

Saturday, 28th January, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

which could be laid aside or lost sight of, and with a view to satisfy him that it was not forgotten by the Home authorities, he would read an extract of a Despatch from Lord Stanley on the subject, the greater part of which had already been communicated to the Legislative Council. The Despatch was dated the 12th May 1859, and concluded as follows:—

“I have in conclusion to request that you will give me early intimation as to the progress made by the Legislative Council in revising the Penal Code and the Code of Criminal Procedure, and as to the measures proposed to be adopted in regard to them when the revision shall have been completed.”

It would, he (Sir Bartle Frere) thought, be evident from the passage which he had quoted, that the question was still under consideration; and from the character of those in England who had their attention directed to the subject, among whom he need not remind the Council were some of the eminent and learned men who had preceded the Vice-President on the Bench of the Supreme Court (Sir Edward Ryan, &c.), he trusted the Council would agree with him that the consideration of the question could not be in better hands. The Honorable Member for Bengal was quite justified in agitating the matter and wishing that the present state of things should not be allowed to continue. But he (Sir Bartle Frere) hoped that his Honorable friend would acquit him of any intention to dictate to him or fetter his action in the matter if he ventured to point out that the matter was not one which could be properly dealt with at a time of much public excitement, and that it was not desirable or expedient, from such isolated cases as those to which the Honorable Member had referred, to hurry legislation on the subject, but that the better course would be to leave the question to come forward in its natural course after the Codes had been laid before the Home Government.

NOTICES OF MOTION.

MR. HARRINGTON gave notice that he would, on Saturday next,

move the first reading of a Bill to amend the Articles of War for the Native Army.

Also the first reading of a Bill relating to the Transportation of Convicts.

The Council adjourned.

Saturday, January 28, 1860.

PRESENT :

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

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

PASSENGERS; AND TRIALS BY SESSIONS JUDGES.

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill “to amend the law relating to the carriage of passengers by sea,” and the Bill “to empower Sessions Judges to pass sentence in certain cases without reference to the Sudder Court.”

ABKAREE REVENUE (BENGAL).

The Clerk presented to the Council a Petition of certain distillers of rum, praying that the Council will suspend the passing of the Abkaree Bill and appoint a Committee to obtain information regarding the working of the present Abkaree Act.

MR. SCONCE moved that the Petition be printed.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

MR. HARRINGTON moved the first reading of a Bill “to amend Act XIX of 1847 (Articles of War for the Native Army).” He said, there were at the present time, as Honorable Mem-

here were doubtless aware, no less than three Bills before the Council, all having for their object the amendment of the Articles of War for the Native Army. The first of these Bills was brought in by the Honorable Member for Bombay, under date the 19th January 1856, and having been read a second time on the 2nd February following, was referred on the same date to a Select Committee, with instructions to report on or after the 6th May next ensuing. The object of this Bill, as set forth in the Preamble, was to make Native Officers and Soldiers, when imprisoned or absent by reason of being prisoners of war, subject to forfeiture of pay and time of service in the same manner in which European Soldiers were liable to forfeit their pay and period of service under similar circumstances.

The second Bill was brought in by the Honorable and learned Vice-President, then a Member of the Supreme Government, on the 19th July 1856. This Bill was read a second time on the 26th July, and referred on the same day to a Select Committee with instructions to report after the 30th October following. The Preamble of the Bill recited that—

“Whereas by the 2nd paragraph of the 101st Article of War for the Native Army, it is provided that it shall be competent to the Governor-General of India in Council, by a General Order, to authorize the Native Troops of any of the Presidencies to claim to be tried by European Courts Martial, and it is expedient that that provision should be extended to all Native Troops in the Military Service of the East India Company, whether belonging to or serving in any of the Presidencies or not; It is enacted as follows :—”

The third Bill was also introduced by the Honorable and learned Vice-President. It was brought in on the 4th September 1858, read a second time on the 18th of that month, and referred on the same date to a Select Committee with instructions to report after six weeks. This Bill proposed to increase the powers of Officers commanding Native Regiments and to amend the Articles of War in certain other respects. No report had as yet been made on any of these Bills, and

not being a Member of the Select Committees to which they were referred, he was unable to explain the cause of the delay. Meanwhile, with reference to the early despatch of Native Troops to China, consisting partly of Seikhs, who had hitherto been subject not only to the Articles of War for the Native Army, but also to the authority of their Commanding Officers exercising Magisterial powers, and partly of Hindoostanee Soldiers who had, up to the present time, been governed exclusively by the Articles of War, as was the case with the Bengal and Madras Troops now serving in China—the Governor-General in Council considered it of great importance that some provision should immediately be made by an amendment of the Articles of War for the punishment and trial of offences committed by Non-Commissioned Officers, Soldiers, and others, attached to the Native Army, and the present Bill had been prepared accordingly. The amendments to which the assent of the Council was asked were recommended by His Excellency the Commander-in-Chief, and were concurred in by the Honorable the President in Council.

The first and the more important of the two alterations proposed was in Article 78 of Act XIX of 1847. This Article defined the powers of District and Garrison Courts Martial in punishing certain offences committed by Non-Commissioned Officers and Soldiers, and it was proposed to give them powers, as regarded not only Non-Commissioned Officers and Soldiers, but also Native Camp-followers, to the Commanding Officers of Native Regiments. They were already exercised to some extent by Commanding Officers of Irregular Regiments in the Punjab, and there was every reason to believe that the effect had been not otherwise than highly beneficial to the discipline and general efficiency of those Regiments. The powers, thus proposed to be given, would not, however, be exercised indiscriminately by all Commanding Officers of Native Regiments, but only by the Commanding Officers of those Regiments, on whom they might be specially conferred by order

of the Commander-in-Chief of the Presidency to which the Regiment belonged. It was also provided that the proceedings on the trial, though they would necessarily be somewhat of a summary character, should be recorded by the Commanding Officer in the English language with his own hand, in the presence of two or more European or Native Commissioned Officers, whose signatures would be affixed to the record. As soon as the trial was completed the proceedings would be forwarded to the General Officer Commanding the Division, who might set aside the trial on the merits, but not on merely technical grounds. It was hoped that these provisions would prevent any undue or improper exercise of the powers thus proposed to be conferred on Commanding Officers of Native Regiments.

The next alteration proposed was in Article 112 of the same Act. This Article, as now framed, gave power to Commanding Officers to inflict certain punishments, which the Article detailed, on conviction of light offences. Amongst the punishments which a Commanding Officer might thus award, were confinement in the quarter-guard or defaulters' room, or solitary confinement for any period not exceeding seven days, and it was proposed that during the time any Soldier might be in confinement in pursuance of an award so made, he should forfeit all claim to pay and allowances. Under the Articles of War for Her Majesty's European Troops, forfeiture of pay followed on conviction of desertion or felony, or whenever a Non-Commissioned Officer or Soldier was in confinement under a sentence, and Section 11 Act XXXVI of 1850 declared that no Native Officer or Soldier or public follower in the Military service of the East India Company should be entitled to pay or allowances when imprisoned under the sentence of a Court Martial or a commuted sentence, or under the sentence of a Court of Criminal Judicature, but should be clothed and subsisted at such rates, or in such manner as the Governor-General of India in Council might from time to time order. There seemed no reason why forfeiture of pay and allow-

ances should not likewise take place during the time that a Soldier was in confinement in pursuance of an award made under the Article of the Act to which he was referring. The State, while such confinement lasted, was equally deprived of the man's services owing to his misconduct, and the penalty of forfeiture of pay and allowances appeared not only unobjectionable, but just and proper.

Before closing these remarks, he would observe that an entire revision of the Articles of War for the Native Army had, he believed, long been deemed necessary; but before such revision could be completed, it would be proper to consult the Commanders-in-Chief of the other two Presidencies as well as other Officers, and he thought that all would agree that the work of revision had better be deferred until the question of the re-organization of the Native Army of Bengal, which was at present under the consideration of the Home Authorities, whose orders on the subject might shortly be expected, had been disposed of.

MR. LEGEYTT said, he merely wished to observe, with reference to the remark of the Honorable Member for the North-Western Provinces as to the delay which had occurred in proceeding with the Bill introduced by himself to amend the Articles of War for the Native Army, relating to the forfeiture of pay and service in certain cases, that the Bill in question had been taken into consideration by the Select Committee to whom it was referred, but that at the last Meeting held by the Committee, it was resolved, at the request of the late General Anson, that the papers of the Bill should be made over to him with the view of its being considered in a general revision of the Articles of War for the Native Army then before him.

THE VICE-PRESIDENT said, he also wished to offer some explanation regarding the delay to which the Honorable Member for the North-Western Provinces had alluded, in proceeding with the two Bills brought in by himself. The first of these was a Bill to extend the provisions of the 101st Article of War for the Native

Army provided by Act XIX of 1847, which was introduced into the Council on the 19th July 1856, and which, after having been read a second time on the 26th of the same month, was referred to a Select Committee, who were required to report upon the Bill after the 30th of October 1856. With regard to this Bill he begged to explain that, towards the end of 1856, revised Articles of War for the Native Army had been sent up to the Governor-General by the late Commander-in-Chief, and it was thought advisable that the amendment should be made in the new Act. The Bill was, therefore, not proceeded with. Shortly afterwards the mutiny broke out, and it was not considered advisable at that time to bring in a general Bill to amend the Articles of War for the Native Army.

The object of the second Bill, to amend Act XIX of 1847, was to give certain larger powers to Commanding Officers of Native Regiments than they already possessed under that Act, which prevented them from dismissing or reducing to the ranks a Native Non-Commissioned Officer, and from dismissing a Soldier. It also made some alteration in the punishment of certain offences, and legalized certain sentences which had been passed, but which were not then valid. One was the case of a Soldier who had been sentenced to transportation for seven years, whereas the Articles of War only sanctioned transportation for life. After the introduction of the Bill he received a telegraphic message from the Governor-General, requesting that the Select Committee should not present their Report until he heard further from His Lordship on the subject. It was subsequently thought advisable not to proceed with the Bill except so far as it legalized the sentences to which he had referred. He afterwards consulted the Governor-General upon the subject, and it was not thought necessary to proceed with the Bill, and it was accordingly dropped. He merely made this explanation that the Council might know why the two Bills had not been proceeded with. Mr. Harington's Bill was read a first time.

The Vice-President

TRANSPORTATION OF CONVICTS.

MR. HARRINGTON moved the first reading of a Bill "relating to the transportation of Convicts." He said, the object of this Bill was not to introduce any change in the existing law as regarded the actual punishment of transportation, or the offences for which that punishment might be inflicted, but simply to provide that, in cases in which a sentence of transportation was passed, the Court, passing the sentence, should not specify in its sentence or warrant the particular place to which the prisoner was to be transported, as he believed was now done in all sentences of transportation passed by the Supreme Courts of Judicature; but that it should rest with the Governor-General of India in Council to determine to what place the prisoner should be sent for the purpose of undergoing the sentence passed upon him. This was already the law in the Presidency of Bengal, except as to sentences of transportation passed by the Supreme Court at Calcutta, as would be seen on a reference to Regulation IX. 1813 Section II, and Regulation XIV. 1816 Section XV, of the Bengal Code, though certain geographical limits were prescribed therein within which the power must be exercised.

The Madras and Bombay Codes contained no corresponding provisions, and he had not been able to find any rules for regulating the transportation of convicts sentenced to be transported by the Criminal Courts of those Presidencies, other than the Courts established by Royal Charter, in so far as regarded the places to which persons so sentenced were to be sent.

Honorable Members would probably remember the case of a convict, who, after being transported from Bombay to the Straits Settlements, was transported back again to Bombay on conviction of an offence committed by him while undergoing his sentence in the Straits Settlements, which was also punishable with transportation. The Court of Judicature in the Straits Settlement held

that it had no alternative in the matter, but that, under the law, it was bound to transport the prisoner to Bombay, though in so doing it was really sending him back to his native country. A Select Committee of the Council was appointed to consider whether any alteration of the law, or any legislation was necessary; but, after nearly two years, the Committee was discharged, without making any report, on the motion of the Honorable Member who had moved the appointment of the Committee, the reason assigned by him for the second motion being that, subsequently to the appointment of the Committee, cases had occurred which showed that it was not necessary at that time to take any further proceedings in the matter. The particulars of the cases referred to were not stated, nor was it shown how they bore upon the question. But as it appeared that what had been said as to the necessity of the Criminal Court in the Straits Settlement transporting to Bombay all convicts upon whom it might pass sentence of transportation, was erroneous, it being the practice only to transport to Bombay, and there being no law prescribing that limitation, Her Majesty's Government, as would have been seen from the extract of a Despatch from the Secretary of State, lately printed and circulated, were of opinion that no legislation was called for to meet cases such as that just mentioned.

In the concluding paragraph however of the same Despatch, the Secretary of State noticed the occurrence of more than one case showing the expediency of Courts of Justice abstaining, in sentences of transportation, from fixing the place at which the sentence was to be carried out, and of leaving that point to be determined by the Government, and the present Bill had been introduced to give effect to these views. There could, he thought, be no doubt that the Governor-General in Council, in his Executive capacity, was the proper authority for determining to what places prisoners sentenced to transportation should be sent for the purpose of undergoing the sentences passed upon them, not the local

Governments, much less the Courts passing the sentence, who must necessarily often be ignorant of or at least very imperfectly acquainted with many circumstances having a material bearing in the matter.

The only other provision contained in the Bill had been introduced in reference to what was stated in the 6th paragraph of the Despatch from the Secretary of State already alluded to. The Section in which this provision was contained, declared that, when a convict, who was undergoing a sentence of transportation, committed an offence, also punishable with transportation, at the place to which he had been ordered to be transported, and a second sentence of transportation was passed upon him in consequence, it would not be necessary for the Governor-General in Council to order the removal of the convict from such place.

The Bill was read a first time.

ABKAREE REVENUE (BENGAL).

MR. SCONCE moved the second reading of the Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal)." Before doing so, he said he only thought it necessary to explain that it was not his intention to press the further progress of the Bill that day, in the event of its passing a second reading. He should therefore merely move that the Bill be read a second time.

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

MARRIAGES (CHRISTIAN CONVERTS).

SIR CHARLES JACKSON postponed the Motion (which stood in the Orders of the Day) for the second reading of the Bill "to provide for the dissolution of certain marriages entered into by Christian Converts before their conversion."

CATTLE TRESPASS.

MR. SCONCE said, before moving the third reading of the Bill "to amend

Act III of 1857 (relating to trespasses by Cattle)," it seemed only necessary for him to say a few words with reference to a proposition which was before the Select Committee on the subject of wilful damage to Indigo plant by other means than cattle trespass. The Committee on the whole were of opinion that it was not advisable to introduce a provision on the subject in the present Bill, but that this matter should form part of a general law for the punishment of wilful injuries to property. For his own part, he felt that the Council had not been sufficiently informed as to whether complaints of this nature were not now cognizable and punished by Magistrates: and it was his own impression that complaints of damage done to crops were constantly taken cognizance of by Magistrates. On the other hand, the change suggested seemed to involve legislation of a novel and equal character, the principle of which could not be adequately discussed at this stage. So far in his judgment it was not desirable to introduce any provision of the kind in the present Bill. He therefore begged to move that the Bill be read a third time and passed.

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

LAND FOR PUBLIC PURPOSES.

On the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)," the Council resolved itself into a Committee for the further consideration of the Bill.

Section II provided as follows:—

"It shall be the duty of the Collector to fix the time for the appearance of the parties with reference to the time that will probably be required for the completion of the detailed measurement of the section of land included in the notice, so that ordinarily the detailed measurement should be completed by the expiration of the period specified in the notice."

MR. SCONCE moved the omission of Section II. He said he was quite prepared to acquiesce in the conclusion to which the Council came last Saturday with regard to Section III.

Agreed to.

MR. SCONCE then moved the adoption of the following new Section in lieu of Sections II and III:—

"On the completion of the detailed measurement and on the expiration of the period prescribed in the foregoing Section, the Collector or other Officer shall proceed as provided in the 5th and following Sections of Act VI of 1857."

He said the purpose of this Section was to connect the Bill with Act VI of 1857.

THE CHAIRMAN said, he thought that all that this Bill with the proposed Section would amount to was to dispense with the detailed measurement of the land before giving the notices.

MR. SCONCE said, the purpose of the introduction of this Bill was to avoid delay. First of all, under the present Act, the land was marked out and planned by the Railway Authorities. Subsequently, a detailed measurement was made by the Railway Commissioner and his subordinates, which involved a description of every thing in the land, that is, not only the extent of the land itself, but also the houses, trees, tanks, and other property thereon. In short, a measurement which should enable any party, by reference to that record, to trace a full and complete account of the kind and nature of the property possessed, and to facilitate adjudication. In that respect the present Bill proposed to retain the operation of the old law. The simple change now proposed was that the notice to parties interested in the land would be given before the detailed measurement was commenced, instead of at its completion, as required by the Act now in force. It was a simple question of saving of time, and not of trouble or inconvenience to any one.

THE CHAIRMAN said, he still thought that the purpose of the Bill was to dispense with the detailed measurement prescribed by the present Act. It appeared to him that a much simpler course to adopt, whereby that object would be attained, was to repeal so much of the existing law as required a detailed measurement to be made.

Mr. Sconce

SIR BARTLE FRERE said, he would put it to the Honorable Member, whether it would not be the better course to re-appoint a Committee to consider the Bill. It was hardly possible, after so much doubt had been expressed with regard to the Bill, that it would pass the Committee of the whole Council without some mistake. If the Honorable Member did not object, he would suggest that the Bill be referred back to the Select Committee.

MR. SCONCE said, he should like to know on what grounds the Honorable Member wished the Bill to be referred back to the Select Committee.

SIR BARTLE FRERE said, his ground was simply this. The subject had for some time been under consideration. A leading principle of the Bill, as originally drafted, was that Government might take possession of the land required, before paying for it. That principle had been rejected by a majority of the Council. The Honorable Member had moved to-day the substitution for the two principal Sections in the Bill of a very brief Section referring to the former enactment of 1857. He could not quite understand from his recollection of what he had heard and read of the proceedings, whether the Bill, as it now stood, was calculated to meet the object for which it was intended, and it seemed to him that it might facilitate the object which the Honorable Member had at heart if the matter was referred back to the Select Committee, who would give the subject a careful consideration, and report to the Council at a future sitting whether, in their opinion, the Bill was really necessary or not.

MR. SCONCE said, that in pressing the Bill he could only repeat that a saving of time was the principal object of this Bill. He proceeded to repeat what he had before mentioned as to the manner in which this saving of time would be effected, and concluded by observing that, in the event of the Bill being passed, the main object of the present Act would be gained to the advantage of all and the disadvantage of none.

THE CHAIRMAN said, if this Bill were passed, the object of it would

not be understood. It appeared to him that the Bill did no more than dispense with the necessity of a detailed measurement before giving the notices. He did not consider that, under the Bill as it stood, a detailed measurement was necessary to be made before the notices were given. Section IV Act VI of 1857 required three things. It required the land to be marked out, the land to be measured, and a plan of the land to be made. If this measurement were now understood to mean a detailed measurement, the inconvenience which was stated to have been felt might be avoided by enacting that a detailed measurement, before giving the notices, should not be necessary. The Bill, as now amended, appeared to him to be unintelligible. Under these circumstances, although he would not object to the amendments, he would vote against the third reading of the Bill.

The proposed Section was then put and carried.

Sections IV to VI and the Preamble and Title were passed as they stood, and the Council having resumed its sitting, the Bill was reported.

NOTICES OF MOTION.

MR. HARRINGTON gave notice that he would, on Saturday, the 4th of February, move the second reading of the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)."

Also the second 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."

ABKAREE REVENUE (BENGAL).

MR. SCONCE moved that the Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal)" be referred to a Select Committee, consisting of Mr. Wilson, Mr. Harrington, and the Mover.

Agreed to.

CATTLE TRESPASS.

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)" 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, February 4, 1860.

PRESENT :

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

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

CIVIL PROCEDURE.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor General had assented to the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

CLERK OF THE COUNCIL.

The following Message from the President in Council was also read:—

MESSAGE No. 198.

The President in Council informs the Legislative Council that Macleod Wylie, Esquire, has been appointed to be Clerk of the Council, on a salary of Rupees 2,500 per mensem, in succession to Walter Morgan, Esquire.

By order of the Honorable the President in Council.

W. GREY,

Secy. to the Govt. of India.

Fort William,
The 1st February 1860.

STAMP DUTIES.

THE CLERK presented to the Council a Petition of Native Inhabit-

ants of Bombay, 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.

MERCHANT SHIPPING.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding for consideration, in connection with the question of consolidating the law relating to Merchant Shipping in India, a copy of papers regarding the proposed amendment of the provisions of the English Merchant Shipping Act of 1854, in consequence of the large number of imprisoned seamen at Bombay.

THE VICE-PRESIDENT moved that the communication be printed.

Agreed to.

ELECTRIC TELEGRAPHS.

MR. LEGEYT presented the Report of the Select Committee on the Bill "for regulating the establishment and management of Electric Telegraphs in India."

RAILWAY CONTRACTORS AND WORKMEN.

MR. LEGEYT also presented the Report of the Select Committee on the Bill "to empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

ARTICLES OF WAR (NATIVE ARMY).

MR. HARRINGTON moved the second reading of the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)."

SIR JAMES OUTRAM said, he was satisfied that the provisions of the Bill were all that was at present necessary to meet the requirements of the Native Force about to proceed to China, with which view alone the Bill