposit of Government Paper upon an agreement bearing a half Crown stamp, and the essential part of the loan was the security thus given. If a Bill of Exchange or a Promissory Note were discounted, or if the method of borrowing money on a Bill of Exchange or Promissory Note were resorted to, such transaction partook of a commercial character; it was quite different from that of a loan made upon the deposit of Government Security. There could be no doubt that persons who had Government Securities in their possession were in a position to borrow money on better terms than those who were not so fortunate. He (Mr. Wilson) had no objection however to extend the proposed provision to the deposit of any securities which should not be a Bill of Exchange or Promissory Note, or to which the person borrowing is not a party, for very often it was not only customary to deposit Government Securities, but also to give Promissory

Notes and Bills of Exchange bearing the same stamp. It was very obvious that, if we were to impose the same Stamp Duty on loans as we have prescribed for bonds, the former would in point of fact be placed on a footing of a prohibitory class of transactions. It very often happened that merchants required to borrow money on Government Securities for 2, 3, or 4 days, and if they were to be clogged with having to pay a heavy Stamp Duty, it would operate as a check on this class of transactions. This class of transactions had hitherto been altogether free, while bonds had borne a duty; and he thought that, if his Honorable and learned friend would take this matter into consideration, he would observe that there was a wide distinction between this class of transactions and bonds properly so called.

Mr. SCONCE suggested the advisability of raising the rates of duty. As he understood it, the objection taken by the Bank of Bengal was that the Bill made no adequate provision with respect to the loans made by the Bank which by the Charter Act could not exceed three months. Thus it might happen that a loan renewed four times in the year would have to pay four times the duty that would be paid if the loans had been made for one year. But the present proposal might place the Bank in too favorable a position, and a slight increase of the rates proposed might be fairer to all parties.

Mr. FORBES said, he doubted whether the suggestion of the Honorable Member for Bengal would meet the difficulty of the case. The proposition made by the Right Honorable Gentleman was one which had been demanded by the public, and the Right Honorable Gentleman would remember that, at the instance of the Chamber of Commerce at Madras, he (Mr. Forbes) made a proposition on the subject in Select Committee.

SIR BARTLE FRERE said, he spoke subject to correction, but it struck him that there was a considerable difference between the two cases, owing to the practice which generally

prevailed in the Banks of keeping in hand the Government Paper of their constituency with a power of Attorney which gave them great practical power to use it for their own security. If the duty were too high, it would be evaded altogether, for the Banks might take their chance of being put to inconvenience and loss rather than pay a duty.

MR. SCONCE asked, if the Right Honorable Gentleman was satisfied that provision had been made to guard against the misuse of the Clause to the sacrifice of the duty derivable under the head of Bonds. Obviously the agreement for money lent would be confined to such Banks as the Bank of Bengal. Native Bankers of this City might avail themselves of the same rule, and in lending money under an agreement for three months, they might allow the loan to remain for a year or more. It was not obligatory to enforce payment of a debt at the date specified for payment, and thus a loan under an agreement might be largely substituted for loans under Bonds.

MR. WILSON said, it was quite clear that the provision was applicable only to Bonds. It was very difficult indeed to make a law so perfect and complete that its provisions might not be evaded.

SIR MORDAUNT WELLS said, he simply wished to observe that the hardship which the Honorable and learned Chairman apprehended would result from the proposed amendment was not so formidable as was supposed, as a person might borrow 10,000 Rs. on one day and 500 Rs. on another day, and in respect of both transactions, he would have to pay under the proposed Clause for two stamps of the same value. Certainly in England there was a strong feeling in favor of uniform Stamp Duties.

After some further discussion the Council divided—

Ayes 6.

Sir Mordaunt Wells.  
Mr. Seonce.  
Mr. Forbes.  
Mr. Harrington.  
Mr. Wilson.  
Sir Bartle Frere.

Noes. 1.

The Chairman.

*Sir Bartle Frere*

So the Motion was carried.

MR. WILSON said, he would now ask the Council to turn to page 28 of the Bill. A great doubt had arisen as to the proper stamp to be used in cases of transfer of shares in Joint Stock Companies, including the Chartered Banks. It was therefore considered expedient to provide for a distinct Stamp in such cases. According to the law in England, the transfer of a share in the stock and funds of the Bank of England or the Bank of Ireland, or of the South Sea Company, whether upon a sale or otherwise, was subject to a uniform Stamp Duty of 7s. 9d., while the transfer of a share in the stocks and funds of any other Corporation or Company was subject to a considerably higher duty. He thought, however, that it would be better if we made no distinction between the Bank of Bengal and other Banks. It was very obvious that there should be every facility given to such transfers, and therefore he proposed the adoption of what would, in point of fact, be in the character of an *ad valorem* Stamp Duty, varying according to the value of each share. With these remarks he begged to move the addition of the following item to Article 10:—

“Transfer of any share in any Joint Stock Bank, or in any other Joint Stock Company, when the original value of the said share shall not exceed the sum of 500 Rupees ..... 5 Rupees.  
When it shall not exceed the sum of 1,000 Rupees ..... 10 Rupees.  
And a further rate of 5 Rupees for every additional value thereof, by steps of 500 each.”

SIR BARNES PEACOCK said, this amendment appeared to him to be quite in the nature of exceptional legislation. In England transfers of shares were subject to an *ad valorem* duty. It was true that transfers of shares in the Bank of England and the Bank of Ireland paid a different rate of Stamp Duty. It might be right or it might be wrong. At any rate, it was exceptional, and we did not know the principle upon which the exception was grounded. He



therefore saw no reason why we should give a preference to one description of Joint Stock Companies over another. He did not see why the former should not pay the same duty to Government. If a man in England were to purchase a share in a Bank in India, he would have to pay an *ad valorem* duty. Why should he do so here on better terms? He saw no reason for the distinction.

Another objection he had to the amendment was that the shares of some Companies were sold considerably above their nominal value. For instance, the shares of the Bank of Bengal sold for more than its nominal value, whilst those of the Steam Navigation Companies were sold at more than double their nominal value. He saw no reason why prosperous Companies should be put on a better footing than Companies which were just started, and whose shares might be selling below par.

Mr. WILSON said, in all these mercantile transactions, as his Honorable and learned friend (Sir Mordaunt Wells) had remarked, there was nothing so important as uniformity and simplicity. In legislating on this subject, it was very desirable that we should avoid throwing petty obstacles in the way of commerce. The object of imposing a uniform Stamp Duty on transfers was simply to allow these transfers to be made with as little inconvenience as possible to the parties concerned. Another reason was to avoid uncertainty, so that there might be no question of price. In making his present proposition, there was no disposition on his part to favor the Banks, as it would be seen that the uniform Stamp Duty was higher than if an *ad valorem* duty were charged. He had consulted the managers of several of the Banks in this country, and had ascertained that they were in favor of the measure for the reasons which he had already stated.

Mr. SCONCE said, he felt some doubt as to what would be the effect of the amendment proposed by the Right Honorable Gentleman. As he understood, it was the intention of the

Right Honorable Gentleman to propose that the transfer of the shares of public Companies should be charged at the rate of one per cent. on the original value of each full share of the Company. Now the value of a full share on the stock of the Bank of Bengal, for example, was 4,000 Rupees, so the transfer of any such share would cost Rupees 40; but, besides, as he apprehended, it might also follow from the proposal of the Right Honorable Gentleman that the transfer of a portion of a share would be chargeable with the duty of a full share. The stock of the Bank of Bengal might be transferred on quarter shares of 1,000 each, and thus, if the duty on each transfer were regulated only by the value of a full share, the transfer of a quarter share would cost as much as the transfer of a whole share. He did not quite catch the exact bearing of the amendment, but he found that, in another respect, the charge would be excessive, if, for example, the duty should be levied at the rate of one per cent. on all the shares conveyed in any one transfer. But if five shares, for example, would be transferred for the same sum as one share, this objection would not apply.

Mr. WILSON said, he was not aware that such was the practice of the Bank of Bengal, and he begged to postpone the consideration of this Clause, as he was desirous of making enquiries on the subject before re-submitting the matter to the Council.

The consideration of the Clause was accordingly postponed.

Mr. WILSON proposed the insertion of the following Clause in the general exemptions under Article 45 of Schedule A. :—

“ Receipts given for money deposited in any Bank, or in the hands of any banker, to be accounted for, whether with interest or not, provided the same be not expressed to be received of, or by the hands of any other than the person to whom the same is to be accounted for. Provided always that this exemption shall not extend to receipts or acknowledgments for sums paid or deposited for or upon letters of allotment of shares in respect of calls upon any scrip or shares of or in any Joint Stock or other Company, or proposed or intended Company, which said last men-

tioned receipts or acknowledgments, by whomsoever given, shall be liable to the duty charged upon receipts."

He said it was very doubtful whether, under the Bill as it now stood, receipts for deposits with bankers would be charged a Stamp Duty. It was quite clear that they ought not to be so, and he therefore proposed to insert a Clause similar to the Clause in the English Act. These receipts were not in discharge of a debt, but simply in acknowledgment for money given for the purpose of being kept in custody.

Agreed to.

Article 45 also contained the following general exemption :—

"Receipts or discharges written upon or contained in any mortgage deed, or other security, or any deed of conveyance, settlement, or other instrument duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby charged."

Mr. WILSON moved the insertion of the words "personal bond" before the words "other instrument."

The Motion was carried, and the Art<sup>e</sup>'s as amended then passed.

A discussion then ensued as to the effect of the repeal by Section I of this Bill of Section XXXVII of Act X of 1859.

Mr. HARRINGTON proposed the omission of the repealing words from Section I.

Mr. SCONCE moved by way of amendment the introduction of the following proviso in Schedule B :—

"Provided that in suits instituted before Collectors under Act X of 1859, for the recovery of arrears of rent, or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other suits, so instituted under the same Act, the statement shall be written on paper bearing a stamp of the value of eight annas.

After some discussion, both the motion and amendment were severally withdrawn.

Mr. HARRINGTON then moved the addition to the Special Rule for

*Mr. Wilson*

Bengal in Article 5 of Schedule B of a Clause corresponding in terms to Section XXXVII, Act X of 1859. The Clause was as follows :—

"In suits for the recovery of arrears of rent or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other suits the statement shall be written on paper bearing a stamp of the value of eight annas. No stamp shall be required in respect of the production or filing of any document, or the summoning of any witness, or of any application for the execution of any order or judgment passed in a suit under this Act."

He contended that the special advantage afforded by this provision was strictly in conformity to the course of legislation in similar cases for many years, and was advisedly adopted in Mr. Currie's Act, and should not be disturbed without full consideration of the working of that Act.

SIR BARNES PEACOCK said, he had protested against the advantage given by the provision at the time, and he objected to it still. In the present state of the Revenue there was no excuse for such an exceptional arrangement of Stamp Duties. Like others, he should be glad to see stamps in judicial proceedings entirely abolished. But as this could not be, he did not see that the lower rates of stamp should be allowed in this case. It eased the rich man and raised the duty payable by the poor man.

The question being put, the Council divided as follows :—

<i>Ayes</i> 3.	<i>Noes</i> 4.
Mr. Sconce.	Sir Mordaunt Wells.
Mr. Forbes.	Mr. Wilson.
Mr. Harrington.	Sir Bartle Frere.
	The Chairman.

So the Motion was negatived.

After some verbal amendments in Schedule B, which were moved by Mr. Harrington and carried, the Council resumed its sitting.

BOUNDARY MARKS (FORT ST. GEORGE.)

Mr. FORBES moved that the Council resolve itself into a Commit-



tee upon the Bill "for the establishment and maintenance of Boundary Marks, and for facilitating the settlement of Boundary disputes in the Presidency of Fort St. George," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to VIII were passed as they stood.

Section IX was passed after the correction of a misprint.

Sections X to XXX were passed as they stood.

Mr. FORBES said, he wished to be allowed to say a few words in explanation of the new Sections, of his intention to propose the introduction of which he had given notice to the Committee.

When the survey and settlement departments were formed in Madras, it was found necessary to appoint the Deputy Directors of Revenue Settlements to be Sub-Collectors and Joint Magistrates in the Districts in which they might be employed, but by the law under which the grade of Sub-Collector was formed, that Officer had authority to exercise the powers of a Collector only in the particular portion of the District of which he might have separate charge, or when such power was specially delegated to him by the Collector. Now the Deputy Directors of Settlements had no separate Revenue charge in any district, so that although the Government could appoint them to be Sub-Collectors, the special delegation of power by the Collector was necessary to enable them to act.

It had been found very necessary that they should have power to act for the punishment of the fraud and corruption which were so likely to be practised in a survey and assessment, and which had actually been in several instances practised, and the first of these new Sections was intended to give the Deputy Directors the same powers for the punishment of malversation as were now possessed by all Collectors, they being restricted however to such cases as might arise in

their own immediate Department, and the same general control being had over their proceedings as were now had in case of all other Sub-Collectors.

On account of the frauds of which he had just spoken, it was also necessary that the servants of the survey and assessment Departments should be declared liable to the law against malversation in the same way as all servants of the ordinary Revenue Establishments now were, and the second of the new Sections provided for this.

The last Section was not as might at first sight appear *ex post facto* legislation. It made no new offence and enhanced no punishment; no one ever doubted that it was a criminal act for a public servant to take a bribe, to defraud the Government, or to falsify the public accounts, and those to whom this Section would apply did not perform their guilty acts under any idea that they were not doing wrong or were not liable to punishment, but only with the same hope of exemption from discovery under which all crimes were committed.

Cases that had been decided by the Deputy Directors under their appointments as Sub-Collectors might however, it was feared, be reversed in appeal by the Board of Revenue, both because of the doubt he had referred to, whether the Officers could exercise power as Sub-Collectors not having any separate charge in their District, and also because it might be held that the servants of the settlement Department did not come within the strict definition of the present law against Revenue malversation, that law being confined to persons on the Collector's establishment. It was certainly not right that persons who had been guilty of acts, of the real criminality of which they could not possibly have been ignorant, should evade punishment on merely technical grounds, and their case would be provided for by the adoption of the last of the new Sections.

With these remarks he begged to move the addition of the following Sections:—

"Any Deputy Director of Revenue Settlement being a Sub-Collector and Joint Magis-

trate shall be competent to exercise within the District within which he shall be employed any of the powers ordinarily exercised by a Sub-Collector and Joint Magistrate within his charge, provided however that such Deputy Director shall only have cognizance of cases and offences connected with the duties of the Survey or the Settlement Department. In cases coming under Regulation IX. 1822 of the Madras Code tried before a Deputy Director under this Section, the power of control and revision provided by Clause 3, Section 111, Regulation VII. 1828 of the same Code shall be exercised by the Director of Revenue Settlement.

"All Servants of the Survey and Settlement Departments shall be subject to the provisions of the said Regulations IX. 1822 and VII. 1828 of the Madras Code, and those Regulations apply to the Survey and Settlement Departments in the same way as they apply to the ordinary Revenue Department.

"The provisions of the two preceding Sections shall apply to all cases not finally decided at the time of the passing of this Act."

The Sections were severally carried.

The Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported.

#### UNIVERSITIES.

SIR BARTLE FRERE moved that the "Bill for giving to the Universities of Calcutta, Madras, and Bombay the power of conferring Degrees in addition to those mentioned in Acts II, XXII, and XXVII of 1857" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

#### SUCCESSIONS.

MR. HARRINGTON moved that Sir Bartle Frere be requested to take the Bill "for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons" to the Governor General for his assent.

Agreed to.

#### POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. FORBES moved that Mr. Harrington and Sir Mordaunt Wells be

added to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca").

Agreed to.

#### REGISTRATION OF ASSURANCES.

MR. FORBES moved that a communication received by him from the Madras Government, be laid upon the table and referred to the Select Committee on the Bill "to provide for the Registration of Assurances."

Agreed to.

The Council adjourned.

Saturday, June 23, 1860.

#### PRESENT:

The Hon'ble the Chief Justice, *Vice-President*  
in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq.,
H. B. Harrington, Esq.	and Hon'ble Sir M. I. Wells.

#### INCOME TAX.

THE CLERK presented to the Council a Petition of proprietors of permanently settled estates in Bengal, Behar, and Orissa against the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

MR. WILSON moved that the above Petition be printed.

Agreed to.

#### TRANSPORTATION OF CONVICTS.

MR. HARRINGTON presented the Report of the Select Committee on the Bill "relating to the transportation of Convicts."

#### EMIGRATION TO NATAL.

SIR BARTLE FRERE moved the first reading of a Bill "relating to emigration to the British Colony of Natal." It was in its details similar