

Saturday, 7th January, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF

INDIA

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LEGISLATIVE COUNCIL OF INDIA.

1860

Saturday, January 7, 1860.

PRESENT:

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

Hon. Lieut.-Genl. Sir James Outram,	H. B. Harington, Esq.,
Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	and A. Sconce, Esq.

FOREIGNERS; AND IMPORT DUTY ON SALT (N. W. P.)

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "to revive and continue in force for a further period Act XXXIII of 1857 (to make further provision relating to Foreigners)," and the Bill "to empower the Governor-General in Council to increase the rate of duty on Salt imported into the North-Western Provinces of the Presidency of Bengal."

BOUNDARY MARKS (STRAITS SETTLEMENT).

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement, suggesting extension to that Settlement (with necessary modification) of Act I of 1847 (for the establishment and maintenance of Boundary Marks in the North-Western Provinces of Bengal).

MR. SCONCE moved that the above communication be printed.

Agreed to.

EXCISE DUTY ON SALT (MADRAS).

MR. FORBES presented the Report of the Select Committee on the Bill "to establish a duty of Excise on Salt manufactured in the Presidency of Fort St. George."

LAND FOR PUBLIC PURPOSES.

MR. SCONCE presented the Report of the Select Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)."

CATTLE TRESPASS.

MR. SCONCE also presented the Report of the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

PASSENGERS.

MR. LEGEYT moved that the Bill "to amend the law relating to the carriage of Passengers by Sea" be read a third time and passed.

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

CIVIL PROCEDURE.

MR. HARRINGTON moved that the Council resolve itself into a Committee on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)," 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.

Section I provided as follows:—

“From and after the passing of this Act, so much of the 332nd Section of Act VIII of 1859 as enacts that ‘If the appeal lie to the Sudder Court it shall be heard and determined by a Court consisting of three or more Judges of that Court,’ shall be repealed, and in lieu thereof the following shall form portion of the said Section:—

‘If the appeal lie to the Sudder Court, it shall be heard and determined by a Court consisting of two or more Judges of that Court. If the Court consist of two Judges only, and there is a difference of opinion upon the evidence, and one Judge concur in opinion with the Lower Court as to the facts, the case shall be determined accordingly. If, in a Court so constituted, there is a difference of opinion upon a point of law, the Judges shall state the point upon which they differ, and the case shall be re-argued upon that question before one or more of the other Judges, and shall be determined according to the opinion of the majority of the Judges of the Sudder Court.’”

MR. HARRINGTON said, he had to ask the assent of the Council to a slight verbal alteration in this Section, but previously to moving the same, he wished to make a few remarks on the subject of the rule which the Section proposed for adoption. That rule provided for the hearing of appeals in the Sudder Courts, by a bench which might consist of only two Judges, the existing rule being that no appeal to the Sudder Court, whether regular, special, or miscellaneous, should be heard and determined by a smaller number of Judges than three sitting together. In introducing the present Bill he (Mr. Harrington) explained at some length the practice of the Sudder Courts of the Bengal Presidency in disposing of regular and admitted special appeals, from the earliest times up to the present period; and speaking from his own experience as a Judge of the Sudder Court for the North-Western Provinces, he bore testimony to the great advantages which had resulted from the adoption by that Court of the rule requiring that all regular and admitted special appeals should be disposed of by a bench of three Judges. He was of course unable to say anything, of his own knowledge, as to the practical effects of the rule in the Sudder Court at Calcutta, where it was also followed; but he

quoted the evidence of the late Lieutenant-Governor of Bengal, Mr. Halliday, given before a Committee of the House of Commons, in which he stated that it was very remarkable of how much greater weight the decisions of the Sudder Court had been since the introduction of the rule in question than they were before. He then proceeded to notice the reason which had led the Government to propose to the Council a modification of the rule which had been embodied in the new Code of Civil Procedure, notwithstanding the beneficial effects which were generally admitted to have attended its introduction. This was the very great difficulty, arising partly from financial and partly from other considerations, of providing the amount of agency necessary to enable the Sudder Judges to dispose of the appeals instituted before them within a reasonable period.

He had been induced to make these remarks chiefly in reference to the petitions which had been presented to the Council against the Bill. One of these petitions was received by the Council after the Select Committee, to which the Bill was referred, had made their Report, and it consequently had not been taken into consideration by the Committee. He was not prepared to say that the petitioners had no ground for the objections taken by them to the Bill. On the contrary, he thought it must be admitted that there was considerable force in some of their objections, but the fact was the present case was one of necessity. The Sudder Court at Agra, in reporting on the Bill, observed, that

“Section 332 of Act VIII of 1859 was based on a sound principle, and any scheme which departed from that principle was to be deprecated. But arrears of work, the vexatious delay and litigation thereby engendered, were serious evils. If the Government were unable to employ a sufficient number of Sudder Judges, some such measure as that proposed in the Bill must be adopted, and sound principle be sacrificed to expediency.”

In these remarks he thought they must look for a defence of the present measure. He supposed that

nobody would deny that an Appellate Court, composed of three Judges, must be a better Court than a Court composed of only two Judges, or that the decisions of a Court of three Judges must generally give more satisfaction to the suitors and to the public at large than the decisions of a Court of only two Judges. But when the choice was found to lie between a Court of three Judges and great and vexatious delays, and a Court of two Judges who were able to dispose of the cases brought before them with reasonable celerity, he thought there could be no doubt that the Government should choose the latter, suitable provision being at the same time made for the disposal of appeals in which a difference of opinion might arise between the Judges. It was hoped that this had been done in the Section under consideration; and as meeting in some degree the objections which had been taken to that Section, he might observe that its character was permissive only, not imperative, that is to say, there was nothing in the Section to prevent three Judges of the Sudder Court from sitting together to hear appeals, whenever the state of the file admitted of this being done without inconvenience, or whenever in any particular case the Court might consider that any special ground existed for the appeal being heard before three Judges; and he (Mr. Harington) had no doubt that in every case of more than ordinary importance, the Judges of the Sudder Courts would gladly avail themselves of the power thus reserved to them.

He would now proceed to mention the verbal alteration in the Section which it seemed desirable to make. It had been suggested that, in construing the Section as it was at present worded, a doubt might arise whether it applied to all appeals, regular, special and miscellaneous, or whether its application was not restricted to regular appeals: he (Mr. Harington) must confess that such a doubt would never have occurred to him. The language of the Section of the original Code which it was proposed to amend was not more specific than the language of

the Section intended to be substituted for it, and he had never heard of any doubt being entertained as to the applicability of that Section to all classes of appeals falling under the Code. Still it was not desirable to run the risk of a misconstruction of the Section such as he had mentioned, particularly as it would leave no rule for the guidance of the Sudder Courts in disposing of special and miscellaneous appeals, and he proposed, therefore, to introduce words which, he thought, would remove all doubt upon the point. With this view he begged to move the omission of the words in italics, and the substitution for them of the words—"If, when the Court shall consist of only two Judges, there is a difference of opinion upon the evidence in cases in which it is competent to the Court to go into the evidence."

Agreed to.

MR. HARRINGTON next moved the addition of the words "by whom the appeal is heard" at the end of the Section.

The Motion was carried, and the Section as amended then passed.

Section II was passed as it stood.

Section III provided as follows:—

"All rules and forms framed by the Sudder Court under the provisions of Section 381 of the said Act when so framed shall be submitted to the Governor-General of India in Council, and after the same shall have been approved by the said Governor-General of India in Council, they shall be of the same force as if they were inserted in the said Act."

MR. FORBES said, he wished to ask his Honorable friend to omit this Section. It formed no part of the original Bill, but had subsequently been added by the Select Committee, and he thought the change which it made in the law was too important to admit of its being passed without its being published for general information. He was aware that Act XVII of 1841 made the same provision for the Presidency of Bengal that it was now proposed to extend to Bombay and Madras; but that law was confined to Bengal alone. The Section under con-

sideration applied not only to Bengal but also to Madras and Bombay, and the Governments of those Presidencies had had no opportunity of expressing their opinion upon it. When Act XVII of 1841 was passed, it was previously published in the usual way, and the Government and the Sudder Court of Bengal had an opportunity of making any representations they pleased regarding the proposed Law, and he was of opinion that the Governments of the other Presidencies should now be allowed the same opportunity. He would give no opinion on the abstract propriety of the Section, but as the Civil Procedure Code would probably, from time to time, require further emendations, opportunity would be afforded to introduce this Section in some future Bill when it would be published in the usual way. On these grounds, he would ask his Honorable friend to assent to the omission of this Section.

Mr. HARRINGTON said, he was not unwilling to accede to the proposal of his Honorable friend, the Member for Madras, and to exclude the Section before the Committee from the present Bill. As noticed by the Honorable Member for Madras, the Section did not form part of the original Bill, but had been introduced by the Select Committee. It could not be denied that the provision, which the Section contained, was a very important one, and the local Governments might not unreasonably claim to be heard on the subject of it before it was passed into law. An opportunity might be afforded to those Governments of expressing their sentiments on the provision in question by republishing the Bill before it was read a third time, but this would necessarily cause a delay of some weeks; and, looking to the length of time, that from accidental circumstances the Bill had already been before the Council, and to the object chiefly aimed at in the introduction of the Bill, namely, the relief of the Sudder Courts, some of which, particularly the Calcutta Court, were much oppressed with work, he thought it better that he should assent to the proposition of the Honorable

Mr. Forbes

Member for Madras, though reserving to himself the right of bringing forward the provision at some future time either in a separate Bill or in any new law which might be introduced for the amendment of the Code of Civil Procedure. At the same time he might remark that, at the time the Section, to which it was proposed to add the provision under discussion, was before the Select Committee on the Civil Procedure Bill, it was agreed that that provision should be included in it. Why it was afterwards omitted he was unable at present to say. He thought there could be no doubt that the provision was a very wholesome one. If a uniform Code of Civil Procedure for all the Courts in India was desirable, it could be no less desirable that there should be uniformity in any subsidiary rules that might be adopted for carrying the Code into effect. This uniformity could only be secured by requiring that all rules which might be proposed should be confirmed by some general controlling authority, and that until they had been so confirmed they should have no force. Now, it appeared to him (Mr. Harrington) that the only authority to whom that power could properly be entrusted was the Government of India, all the members of which were also members of the Legislative Council, and in their double capacity they could always prevent any rule from being adopted which they considered inconsistent with the original Code, or contrary to the intentions of its framers; but still, as he had already said, he was very willing to consent to the proposition of the Honorable Member for Madras, and he would therefore move that the Section be struck out of the Bill.

The Section was then put and negatived.

Section IV and the Preamble and Title were severally passed as they stood; and the Council having resumed its sitting, the Bill was reported with amendments.

Mr. HARRINGTON gave notice that he would, on Saturday next, move the third reading of the Bill.

ADMINISTRATOR GENERAL.

MR. FORBES gave notice that he would on the same day move the first reading of a Bill to amend Act VIII of 1855 (to amend the law relating to the office and duties of Administrator General.)

PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Bombay Government on the subject of inserting a Clause against fraud in the new Penal Code, be laid upon the table and referred to the Select Committee on that Bill.

Agreed to.

PASSENGERS.

MR. LEGEYT moved that Sir Bartle Frere be requested to take the Bill "to amend the law relating to the carriage of Passengers by Sea" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, January 14, 1860.

PRESENT :

The Hon ^{ble} the Chief Justice, <i>Vice-President</i> , in the Chair.	
Hon. Lieut.-Genl. Sir	H. B. Harrington, Esq.,
J. Outram,	H. Forbes, Esq.,
Hon. Sir H. B. E.	and
Frere,	A. Sconce, Esq.
P. W. LeGeyt, Esq.,	

STAMP DUTIES.

THE CLERK presented a Petition of the British Indian Association concerning the Bill "to consolidate and amend the law relating to Stamp Duties."

MR. SCONCE moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

LAND FOR PUBLIC PURPOSES.

THE CLERK presented a Petition of the Bombay Association concerning the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes.)"

MR. LEGEYT moved that the Petition be printed.

Agreed to.

ADMINISTRATOR GENERAL.

MR. FORBES said, he should detain the Council but a very short time in introducing the Bill, of which he had given notice, for the amendment of Act VIII of 1855.

That Act was passed to amend the law relating to the office and duties of Administrator General, and it had generally been found fully efficient for all the purposes for which it was enacted. There were, however, one or two points on which an alteration of the law was required, but the interference of the Legislature was needed, not on account of any defect in the original law, so much as on account of the very poor remuneration which was now attached to the Administrator General's Office at Madras.

It appeared from a letter from the Advocate General to the Government of Madras, which would be found in the annexures printed with this Bill, that in several cases loss had resulted to the Administrator General from administering to small Military Estates, not all of which were solvent, and the consequence had been that the Administrator General had availed himself of the law being permissive only, and not imperative, and had declined to take out letters of administration to such estates when called upon to do so by the Military Secretary to Government.

Section XI of the Act made it imperative on the Administrator General to take out letters of administration in cases when a deceased person, not being a Mahomedan or Hindoo, might have died possessed of assets exceeding five hundred Rupees, but this necessity to act was not laid upon the