

Saturday, 4th August, 1860

PROCEEDINGS

OF THE

**LEGISLATIVE COUNCIL OF
INDIA**

Vol. VI

(1860)

execution of powers or pursuant to any previous settlement, deed, or will."

MR. WILSON moved the introduction of the following exemption to the same Article:—

"Deeds for securing gifts or dispositions made by previous settlements, deeds, or wills."

Agreed to.

A verbal amendment was made in the heading of Schedule B.

Article 5 contained the following General Exemption:—

"Petitions or applications presented to any Munsiff's Court in relation to any suit or case of an amount or value less than fifty Rupees."

MR. SCONCE moved the addition of the following words to the above:—

"Or to a Collector or Deputy Collector in relation to any suit or case of the same amount or value tried under Act X of 1859."

Agreed to.

The Council having resumed its sitting, the Bill was reported.

MR. WILSON then moved that the Bill be read a third time and passed.

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

MR. SCONCE moved that Mr. Wilson be requested to take the Bill to the Governor-General for his assent.

Agreed to.

INDEMNITY.

MR. HARRINGTON moved that Sir Bartle Frere be requested to take the Bill "to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances" to the Governor-General for his assent.

Agreed to.

TRANSPORTATION OF CONVICTS.

MR. HARRINGTON moved that Sir Bartle Frere be requested to take the Bill "relating to the Transportation

of Convicts" to the Governor-General for his assent.

Agreed to.

The Council adjourned at half past 8 o'clock (on the Motion of Sir Bartle Frere), till Saturday, the 4th of August.

Saturday, August 4, 1860.

PRESENT:

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

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| His Excellency the | H. Forbes, Esq., |
| Commander-in-Chief, | A. Sconce, Esq., |
| Hon'ble Sir H. B. E. | and |
| Frere, | Hon'ble Sir M. L. |
| H. B. Harrington, Esq., | Wells. |

INDEMNITY, TRANSPORTATION OF CONVICTS, AND STAMP DUTIES.

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances"; the Bill "relating to the Transportation of Convicts"; and the Bill "to consolidate and amend the law relating to Stamp Duties."

MASTERS AND SERVANTS.

THE CLERK presented to the Council a Petition from the Calcutta Trades Association, on the subject of a law regarding Masters and Servants.

MR. SCONCE moved that the above Petition be printed.

Agreed to.

PENAL CODE.

THE CLERK reported to the Council that he had received a communication from the Bombay Government, regarding the case of a Frenchman, who was charged with having obtained money and goods from a Tradesman in Poonah under false pretences, but who was obliged to be discharged owing to the defective state of the law.

SIR BARTLE FRERE said that, as he understood the Penal Code would provide for such cases, he would propose that the communication just reported to the Council lie on the table.

Agreed to.

INCOME TAX.

THE CLERK also reported to the Council that he had received a communication from the Governor of the Straits Settlement, relative to the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

SIR BARTLE FRERE said, he believed that the matter referred to in this communication would be provided for by instructions already issued to the Governor of the Straits Settlement. He would therefore propose that the communication lie on the table.

Agreed to.

WRECKED BOATS.

MR. SCONCE moved the first reading of a Bill "for the preservation of property recovered from wrecked boats." He said, the object of this Bill was to provide a remedy for the evils which had for several years been found to exist to a considerable extent in Bengal. In the great Rivers in Bengal boats carrying the traffic of the country were constantly being wrecked. A correspondence, recently transmitted to him by the Bengal Government, suggested the expediency of adopting some measure having for its object, not only to regulate the proceedings of the local Officers in such cases, but also to induce villagers living on the banks of the rivers to interest themselves in saving wrecked property by offering them salvage. In the following extract of a letter from the Magistrate of Moorshedabad, Mr. Herschel, the evil was thus described:—

"Plunder of wrecked boats has been a crime brought strongly to my notice this quarter. I have to-day seen the wrecks of six boats, one wrecked before my eyes. In

the other I came in time to save the property from the hands of the ryots, who had plundered every sack of wheat. In another I was too late; the wreck having been cleared out in half an hour by the crews of boats going down the stream. (This having occurred above Jungypore, I am in hopes I may secure some of the delinquents to-morrow morning: two have been arrested already.) In my Report in the Hazarpoorah wrecking case, I recommended the extension of Act XVI of 1850 to the entire village concerned. In addition to this I would suggest a distinct Law of Salvage. The property which I have saved from plunder to-day would have vanished in a few hours had I not secured the ryots a four-anna share of it. With proper precautions against the inducements to purposely wreck, a Salvage Law for river wrecks would go far to mitigate the evil. At present there is no sufficient general inducement to the population to turn out to save wrecked property, while there is a very great inducement to the contrary course."

There was a very general concurrence of opinion among the Officers in Bengal as to the necessity for a law of this kind. Wrecks and depredations on wrecked boats, though not of universal occurrence, frequently took place in Bengal, especially in the greater rivers, such as the Hooghly, and the body of the Ganges, and upwards from above Dacca to ards Patna. The purpose of this Bill was not to meet the question as to the offences committed by the wilful casting away of boats, or the felonious taking of the property found in wrecked boats. That question more properly belonged to the Penal Code, and an opportunity would probably be found, at no distant period, of considering how far the Code would sufficiently reach the offences referred to. The Bill which he had prepared, however, was confined mainly to the regulation of the recovery of wrecked cargo, by imposing penalties on its irregular removal, and enabling Magistrates to award salvage to the parties who might irregularly engage in its recovery. The Bill was founded wholly upon the Sections of the Merchant Shipping Act, 17 and 18 Vic, c. 104, relating to ships or coasting boats stranded, or in distress on the sea-shore, or in tidal rivers in England. These provisions, though mainly applicable to vessels on the sea-shores of England, seemed to

him to be quite applicable to the wrecks suffered in the great rivers in this country, in the mode proposed by the Bill.

Some years ago the Bengal Government took up this matter, and would have carried legislation farther than he now proposed. In a letter addressed to the Government of India, in 1853, it was proposed to extend legislative action to boats which had been cast away and run ashore by their crew, with the felonious intent of stealing the cargo. But, as he had said before, it would be better to avoid this part of the question, and to confine ours lves to the matter of the recovery of wrecked property. In the letter from the Secretary to the Government of Bengal, dated the 28th May 1853, it was remarked as follows:—

"In July of last year, a boat, in which Captain Bird of the 11th Native Infantry, and his family were proceeding to Chittagong, was run aground on the coast, (there is every reason to believe intentionally), and before the boat became a wreck, three hundred or four hundred people from the neighboring villages collected, and together with the crew broke open Captain Bird's boxes, and plundered the whole of his property, worth about three thousand Rupees."

"The Governor of Bengal is disposed to think that the provisions of the existing law, the construction of which is shown above to be open to doubt, are insufficient for the prevention of the heinous crime of wrecking and plundering boats, which has long been known to prevail along the great rivers of Bengal, and on the North-eastern shore of the Bay. His Lordship would take the offence out of the category of those punishable by a Magistrate, and include it specifically among those which are now declared by law to amount to gang robbery. At the same time His Lordship would render it incumbent on all owners and managers of land to give information of wrecks happening in their estates, and give authority to the local Government to raise a special police in places where the crime is found to prevail, charging the expense on the inhabitants. Lastly, His Lordship would empower the Magistrate to award salvage in cases of wreck or danger to the extent of a moderate proportion of the value of the boat and cargo."

This letter would be printed for the consideration of the Council. He had thought it necessary, however, on the present occasion, to refer to it, both

because it suggested that the offence of wilful wrecking should be specially dealt with, and because it advocated a Law of Salvage.

He would only add, with the view of satisfying the Council that good grounds existed for the introduction of the present measure, that, in the papers to which he had referred, several cases, in which cargoes of considerable value were wrecked, were noticed by the Magistrates. Among them was mentioned the case of a boat which had been wrecked and property of the value of four thousand Rupees plundered by the villagers. In the ordinary course of law, the matter was enquired into, and the result was that a portion of the property was recovered, and several of the villagers were punished. But afterwards, when another boat containing a cargo, valued at three thousand six hundred Rupees, was wrecked in the same neighborhood, the villagers gave no assistance whatever. So that, in any point of view, a Law of Salvage was desirable.

With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

MR. FORBES moved the first reading of a Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)." He said, the object of this Bill was simply to substitute the Commissioner of Police in the Presidency Towns for the Magistrate, as the executive officer to enforce the surrender of land required for public purposes under Act VI of 1857, when the Collector might be obstructed or opposed in taking possession of such land.

Section IX of the Act provided that the Magistrate should be the executive officer, and the expression led to the belief that the Mofussil, where there was one particular officer called "the Magistrate," was referred to, and not the Presidency where there were several Magistrates; and this

view was much strengthened by the ruling of the Honorable and learned Chief Justice in a case under the Post Office Act, which occurred last year, and which, though not strictly in point, tended very much to the belief that the word "Magistrate" used in Act VI of 1859 meant the Mofussil Magistrate, and not Justices of the Peace in the Presidency Towns.

But, independently of that argument, he thought that there could be no doubt that, for the performance of an executive act, in which a breach of the peace might possibly occur, the Commissioner of Police should be the Officer to act and not the Magistrate before whom a case arising out of the act of the Police might eventually come for trial.

The Bill needed no further explanation, and he would now move that it be read a first time.

The Bill was read a first time.

PAPER CURRENCY.

SIR BARTLE FRERE (in the absence of Mr. WILSON) postponed the Motion, which stood in the Orders of the Day, for the second reading of the Bill "to provide for a Government Paper Currency."

CRIMINAL JUSTICE (SUPREME COURTS.)

SIR MORDAUNT WELLS gave notice that he would, on Saturday next, call the attention of the Council to the evidence given before the Indian Commission by the Honorable Mr. Eden, a Member of the Bengal Civil Service, so far as his evidence referred to the administration of Criminal Justice in Her Majesty's Supreme Court.

PENAL CODE.

THE VICE-PRESIDENT gave notice that he would, on the same day, move for a Committee of the whole Council on "The Indian Penal Code"

The Council adjourned at noon, on the Motion of the Commander-in-Chief.

Mr. Forbes

Saturday, August 11, 1860.

PRESENT :

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

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| Hon'ble Sir H. B. E. Frere, | H. Forbes, Esq., A. Sconce, Esq., and |
| Hon'ble C. Beadon, H. B. Harrington, Esq., | Hon'ble Sir M. L. Wells. |

The following Message from the Governor-General was read by the Vice-President :—

MESSAGE No. 233.

With reference to the Message from the Legislative Council, No. 138, dated the 25th February 1860, the Governor-General in Council has the honor to forward to the Legislative Council the accompanying copy of a Despatch from the Right Hon'ble the Secretary of State, No. 6 of 1860, dated the 29th June, communicating the disallowance by Her Majesty's Government of Act XVI of 1859.

By order of the Right Hon'ble the Governor-General,

(Signed) W. GREY,
Secy. to the Govt. of India.

FORT WILLIAM, }
The 6th August 1860. }

MR. FORBES moved that the Clerk be requested to read the above Despatch at the table.

The Motion was carried and the Despatch read accordingly.

MR. FORBES then moved that the Despatch be printed.

Agreed to.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding copies of papers from the Secretary of State for India relative to a suggestion for the amendment of Section XXXVII of Act VI of 1857 (for the acquisition of land for public purposes.)

MR. FORBES moved that the above communication be printed.

Agreed to.