

Saturday, 11th February, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF
INDIA

Vol. VI

(1860)

Saturday, February 11, 1860.

PRESENT :

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

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

POWERS OF COMMANDING OFFICERS.

THE CLERK reported to the Council that he had received from the Military Department copies of papers on the subject of granting increased powers to Commanding Officers for the trial and punishment of Military offences.

SIR JAMES OUTRAM moved that the communication be printed.

Agreed to.

EMIGRATION TO ST. VINCENT AND
ST. KITTS.

THE CLERK also reported that he had received from the Home Department a further Despatch from the Secretary of State, regarding the proposed emigration of Indian Laborers to the Colony of St. Vincent, and also to that of St. Kitts.

MR. SCONCE moved that the Despatch be printed.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

MR. HARRINGTON presented the Report of the Select Committee on the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)."

REGISTRATION OF ASSURANCES.

MR. FORBES moved the first reading of a Bill "to provide for the Registration of Assurances." He said he never rose to address the Council with so strong a conviction that he needed its most indulgent consideration, as he had on the present occasion. The measure

which he was presently to introduce was one of so much importance, and one which had, on former occasions, occupied the attention and consideration of men so far more able than he was to deal with it successfully, without having been brought to a practical issue, that he might well bespeak indulgence. For his support in the duty which he had undertaken, he had, however, a personal experience that the Council was always willing to give its most indulgent consideration to those who needed it most, he had the great advantage of being able to make free use of all that had been left recorded by those who had preceded him in the work which he had undertaken to perform, he had had the invaluable aid of his colleagues in the Select Committee which prepared this Bill, and he had the hope that all the imperfections which the Bill might possess would be rectified by the suggestions of the general public, if it should pass a second reading, and be placed before the country.

The first law passed on the subject of Registration was Regulation XXXVI. 1793 of the Bengal Code. It provided Offices for the Registration of deeds affecting real property, of wills, and of authorities by a husband to his wife to adopt a son after his decease. Section IV of the Regulation, however, enacted that it should be left to the option of all persons to register or not as they might think proper, and that the non-registering of deeds should in no wise operate to the prejudice of the rights of the parties thereto, which were to remain the same as if the law had never been enacted. This law, originally passed for Bengal, was subsequently extended to other parts of India, and by Regulation XX. 1812 of the Bengal Code its provisions were extended to engagements for the delivery of indigo, and to bonds, promissory notes, and generally all obligations for the payment of money, the law being still optional. By Regulation XXXVI. 1793 of the Bengal Code, and Regulation XVII. 1802 of the Madras Code, and Regulation IX. 1827 of the Bombay Code, preference was to be given in the

Courts to registered deeds, provided that the party suing on them was not cognizant of the existence of other unregistered deeds affecting the same property at the time that he bought or took it upon mortgage.

This part of the law was found to give rise to great difficulty, inasmuch as a complicated system of law arose out of the construction to be given to the knowledge of parties, and the perjury, forgery, and fraudulent concealments which arose threw general doubt on all conveyances of property. Act I of 1843 was therefore passed, repealing so much of the existing law as required ignorance of the existence of any previously executed deed, to entitle any deed executed subsequently to any benefit from Registration.

With the exception of some law regarding the person who should execute the duties of a Register, he believed that he had stated to the Council the present state of the law of Registration.

Since Act I of 1843 was passed, there had been several propositions made for an amendment of the law, but one only was ever brought before the Legislature, or promulgated for general information. The measure to which he referred was prepared by the Honorable and learned Judge opposite (Sir Charles Jackson) at the time when he filled the office of Fourth Ordinary Member of the Government of India, was most elaborate and comprehensive, and did not become law only in consequence, he believed, of the technicality of its language, and the difficulties which it consequently presented to unprofessional persons.

Another draft of a Law on Registration was prepared by Mr. Thornhill in 1853, and again another by Mr. Grant, then Government Solicitor; but neither of them appeared to have been adopted by the Legislature of the day.

He (Mr. Forbes) was now about to bring the question forward again. He was afraid that there was but one opinion as to the very general prevalence of both forgery and perjury in India. Not only were good claims supported by forged instruments and perjured evidence—not only were good

and *bonâ fide* claims denied in reliance on the support which such denial might receive from recourse to false evidence, both documentary and oral—but claims altogether devoid of foundation were set up, and were only too frequently, either wholly or in part, successfully maintained by an unscrupulous resort to the same nefarious means.

It was notorious that the fabrication of deeds had been reduced to system, and that the means of their preparation were kept ready in anticipation of their being required, in order that the requisite appearance by age might be given to the instrument, so that its outward appearance might coincide with the date which it was convenient to assign to it.

When giving an opinion upon the Honorable and learned Judge's (Sir Charles Jackson's) Bill, the Lieutenant-Governor of the North-Western Provinces, Mr. Thomason, said—

“As regards bonds and money transactions the necessity for some alteration of the law was most urgent. Constant complaints were made of the prevalence of false suits, founded on forged bonds, supported by false evidence. The only remedy for this consists in a stringent law which should render registration within a certain time, and in a manner calculated to prevent fraudulent or clandestine transactions, necessary for the validity of a bond.”

The Sudder Board at Calcutta, when addressing Government in 1857, spoke of the frauds prevalent in the Courts as “an evil of overwhelming magnitude,” and were of opinion that it was necessary to meet that

“evil by legislation corresponding in comprehensiveness with the greatness of the evil. The mere extension of voluntary registration would not, in the Board's opinion, have been sufficient to check, in any sensible degree, the prevailing practice of forgery.”

The same testimony to the frequency of fraudulent litigation was borne by Mr. Robinson, then Commissioner of Agra, when writing upon a Despatch received from the Honorable Court of Directors, in which they had expressed their fear lest Act I of 1843 should have done injustice to parties by annulling titles by which property was held, which had been acquired in

good faith and according to well and long established usage. Mr. Robinson said—

“One thing particularly strikes me in this correspondence, namely, that the anxiety of the Honorable Court of Directors should have been awakened only by the fear that the purchaser, the capitalist, the monied man, the man of affairs, should be taken in, in making a purchase. That I should be surprised is not astonishing, when it is known that I do not remember a case of this kind, while my memory is overloaded with instances of persons tricked out of their properties by forged deeds of sale, by forged notes of hand, by false running accounts, and by decrees founded on such papers and bolstered by false oaths. It is against actions founded on these classes of documents that the whole country cries out.”

And now again, in reply to a call from the Madras Government for a report on a project of law for registration, the Sudder Court at that Presidency said—

“All who have had an opportunity of judging, must have become painfully aware of the existence of the evils referred to. Claims are taken up for investigation at a time remote from the date of occurrence attributed to them, and the Courts depend, for proof or disproof thereof, upon documents and witnesses produced by the parties without effective precaution against such evidence being utterly false.”

It was to protect the people of India from the effects of such frauds as were referred to in the communications which he had read, that this Bill had been prepared, and although he did not present it as a perfect measure, or one on which opinion might not be more or less divided, he did consider that it contained the foundation of what the Registration Law should be, and he was sanguine that if this Council would allow it to go forth to the country, they would receive such suggestions and such opinions as would enable them to pass a law, which, for beneficial results, would stand a comparison with any that had yet passed the Council.

The Bill proceeded on the principle of compulsory registration, that is, it proposed to enact that no unregistered transfer of property should hereafter be held to be valid. This principle was admitted by the learned

Mr. Forbes

Judge opposite into his Bill, as far as regards transfers of moveable property; it had been introduced in the Punjab and into Oudh; and he believed the Honorable Gentleman on his left (Sir Bartle Frere) would bear him out in saying that it was successfully introduced in Scinde during the time of his administration of that country.

As the Bill was now drawn, it would only affect transfers of moveable property of the value of fifty Rupees and upwards. Should the Bill become law, and be found to work beneficially, its provisions could hereafter be made general; or if fifty Rupees be considered too small a sum on the first introduction of the Law, it could be enlarged in Committee, if the Bill should even reach that stage.

He would only further add that the Bill was not intended to apply to the limits of Her Majesty's Supreme Courts.

The Bill was read a first time.

JOINT STOCK BANKING COMPANIES LIMITED.

On the Order of the Day being read, for the third reading of the Bill “to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability—”

Mr. SCONCE moved that the Bill be re-committed to a Committee of the whole Council, for the purpose of moving two amendments therein. The first was merely of a clerical character, namely the substitution of the figure “I” for the figure “II” in the 1st line of Section I. The other was the insertion of the words “fifty Rupees” in the blank at the 25th line of Section III, which he would propose as the amount of penalty to be prescribed for non-compliance with the provisions of that Section, the amount in the English Act being five pounds.

Agreed to.

The proposed amendments were agreed to in Committee; and the Council having resumed its sitting, the Bill was reported.

Mr. SCONCE then moved, under the 87th Standing Order, that the Bill be read a third time and passed.

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

ARTICLES OF WAR (NATIVE ARMY).

MR. HARRINGTON moved that the Council resolve itself into a Committee on the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)"; 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.

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

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

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

MR. LEGEYT moved that the Select Committee on the Bill "to amend the Articles of War for the Native Army, relating to the forfeiture of pay and service in certain cases" be discharged.

Agreed to.

THE VICE-PRESIDENT moved that the Select Committees on the Bill "to extend the provisions of the 101st Article of War for the Native Army," and on the Bill "to amend Act XIX of 1847 (Articles of War for the government of the Native Officers and Soldiers in the Military Service of the East India Company)," be discharged.

Agreed to.

MR. HARRINGTON moved that Sir Bartle Frere be requested to take the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability" to the President

in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

NABOB OF THE CARNATIC.

THE VICE-PRESIDENT said, he moved on Saturday last for the appointment of a Select Committee to prepare a statement of the circumstances under which Act XVI of 1859 was passed. The Committee had not yet drawn up their statement on this matter, and he now begged to move that Sir Charles Jackson be added to the Select Committee.

Agreed to.

THE VICE-PRESIDENT then moved that the Committee be instructed to report generally on the matter, and to send in their Report, when ready, to the Clerk of the Council, in order that it might be printed and circulated.

Agreed to.

THE VICE-PRESIDENT also gave notice of his intention, on Saturday next, to move a Resolution on the subject of Act XVI of 1859, and of the Judgments of the learned Judges of the Supreme Court at Madras in the case of Gunshan Doss.

OATHS AND AFFIRMATIONS.

MR. LEGEYT moved that two communications, received by him from the Government of Bombay, on the subject of Oaths and Affirmations in Judicial Proceedings, be laid upon the table and printed. He said, there was no Bill on the subject now before this Council, and these papers were in answer to questions which had been sent to the several local Governments, in connection with the Bill introduced by the Honorable Member for Madras, which had since been withdrawn. The papers contained a great deal of information on the subject, and it was for the consideration of the Council whether it would be necessary or advisable to print them, so that on future occasion the opinions of the authorities in the Western Presidency might be available.

MR. WILSON suggested whether it would not be preferable to allow the manuscripts themselves being placed upon the records of the Council. This was the practice in England, and would obviate the expense of printing the papers until they were actually required.

MR. LEGEYT adopted the suggestion, and an amended Motion to the above effect was then made and agreed to.

The Council adjourned.

Saturday, February 18, 1860.

PRESENT :

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

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

CATTLE TRESPASS.

THE VICE-PRESIDENT read a message, informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding a Despatch from the Secretary of State for India, on Section 238 of the Bill "for simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter" (as settled in Committee of whole Council) regarding trial by Jury.

MR. HARRINGTON moved that the above communication be printed.

Agreed to.

INDIAN PENAL CODE.

SIR BARNES PEACOCK presented the Report of the Select Committee on "The Indian Penal Code."

INDIAN FINANCES.

MR. WILSON rose and said,

MR. PRESIDENT,— Sir, I feel that the ground over which it will be my duty to travel before I sit down will be so extensive, that the fear of taxing your patience and my own powers will deter me from making any lengthened introductory remarks which may add to that danger. Yet, Sir, I cannot but feel sensible that I owe some explanation, if not indeed apology, for the position in which I now find myself. A year ago nothing could have appeared more beyond the range of probability than that I should now be addressing the Legislative Council of India, so much so, that since that time I have undergone two elections to the Imperial Parliament: it was not till near the close of the last Session, when, as a Member of the Government, it was proposed to me to undertake the honorable but arduous and responsible—perhaps the more so honorable because so arduous—duties which I have now to discharge. Sir, if for a moment I felt some reluctance in occupying so responsible an office, I trust I may say it was from no consideration of a selfish or personal kind; I cannot deny that it was not without the greatest regret that I voluntarily renounced a career, for a time at least, it may be for ever, in the greatest representative assembly in the world, to enter upon a sphere of public duty altogether new; but these are considerations which, however natural, ought not to decide the course of any one who has embraced the service of the State. No, Sir, if I hesitated, it was from a doubt in my own knowledge and capacity to cope with the gigantic difficulties which I was called upon to encounter—difficulties which in a great measure had arisen from circumstances which no one could control, and