

Saturday, 14th January, 1860

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL OF
INDIA

Vol. VI
(1860)

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 J. Outram,	H. B. Harrington, Esq.,
Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	and A. Sconce, 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

Administrator General when the assets fell short of five hundred Rupees, and as the expenses of letters of administration were great, and the fees due to the Administrator were small, it was perhaps not very unnatural that there should have been an indisposition to act.

In Bengal, as he had learnt on a reference to the present Officiating Administrator General, it was not the practice to take out letters of administration in the case of the small estates to which he had referred, but neither was it the practice to refuse to intervene to secure and distribute the assets, and this was done either by the Administrator General granting certificates to applicants under Section XLIII of the Act, or by the Administrator General on his own responsibility collecting and distributing the assets without taking out letters, and thus saving all expense to the estate but the charge of his own commission.

One object of the present Bill, therefore, was to make the law accord with the present practice of the Administrator General's Office in Bengal.

But the want of some further provision of law had been felt in the case of small estates other than Military estates, for although by the present Act the Administrator General was authorized to give certificates to collect assets in estates of not more than five hundred Rupees to the next of kin, no means were afforded to creditors to obtain payment of their dues in cases wherein the next of kin might not take out a certificate, and the Administrator General might not administer.

It seemed only just to give the assistance of the law to creditors under these circumstances, and to enable them to obtain administration from the Court, when neither the Administrator General nor the next of kin might act. It was provided therefore in this Bill that, under the circumstances just stated, the Court might grant letters of administration to a creditor.

Lastly, some inconvenience had been felt at Madras from the want of a provision, enabling Government tempo-

rarily to supply the place of the Administrator General on occasion of his absence on account of illness, or from any other cause. He was aware that the difficulty had not been felt in Bengal, and that at the present moment there was an officiating Administrator General, but he imagined that the Government was bound to take the opinion in such a matter of its legal advisers, and the Madras Government had been advised that under the wording of the Act an acting appointment could not be made to the office; and that the Court at Madras would refuse to recognise any acting incumbent. At all events no harm could result from giving the power, and at the worst it would be a redundancy.

He would only further add that, in drawing a Bill to amend a law so professional in its character as Act VIII of 1855, he had very largely availed himself of that aid which the learned Clerk of the Council had been at all times prepared so ably and so cheerfully to afford, and he was sure that he spoke the general opinion when he said that, however much they might all rejoice at the professional advancement which that learned gentleman had received, there was but one feeling of regret at the prospect of their being so soon deprived of his services.

The Bill was read a first time.

PORT-DUES (BASSEIN).

MR. HARRINGTON moved the first reading of a Bill "for the levy of Port-dues and fees in the Port of Bassein." He said, this Bill might be regarded as a continuation of Act No. XXXV of 1857, entitled an Act for the levy of Port-dues in the Ports of Moulmein, Rangoon, Khyouk Phyoo, Akyab, and Chittagong. The Port of Bassein, to which the present Bill related, and which was also on the Eastern side of the Bay of Bengal, was excluded from Act XXXV of 1857, as, at the time the Act was passed, it was uncertain how far that Port would be resorted to by Traders and Merchants, and what was known as the Harbour Act had not then been extended to it. The Com-

Commissioner of Pegu and Governor General's Agent now reported that it was evident that, for some years to come, the Port of Bassein must be the principal mart of the district, and he proposed therefore that the levy of Port-dues, at the rate of four annas per ton on all vessels entering the Port, should be authorized by an Act of the Legislature, that being the rate at which Port-dues were now taken in the Port under an order passed when the Province became British territory. In proposing the continuance of this rate, the Commissioner observed that it would not cover the expenses incurred, but he hoped that, as the trade extended, it would prove sufficient for the purpose. He went on to say that Bassein, unlike Rangoon, not being a Port for general traffic, but the trade there being confined in a great measure to a single article, namely, rice, it was not deemed advisable to raise the rate of Port-dues to the level of the rate at Rangoon, but he considered it probable that hereafter, when a Light-house was built on the Alguada Keef, some increase in the rate might be properly adopted. He would only further remark that, in the framing of the present Bill, the wording of Act XXXV of 1857 had been followed.

The Bill was read a first time.

MARRIAGES (CHURCH OF SCOTLAND).

Mr. SCONCE moved the second reading of the Bill "relating to the solemnization of Marriages in India by ordained Ministers of the Church of Scotland."

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

CIVIL PROCEDURE.

Mr. HARRINGTON moved that the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)" be read a third time and passed.

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

LAND FOR PUBLIC PURPOSES.

Mr. SCONCE moved that the Council resolve itself into a Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)," 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.

Mr. LEGGITT said, it was not his intention to offer any opposition to the Motion just made for going into Committee on the Bill, but he reserved to himself the right of moving any amendment before the third reading of the Bill, in consequence of the Petition which had this day been presented from the Bombay Association, and which had, on his motion, been ordered to be printed. He should have preferred the consideration of the Bill to be postponed until he had had time to consider the Petition. It was possible that some amendments might require to be made in consequence of that Petition, and he was not at present prepared to move those amendments, as the Petition had been received only yesterday.

The CHAIRMAN said, as the Council had adopted the Motion for the printing of the Petition, it seemed to him reasonable that the consideration of the Bill should be postponed. It would be almost useless to consider the Petition after the Bill had been settled in Committee. For his own part, he thought it would be better if the Motion for going into Committee were deferred.

Mr. SCONCE acquiesced, and the consideration of the Bill was accordingly postponed till Saturday next.

CATTLE TRESPASS.

Mr. SCONCE postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

EXCISE DUTY ON SALT (MADRAS).

Mr. FORBES moved that 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" be adopted.

Agreed to.

CIVIL PROCEDURE.

Mr. HARRINGTON moved that Sir Bartle Frere be requested to take the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

NOTICES OF MOTION.

Mr. HARRINGTON gave notice that he would, on Saturday next, move the second reading of the Bill "for the levy of Port-dues in the Port of Basscin."

Also the first reading of a Bill for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons.

Mr. SCONCE gave notice that he would, on the same day, move the first reading of a Bill to remove certain tracts on the Eastern border of the district of Chittagong from the jurisdiction of the tribunals established under the general Regulations and Acts.

Also the first reading of a Bill to amend Section VII Act XXI of 1856, by raising the rate of duty leviable on spirits manufactured at distilleries worked according to the English method.

INSPECTION OF MINES.

Mr. SCONCE moved that a communication received by him from the Government of Bengal, relative to the preparation of a Bill for the inspection of mines, with certain correspondence bearing upon that subject, be laid down upon the table and printed. He said that some part of this correspondence related to the entertainment of armed men by the proprie-

tors of Collieries in Burdwan, and another part to trials held by the Joint Magistrate of Rancegunge, in which a European British subject was implicated. It appeared that two persons alleged that they had been illegally seized, flogged, and detained; and one day, in August last, the Joint Magistrate proceeded in company with these men that they might show him the godown in which they said they had been confined. On arriving at the place one of the men pointed out a godown, the door of which was padlocked, and on further enquiry it was found that three other men were forcibly detained in that very place at the time. It also appeared that the European Superintendent of the Bengal Coal Company was implicated in the matter. How far and in what manner he was implicated, the correspondence would show; and he would only now say that the men referred to were released personally by the Joint Magistrate, in the presence of the Superintendent, from a godown belonging to the Coal Company. He made this statement partly with reference to the cases to which this correspondence related, and partly with reference to other cases of outrage which, from recent trials in the Supreme Court and in the Mofussil Courts, might be said to have been judicially ascertained to have been committed by British subjects in the Mofussil. He would remind the Council that a Despatch had been received from the Honorable the Court of Directors which was read to this Council on the 21st November 1857, and in which the Executive Government were called upon, before making British subjects amenable to the jurisdiction of the Mofussil Courts in Criminal matters, to consider the question and report for the approval of the Home Government any measure which they might propose for carrying that object into effect. It was his purpose on that day week to ask the Honorable Member opposite (Sir Bartle Frere) whether, with reference to that Despatch, the Executive Government had under consideration any enactment on the subject. For his own

part, he conceived that, if we were to suppose the passing of any permanent law to be at any early date improbable, taking the basis of the present law, some temporary enactment might be adopted by this Council which would give greater security to life and property, and afford protection against outrages perpetrated by British subjects in the Mofussil. He should now only move that the communication to which he had referred be printed.

Agreed to.

VILLAGE WATCHMEN (BENGAL).

MR. HARRINGTON moved that a communication, received by him from the Government of the North-Western Provinces, be laid upon the table, and referred to the Select Committee on the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the territories under the Government of the Lieutenant-Governor of Bengal."

Agreed to.

The Council adjourned.

Saturday, January 21, 1860.

PRESENT:

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

Hon. Lieut.-Genl. Sir J. Outram,	H. B. Harrington, Esq.,
Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	Hon. Sir C. R. M. Jackson, and A. Seonee, Esq.

EMIGRATION (CAPE OF GOOD HOPE).

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding a correspondence regarding a proposal to authorize the Emigration of Indian Laborers to the Colony of Natal, in the Cape of Good Hope.

THE VICE-PRESIDENT moved that the communication be printed.

Agreed to.

REGISTRATION OF ASSURANCES.

MR. FORBES presented the Report of the Select Committee appointed to take into consideration a communication from the Madras Government, suggesting improvements in the present system of registering Assurances, and submitting the draft of an Act "for affording protection to rights on property."

SUCCESSIONS.

MR. HARRINGTON moved the first reading of a Bill "for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons." He said the immediate occasion of the introduction of this Bill was a doubt which had been expressed by the learned Advocate General of Bengal in respect to the operation of Act XX of 1841, and of that Act as modified by Act X of 1851, in those parts of the British Territories in India which had been acquired subsequently to the date of the passing of the Act first mentioned. The communication from the learned Advocate General, in which this doubt was suggested, would be printed as an annexure of the Bill, and would be in the hands of Honorable Members before they were asked to give their assent to the second reading of the Bill. The Bill would remove all doubts on the point discussed in Mr. Ritchie's note by making the law general. It further provided for the grant of certificates of administration in cases falling within the provisions of the Bill by all district Courts, which it defined as the principal Court of original jurisdiction in the zillah or district. In districts to which the jurisdiction of the Sudder Court did not extend, the appeal from the order of the district Court would lie to the highest Civil Court of appeal. These were the chief points in respect of which fresh legislation was considered desirable. But a modification of the existing law being found necessary, it was thought that it would be better to take advantage of the present opportunity to consolidate all the