

Thursday, 4th February, 1860

PROCEEDINGS

OF THE

**LEGISLATIVE COUNCIL OF
INDIA**

Vol. VI

(1860)

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. HARINGTON 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 this 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

had been introduced. The large and most important measure—the entire revision of the Articles of War for the Native Armies of India—could not, of course, be considered until the future constitution of the Bengal Army had been decided on by the Home Authorities, to whom he must accord the merit of exercising in their deliberations the virtues of patience and endurance to a most marvellous extent—virtues which must needs be emulated by the many thousands of the servants of the State in India who were so deeply concerned in the issue.

He took this opportunity to acknowledge the obligations he was under to the Honorable Member for the North-Western Provinces for so kindly undertaking, at his request, to introduce this Bill, which, strictly speaking, it was perhaps his (Sir James Outram's) duty, as Military Member, to have done. But laboring as he unfortunately did under an unsurmountable difficulty in speaking in public, and the rules of this Council not admitting the reading of a written address, and apprehending, as he did, that he might not, under these disadvantages, sufficiently clearly explain the bearings and objects of the Bill, involving as it did *legal* questions, he therefore solicited the aid of his Honorable friend, so recently his colleague in the Government, and furnished him with the papers connected with the subject, including the views of the Judge Advocate General, concurred in by His Excellency the Commander-in-Chief and himself, and which had been mainly followed in framing the Bill. He begged to thank his Honorable friend most gratefully for so obligingly undertaking and so ably fulfilling the task.

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

SUCCESSIONS.

MR. HARRINGTON moved 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.”

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

ADMINISTRATOR GENERAL.

MR. FORBES moved the second reading of the Bill “to amend Act VIII of 1855 (relating to the office and duties of Administrator General).”

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

CHITTAGONG DISTRICT.

MR. SCONCE moved the second reading of the Bill “to remove certain tracts on the eastern border of the Chittagong District from the jurisdiction of the tribunals established under the general Regulations and Acts.”

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

LAND FOR PUBLIC PURPOSES.

MR. SCONCE moved the third reading of the Bill “to amend Act VI of 1857 (for the acquisition of land for public purposes).” Before doing so he observed that, alter all that had been said on the subject of this measure, he should not be thought too pressing in pushing on the further progress of the Bill. He need hardly say that he should be unwilling to advocate a measure which could be considered to be imperfect, useless, or injurious. He would first remark that the Bill did not apply to land proposed to be taken for all public purposes. It was intended to apply only to land required for Roads, Canals, and Railways. In taking the land, the first and most material object contemplated by the Bill was to be assured that every body included in the land should know that the land was about to be taken. The first intimation under Act VI of 1857 would be the general notice prescribed by Section II, that the land was required for the purpose of a Railway or other work. This was followed by the proceedings to be taken under Section XXXIV of the same Act, whereby the land required would be openly surveyed and marked out; in fact trenched, so that

any man through whose land the line run should have indubitable intimation of the intended operations. Further, by the 3rd Section of the present Bill, notice would be given of the intended survey and marking out in the public Offices therein specified. But, besides that, in the Bill now proposed, when land was required for any of the purposes above referred to, notice would be given to the parties interested that the detailed measurement would commence from a certain date, and requiring them to appear, either personally or by agent, to state the nature of their interests in the land, and the amount and particulars of their claim to compensation. Perhaps he might be allowed to say that this change in the law was calculated to afford material assistance to private individuals; for whereas under the law as it now stood, the detailed measurement might be made in the absence of the parties, it was now proposed that parties owning or occupying the land should be invited to watch the progress of the measurement. This change seemed to him to be a substantial benefit to the parties themselves, while it would tend to effectively assist the Officers engaged in taking the land on the part of the public. This was where the present Bill stopped. A good deal of objection had been taken by his Honorable friend on his right (Mr. LeGeyt) as to the land being taken possession of pending the decision of the arbitrators, to whom the question of compensation might have been referred. The objection taken might or might not be valid, but in this respect he had left the law in its present state.

He then referred to Section V, which would enable the Government to take temporary occupation of uncultivated land situated within two miles of the Railway, Road, or Canal, for the purpose of taking ballast, brick-making, &c. The local Government attached great importance to the enactment of this provision, and if the change in the law before referred to should not, in itself, be considered to be so material an improvement upon the existing law as to justify the Council to consent to the passing of the proposal

into an enactment, it would be seen that the Bill made provision for a double object, and he felt accordingly that he was bound to press the third reading of the Bill.

SIR BARTLE FRERE said, he would only make a few observations to justify him in voting for the third reading of the Bill after what he had already said respecting it. The Bill, as it originally stood, introduced two radical changes in the present law. First, with regard to the notice to be given to the owners of land to be taken, it proposed to substitute for the present notice to each proprietor of land that his land had been measured and would be taken, a general notice to all owners of the land required, that their several portions of land would be measured at a future day; and the change was expected to save much delay in the final adjustment. It was strongly urged by the local Governments. With regard to this first part of the Bill, therefore, though he must confess that it was not so clear as it might be, and he greatly regretted that the Honorable Member for Bengal did not adopt the suggestion of the Honorable and learned Vice-President of so wording the Section as to remove all doubts as to its meaning, he saw no special objection to the change. The second great change proposed by the Bill as it originally stood was that, instead of allowing possession of the land to be taken, as required by the existing law, after award of compensation or reference to arbitration, possession of the land might be taken as soon as the Government wished to do so after the completion of the detailed measurement. That part of the Bill the Honorable Member had withdrawn, and he had inserted a new Clause connecting the Bill with the existing law. There was a third provision for taking land required for brick-making and other purposes, to which the local Government attached great importance, and to which he (Sir B. Frere) could see no great objection. Altogether the Bill was expected greatly to facilitate the acquisition of land for Railway purposes. This was an object of great

importance; and as the provision which seemed to him to trench most unwarrantably on private rights had been withdrawn, he would not feel justified in opposing the further progress of the Bill, though it seemed to him far from being such a perfect measure as could be desired. He feared that, when the Bill should come to be put into operation, especially near the Presidency Towns, not only would private individuals often find their rights jeopardized, but public Officers and the Railway officials, whose proceedings were intended to be facilitated, would find themselves suddenly pulled up, and involved in troublesome and expensive litigation, owing to the obscurity of the Act, and further legislation would be called for. Still, as the local Government considered that the Bill was needed for the more speedy acquisition of land for Railway purposes, he did not feel himself justified in further opposing it. He only hoped that his expectations of its working would never be realized, and that no necessity would, as he feared, arise for their having again, at no distant period, to legislate on this subject.

Mr. LEGEYT said, he only desired to explain that, after the Select Committee had submitted their Report on the Bill, a Petition, very numerously signed, from Bombay, was presented to the Council, from which it appeared that the Bill had been very imperfectly understood. He (Mr. LeGeyt) thought that the possible advantages of the Bill would not counterbalance the disadvantage of disturbing men's minds as to an unconstitutional power being given to Government to take land for public purposes. He saw that the object which the Honorable Member had in introducing this Bill would not be generally understood, and that the impression was that the Bill did away with many of the precautions required to be taken by Act VI of 1857. He entirely agreed with his Honorable friend opposite (Sir Bartle Frere), that misunderstandings would arise from this Bill. He (Mr. LeGeyt) thought it unwise to disturb a law tolerably well understood for the gain of a few days in the acquisition of land required for

a Road, Canal, or Railway. He admitted that, if the Honorable Member's view was generally understood, no evil might result. But he (Mr. LeGeyt) thought that, after the doubts which had been expressed on the subject in this Council, there was little chance of its being better understood by the public generally.

THE VICE-PRESIDENT said, he was very unwilling to trouble the Council with any further remarks on the subject of this Bill. He could not bring himself to the same conclusion as the Honorable Member on the right (Sir Bartle Frere), or vote for the third reading of the Bill. It appeared to him that it was the duty of this Council not to pass a Bill in such a form, that the object of it would not be understood. He pointed out the difficulty that would arise from the numerous references made in the Bill to Act VI of 1857, and said that its obscurity appeared to him to be of itself a sufficient objection to the Bill. The Honorable Member on the right (Sir Bartle Frere) had suggested to the Honorable Mover the expediency of referring the Bill back to the Select Committee; but instead of adopting that suggestion, the Honorable Mover preferred to press the third reading of the Bill.

He (the Vice-President) did not think it right that land should be taken for public purposes in the manner proposed by the Bill. The Honorable Mover had given credit to the Bill for providing that notice should be given to the parties interested before the detailed measurement was commenced. But it appeared to him (the Vice-President) that the Bill did not provide for as ample notice as Act VI of 1857. The Bill required the Collector or other Officer to—

“Cause a notice to be affixed in some conspicuous place or places upon the land at intervals of not less than one mile, and published by proclamation in the neighbouring bazars and villages intimating, &c.”

Act VI of 1857, however, provided that—

“After the land has been so marked out and measured, he shall cause a notice to be affixed

in some conspicuous place upon the land, and published by proclamation in the neighbouring bazars and villages, to the effect that the land is about to be taken by Government for a public purpose; and shall also give notice to the same effect to the occupier (if any) of such land and to all such persons known or believed to be interested therein, or to be entitled by Section XXXVIII of this Act to act for persons so interested as shall reside or have agents within the Collectorate or other Revenue District in which the land is situate, by serving such notice on such persons or their agents."

The provision in the present Act requiring owners and occupiers to be served with a specific notice was entirely omitted in the proposed Bill. He (the Vice-President) thought that if Government wished to take land for a public purpose, it was not too much to require a specific notice to be served on every owner and occupier as required by Act VI of 1857. If, however, it was considered right or necessary to take land without giving such notice, why did not the Honorable Member say so in so many words?

The Honorable Member then referred to a new Section which had been introduced into the Bill, and which proposed to authorize the Government to take temporary occupation of uncultivated land within two miles of a Railway for the purpose of taking ballast, brick-making, &c. He (the Vice-President) thought it was too late now to introduce this Section. The Standing Orders of the Council required the republication of a Bill, and as a general rule he thought that a Bill ought to be republished, when new Clauses such as this were introduced by way of amendment. The Section in question was not in the Bill as originally published. It might be right or it might be wrong to allow land to be taken for the purpose of brick-making, but he thought that it was scarcely right to introduce such a Section at this stage, and to pass the Bill without a republication of it.

For these reasons he should vote against the third reading of the Bill.

MR. SCONCE said, he gladly deferred to the last suggestion which had been made from the Chair, and was quite willing to postpone the Motion

for the third reading until the republication of the Bill.

The Motion was then by leave withdrawn.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability."

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

ARTICLES OF WAR (NATIVE ARMY).

MR. HARRINGTON moved that the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)" be referred to a Select Committee consisting of the Vice-President, Sir James Outram, Sir Bartle Frere, Mr. LeGeyt, and the Mover.

Agreed to.

MR. HARRINGTON said, he wished to ask the Council to suspend the Standing Orders to enable him to move an instruction to the Select Committee which had just been appointed on the Bill to amend the Articles of War, to make their report within one week from this date. The Honorable and gallant General on his left, whom he would take this opportunity of thanking for the observations which, with his usual generosity and kindness, he had expressed towards him (Mr. Harrington) on the motion for the second reading of the Bill as regards his connection therewith, had explained to the Council the object for which the Bill was immediately required, namely, to provide for the trial and punishment of certain offences when committed by Native Non-Commissioned Officers, Soldiers and Camp-followers in the Regiment intended to form part of the Force proceeding to China; and as these Regiments would shortly embark for their destination, it was very desirable that the Bill should be passed into law with as little delay as possible, which

could only be done by suspending the Standing Orders.

SIR BARTLE FRERE seconded the motion, which was agreed to.

MR. HARRINGTON then moved that the Select Committee be instructed to present their Report to the Council within a week.

Agreed to.

SUCCESSIONS.

MR. HARRINGTON moved that the Bill "for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons" be referred to a Select Committee consisting of the Vice-President, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

ADMINISTRATOR GENERAL.

MR. FORBES moved that the Bill "to amend Act VIII of 1855 (relating to the office and duties of Administrator General)" be referred to a Select Committee consisting of Mr. Harrington, Mr. Sconce, and the Mover.

Agreed to.

CHITTAGONG DISTRICT.

MR. SCONCE moved that the Bill "to remove certain tracts on the eastern border of the Chittagong District from the jurisdiction of the tribunals established under the general Regulations and Acts" be referred to a Select Committee consisting of Sir Bartle Frere, Mr. Forbes, and the Mover.

Agreed to.

PENAL CODE.

MR. HARRINGTON moved that a communication received by him from the Government of the North-Western Provinces, relating to the punishment of persons who might escape or attempt to escape from jail, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

REGISTRATION OF ASSURANCES.

MR. FORBES gave notice that he would, on Saturday next, move the

first reading of a Bill to provide for the Registration of Assurances.

INDIAN FINANCES.

MR. WILSON said, it might be for the convenience of the Council that he should give notice now that it was his intention, on that day fortnight, to make a statement regarding the present condition of the Finances of India, and to explain the measures which the Government would be prepared to recommend for the adoption of the Council in relation thereto. He should have been glad to have made this statement at an earlier period, but he feared it might not be in his power to do so.

NABOB OF THE CARNATIC.

THE VICE-PRESIDENT said that the papers relative to certain judgments delivered by the Judges of the Supreme Court of Judicature at Madras, in the matter of an application on behalf of Gunsham Doss, a claimant against the Estate of the late Nabob of the Carnatic, had been printed and circulated. It appeared to him (the Vice-President) that the language used by the Chief Justice at Madras in reflecting upon an Act passed by this Council ought not to be allowed to pass unnoticed. As the Act in question was passed before some of the present Members were in the Council, he begged to move in the first instance that the papers on the subject be referred to a Select Committee consisting of Mr. Harrington, Mr. Forbes, and the Mover, for the purpose of preparing a statement of the circumstances under which Act XVI of 1859 was passed.

Agreed to.

STANDING ORDERS COMMITTEE.

THE VICE-PRESIDENT moved that Mr. Wilson be added to the Standing Orders Committee.

Agreed to.

The Council adjourned.