INDIAN LEG. COUNCIL DEBATES

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P. L.

Saturday, April 20, 1861.

PRESENT:

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

Hon'ble Sir H. B. E. Frere,	H. B. Harington, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	H. Forbes, Esq.,
Hon'ble S. Laing,	A. Sconce, Esq., and
	C. J. Erskine, Esq.

BREACH OF CONTRACT.

THE CLERK presented to the Council a Petition from certain ryots and others of Jungypore against the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, manufacture, carriage, and delivery of Agricultural produce."

SIR BARTLE FRERE moved that the Petition be printed and referred to the Select Committee on the Bill.

STAGE CARRIAGES.

THE CLERK presented a Petition from Mr. William Greenway, proprietor of the Inland Transit Company, concerning the Bill "for licensing and regulating Stage Carriages."

MR. HARINGTON said, as this Petition related to a Bill which was in the Orders of the Day for a Committee of the whole Council, he proposed to move, when they went into Committee upon the Bill, that the Petition be read.

EMIGRATION.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding papers connected with the question as to what the duties of the Protectors of Emigrants at Indian Ports should be, and whether the duties ought to be defined by law.

CORPORAL PUNISHMENT.

THE CLERK reported that he had received a communication from the Foreign Department, forwarding papers relative to the infliction of Corporal Punishment in Oude.

MR. HARINGTON moved that the communication be printed and referred to the Select Committee on the Bill "to provide for the punishment of flogging in certain cases."

SMALL CAUSE COURTS.

The Order of the Day being read for the presentation of the preliminary Report of the Select Committee on the Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)"—

MR. HARINGTON said, in the absence of the Honorable Member of Government who was in charge of this Bill, and who, as all must have heard with deep regret, was prevented by severe indisposition from attending in his place to-day, he had the honor to present the preliminary Report of the Select Committee on the Bill, accompanied by a separate Minute by the Honorable Member for Bengal on the subject of the Bill, and to give notice that on Saturday next he should move that the Standing Orders be suspended with a view to the Bill passing through its remaining stages on that day.

PORT-DUES (CONCAN.)

MR. ERSKINE presented the Report of the Select Committee on the Bill "for the levy of Port-dues in the Ports of the Concan."

CATTLE TRESPASS.

MR. SCONCE said that, as he had not given notice, it would be necessary for him to move for a suspension of the Standing Orders to enable him to introduce a Bill "to amend Act III of 1857 (relating to trespasses by cattle)." The object of the Bill was to provide a penalty for wilful trespass by cattle. It had been long known and admitted by the Council that, on the enactment of Act III of 1857, a practical omis-

sion was made with respect to the crime of trespass by cattle wilfully caused on any land or crop, in not providing a penalty for that offence. Section 17 provided how any such offence should be dealt with. The words of the Section were :—

"When any person commits mischief by causing cattle to trespass on any land, the penalty provided for such offence may be adjudged on the complaint of any person authorized to seize cattle under Section II of this Act, or of any person who may have made advances for the cultivation of the land and delivery of the produce ; and any fine which shall be so adjudged, may be recovered by sale of the cattle, by which the trespass was committed, or any portion of them, whether the cattle were seized in the act of trespassing or not, and whether such cattle are the property of the person convicted of the offence, or were only in his charge, when the trespass was committed.

According to that Section the penalty provided for the offence might be adjudged. But it happened that, so far as Act III of 1857 was concerned, the offence of causing a wilful trespass by cattle was left to be dealt with by subsequent legislation. This defect had been long recognized, and the delay in bringing in a separate Bill to remedy the defect had arisen from the expectation of the early passing into law of the Penal Code which fully provided for such cases. It was true that the Penal Code had been passed ; but its operation had been postponed from the 1st of May to the 1st of January next. Under these circumstances, it seemed to him to be important to give early effect to a portion of the Penal Code which was intended to remedy a defect in the present law, and he proposed to bring in a Bill embodying certain of the Sections of the Code that applied to the offence of wilful trespass. The Sections were taken from the head of "Mischief." The Council might have read the Petition of the Indigo Planters' Association presented last week, in which this and other amendments of the Cattle Trespass Act were proposed. Accordingly the first Section of the Bill which he was about to introduce provided that, when there was a case of wilful cattle trespass, as determined by the Penal Code, the party on conviction, might be imprisoned for three months, or subjected to a fine of two hundred Rupees, or both. The second Section provided that, if the damage exceeded fifty Rupees, the imprisonment might extend to two years, besides a fine. There was another Section which was not taken from the Penal Code, but from the Code of Criminal Procedure, in which it was proposed that, in the case of the imposition of a fine, the party endamaged should have a portion, not exceeding the loss which he had suffered, awarded to him.

These were the main provisions of the Bill, and with these remarks he begged to move that the Standing Orders be suspended, to enable him to move the first and second reading of the Bill.

MR. HARINGTON seconded the Motion, which was put and carried.

MR. SCONCE then moved that the Bill be read a first time.

The Bill was read a first time.

MR. SCONCE moved that the Bill be read a second time.

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

SALT DUTY (BOMBAY).

MR. ERSKINE said, he must also ask the Council to consent to a suspension of the Standing Orders, in order that he might move the first reading of, and then carry at once through its subsequent stages, a Bill "to empower the Governor-General in Council to increase the rate of duty leviable on Salt manufactured in or imported into any part of the Presidency of Bombay." He was naturally unwilling to adopt this course with reference to a Bill which was in the nature of a money Bill, and of the introduction of which therefore a week's notice would ordinarily be required. But he believed that the Council would agree with him that, under the circumstances, this case must be treated as an exceptional one. It could hardly be necessary, he thought, to detain the Council with any

lengthened explanations of the nature and objects of the Bill thus to be proposed. They were indeed exceedingly simple. Had there been here any question as to the general system of Salt Duties in this country, or even as to the general administration of that system in any one Presidency, it would, no doubt, have been desirable to afford full time for deliberation and for the careful discussion of so large a subject. But considerations of the kind could hardly arise in connection with the present measure. For, whatever might be thought on other points, on one point at least there seemed to be little room for difference of opinion, namely, that so long as this impost was maintained, every opportunity should be taken of lessening as far as possible—as far as local exigencies and local experience would admit—the inequality with which it now pressed on different parts of the country. That inequality was undoubtedly considerable; and one of the evidences of this was that, although the Government had recently increased the duties on Salt in those Presidencies where they had previously been highest, it was still impossible in the Bombay Presidency, where they were lowest, to increase them without further recourse to legislation. In the Bengal Presidency he believed the Salt duties had been raised to Rupees 3-4 per maund. In the North-Western Provinces they had been raised to 3 Rupees per maund. In the Presidency of Madras the import duties might be raised by law as high as 3 Rupees per maund; although, under the system actually in force there, the price of Salt sold at the Government manufactories seemed to be so adjusted that, after deducting the estimated cost of production, a sum of about Rupees 1-4 per maund remained, which might be regarded as a duty of Excise and which might still be somewhat increased without any change in the law. In Bombay, on the other hand, neither the Customs nor the Excise duties could be legally raised above 1 Rupee per maund, and hence the necessity for an application to the Legislature. For, in reply to a reference from the Supreme Government, the Government of Bombay had recently intimated their opinion that the Salt duties in that Presidency might at once, if the law were altered, be raised to Rupee 1-4 per maund, without any increase of charge or any probable diminution of the consumption. On this opinion the Government of India had readily acted, and had already issued orders to give effect to the suggested enhancement of rates, by which (he was informed) it was expected that an increase of Revenue would accrue to the extent of 7 or 8 lacs of Rupees per annum. The order for an enhancement of duty, he believed, had been issued and acted upon on Saturday last. It had been the wish of the Government, as he knew, that that order should not have issued without notice being given simultaneously in this Council of a Bill to give effect to the change. And it was to be regretted that that intention had not been carried out. But he trusted that no minor considerations would now interfere with the adoption by the Council of a measure which seemed to be so desirable in other respects, which to some considerable extent would have a favorable effect on the finances, and which had the concurrence of those who were most competent to judge of its policy. In regard to the form of the Bill he need only say that it was drawn on the model of Act I of 1860, which provided for an enhancement of the Salt Duties in the North-Western Provinces. The present Bill contained only three Sections; of which the first repealed some portions of previous Acts, in as far as they limited the Import and Excise duties to 1 Rupee per maund; the second empowered the Governor-General in Council to enhance those duties, from Saturday last, to any rate not exceeding Rupees 1-8 per maund, if necessary; and the third was the usual Clause to indemnify the Officers of Customs who had acted on the Government order for the enhancement in anticipation of the passing of this Bill. He did not know that there was any other point in connection with which any explanation was necessary. And

he would merely therefore in conclusion move that the Standing Orders be suspended in order that this Bill might be read a first time and then carried through its subsequent stages forthwith.

MR. LAING begged to second the Motion and said that he would take this opportunity of stating that he hoped, next Saturday, to submit the Annual Budget for 1861-62, which would be the legitimate time for him to make a General Financial Statement, explaining the changes which had been made in the Salt Duties. He thought that the arguments used by his Honorable friend the Member for Bombay sufficiently explained the necessity for making the proposed increase in the Duty on Salt in the Bombay Presidency to take effect immediately, as a corresponding increase had already been made in the other Presidencies where the existing law admitted of it; and as the measure had been fully assented to by the authorities at Bombay, it was manifestly desirable that not even a week should be lost in placing Bombay in this respect on the same footing with the other parts of the country.

The Motion was then put and agreed to.

MR. ERSKINE then moved that the Bill be read a first time.

The Bill was read a first time.

MR. ERSKINE moved that the Bill be read a second time.

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

MR. ERSKINE moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee with the insertion of the following new Section after Section II (on the Motion of Sir Barnes Peacock), and after a necessary verbal amendment in Section III, consequent on the introduction of that Section :—

"The order issued by the Governor-General of India in Council, on the 13th day of April 1861, authorizing an increase of Duty within the limit aforesaid, shall have the same force and effect as if it had been issued after the passing of this Act."

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

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

MR. ERSKINE moved that Mr. Laing be requested to take the Bill to the Governor-General for his assent.

Agreed to.

GRANTS OF IMMOVEABLE PROPERTY.

SIR BARTLE FRERE moved the second reading of the Bill "for secureing certain grants of immoveable property made by the State."

MR. HARINGTON said, he did not rise for the purpose of opposing the Motion for the second reading of this Bill, of the principle of which he quite approved; though, referring to the second Section, he was inclined to think that, unless some dispensing power was given to the Executive Government, the provision contained in that Section might operate inconveniently and indeed injuriously, not only as regarded the grantee and his heirs, but also as regarded the property constituting the grant. As the Section was now framed, he apprehended the grantee or his heirs would not be able to grant even a lease of the property.

THE VICE-PRESIDENT—I do not see the words "or heirs" used in the Bill. The Bill only speaks of "grantee."

MR. HARINGTON said, he had not overlooked the fact that the word "grantee" only was used in the Bill, but he took it for granted that there had been an omission and that the Bill was intended to apply to heirs also. He should be glad to have any doubt upon this point removed. He also wished to be informed by the Honorable Member of Government who was in charge of the Bill of the ground of the distinction contained in Section III in respect to any process issued out of any Court of Judicature established by Royal Charter before the Bill passed into law.

It seemed to him (Mr. Harington) that, if such a provision was necessary and proper as respected the processes of the Supreme Courts of Judicature, it must be equally necessary and proper as respected the processes of the Sudder Courts and the Courts subordinate thereto. He was aware that the Act, after the model of which they were told this Bill was framed, contained a similar distinction, but the grounds of it did not appear from the Act, and he (Mr. Harington) certainly thought that they ought not to perpetuate the distinction or import it into this Bill unless for good and sufficient reasons.

SIR BARTLE FRERE said, the Honorable gentleman would find, if he referred to the papers presented to the Council on the 29th September last, that at page 5 of them was a letter from the Judge of Allyghur, in which it was mentioned that he had suspended execution of the decree to which the letter referred. It was thence concluded that the Mofussil Courts in the North-West already possessed power to suspend execution of such a decree. As his Honorable friend, however, was an authority in such a matter, he (Sir Bartle Frere) had no doubt he was right and was quite willing to extend the scope of the Bill in Committee.

MR. HARINGTON said, the Section of the Bill to which his question related barred the action of the Bill in respect of processes issued by the Supreme Courts of Judicature prior to the passing of the Bill, which was exactly the reverse of what was done by the Judge of Allyghur in the case referred to in his letter. He believed he was right in saying that the course adopted by the Judge of Allyghur had no authority of law. But as his objection to the Section in question was one of detail, and did not affect the principle of the Bill, it might be further considered in Committee.

MR. SCONCE said, he certainly had no objection to offer to the principle of the Bill so far as it was declared in the annexure. On the contrary, he thought that, if no other case were shown than to protect grants such as that made to agallant soldier like Kurruck Sing, good cause had been shown for the introduction of the Bill. But apart from the 2nd Section of the Bill, which had been referred to by the Honorable Member for the North-Western Provinces, it seemed to him (Mr. Sconce) that the 1st Section was open to a great deal of doubt. The Bill was framed after the model of, nay verbally taken from, Act VI of 1849 (for securing Military and Naval Pensions and Superannuation Allowances). But the payment of pensions was of a different nature, and was attended with quite different effects. For example, pensions were generally personal, subject in some cases to renewal on the death of the grantee. Then, as had been remarked by the Honorable and learned Vice-President, the Bill, as it was drawn, referred only to grantees, not their heirs. There was no provision for the lapse of a grant. The words of the Bill seemed to confine its application to life grants, but probably it was also intended to protect hereditary grants, and, indeed, the declared object of the Bill, which was in part to support titles and dignities conferred by the Government, seemed to imply that the Bill should be enlarged so as expressly to embrace the heirs of grantees in cases in which the grants were perpetuated beyond the life of the first grantee.

Then again the 1st Section commenced with the words "Immoveable property which *has been* or may hereafter be granted." How far was this Bill to go back? Was it to apply to all grants heretofore made? Was it to go back to the time of Lord Hastings or Lord Wellesley, or to a still earlier period? Probably grants by Lord Wellesley or Lord Hastings had passed two or three hands. An estate granted originally to one person might be now distributed among many heirs, and certainly it was important to consider whether the protection created by the Bill should be extended to the various portions of the original grant.

The Section seemed also to be impressed in not providing authoritatively for the determination of the grants that were, and those that were

not, to be protected by the Bill. The words used in the Bill as the ground of the grant were "as a reward for loyal and faithful service rendered to the State," &c. But he would ask, how should it be determined as to what was meant by "loyal and faithful services?" The question would inevitably arise, whether a grant fell within those terms; and as the Bill stood, he believed it would be competent to the Courts to decide in any case, whether a grant was, or was not, protected against creditors. This question, it seemed to him, should not be left to the Courts, and he thought that it might be desirable to vest the Government with the power of declaring what grants should be held subject to the provisions of this Bill or not.

Another matter which seemed to him doubtful was, with regard to the 2nd Section, which virtually prohibited grantees from disposing of their grants. The Section ran as follows:—

"All assignments, agreements, orders, sales, and securities of every kind made by any such grantee, on account of any such grant as aforesaid, or for giving or assigning any future interest therein, are hereby declared *null* and *void*."

The words were taken from the Act relating to Pensions. And taking the word "orders," he would observe that, however right and proper the provision might have been with regard to Pensions, the prohibition was hardly applicable to grants of land. What he wished mainly to notice was, whether it was absolutely necessary to prohibit the sale of grants. Take the case of Kurruck Sing. He had received a grant from the Government. His father also had a grant and left the property to his six sons. Now Kurruck Sing also might have six sons, and the effect of this provision, which prevented the sale of the house now granted to Kurruck Sing, would be that the six sons, to enjoy their inheritance, would have to occupy the house in common. But clearly it might be much more convenient to the family to dispose of the property and distribute the proceeds among themselves. He (Mr. Sconce) doubted very much whether the prohibition should be absolute. Take the case of Mr. Boyle of Arrah, who had received a grant on account of most faithful services rendered to the State. Mr. Boyle had reason to be proud of himself; and might be proud to hold an estate in the place where he had so greatly distinguished himself. But suppose that, by and bye, that gentleman might wish to transfer his interest to England. If therefore he wished to dispose of the property, would you prohibit him from selling it? He (Mr. Sconce) might perhaps be permitted to suggest that, instead of leaving these grants to follow the ordinary law of succession, it ought to be competent to Government to declare that they should be governed by the law of primogeniture. Otherwise he had strong doubts of protecting in perpetuity the grants that would fall within the principle of this Bill.

MR. FORBES said, a dispensing power on the part of Government, to enable Courts to adjudicate claims to grants, was possessed in the Southern Presidency by Regulation IV. 1831 of the Madras Code, Clause 1 Section II of which provided as follows:—

"The Courts of Adawlut are hereby prohibited from taking cognizance of any claim to hereditary or personal grants of money or of land revenue, however denominated, conferred by the authority of the Governor in Council in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of zemindaries or pollams forfeited or held under attachment or management by the Officers of Government, or as a yeomiah or charitable allowance, or as a pension, and also of any claim for the recovery or continuation of, or participation in, such grants, whether preferred against private individuals or public Officers, unless the plaint is accompanied by an order signed by the Chief or other Secretary to Government, referring the complaining party to seek redress in the established Courts of Adawlut."

It seemed to him that that was a dispensing power of the nature adverted to by the Honorable Member for the North-Western Provinces, and it was in his opinion a very desirable power to be vested in the Government.

SIR BARTLE FRERE said, many of the objections which had been stated by the Honorable Members for Bengal and the North-Western Provinces had been previously brought to his notice by the Honorable Member for Bombay, and he (Sir Bartle Frere) had prepared some amendments according to the very sound views expressed by him, which it was his (Sir Bartle Frere's) intention to move in Committee. The first was the addition of a proviso requiring the Government to declare by Notification in the Government Gazette the particular grants to which the Act was intended to apply. Next it was intended to get over the difficulty suggested by the Honorable Member for Bengal, by authorizing the Government of India, when it should be desirable to withdraw an estate from the operation of the Act, to rescind the Notification in the same form in which it was originally made. These, however, were matters of detail, which, as suggested by the Honorable Member for the North-Western Provinces, would be better considered in Committee. If the principle of the Bill were now affirmed by the Council, the necessary amendments could be made in Committee. As truly stated by his Honorable friend opposite (Mr. Sconce), there were few things which the natives had more at heart than to secure by law those privileges which attached to landed property by custom under their own rulers, and among them none was more valued than a provision similar to our own law of entail. He then referred to the gratification with which the Talookdars of Oude had received the extension to their estates of the rule of primogeniture and of a species of entail. The wise policy thus followed at the suggestion of the Chief Commissioner, had done more perhaps than any single act to show the people of Oude the desire of the British Government to uphold those rights of landed property to which they were most attached. He (Sir Bartle Frere) should be prepared to consider in Committee the suggestions which had been offered, if the principle of the Bill were now assented to.

THE VICE-PRESIDENT said, this Bill appeared to him to involve some very important principles. He had not had time to consider it as carefully as he could have wished, the Bill having been read a first time on Saturday last, and been printed and circulated only a few days ago. One great objection which had been pointed out by the Honorable Member for Bengal was this:—Suppose an estate came to several heirs, was this Bill intended to protect the estate from execution issued against the share of one of the heirs for the purpose of realizing his debt? The terms of the Bill were not restricted to grants by which any particular class of heirs was to inherit. In the case of a sovereignty, according to the Hindoo or Mahomedan law, the estate might descend, as in England, to the eldest son. This Bill related to the grants of land made either for eminent loyal services rendered to the State or to accompany titles Suppose the case of a grant made for loyal service, in which no particular course of descent was specified. If the grantee were a Hindoo, upon his death the estate would descend to and be shared equally by all his sons; or in the case of a Mahomedan, not only would the sons be entitled to share equally, but the daughters could each claim a share equal to half of a son's share, so that the estate might descend not only to sons but also to daughters, females as well as males; and although, according to Hindoo law, the sons would take as a joint family, they would be entitled to have a partition. In the case of the death of a grantee, therefore, whether a Hindoo or a Mahomedan, the estate granted might be divided into numerous shares, and on the death of each of the heirs, another sub-division might take place, and the estate, which might originally be a large one, might be thus divided into very minute portions, each of them being protected from seizure on account of the debts of its owner and inalienable for ever. Even if a case had been made out for this Bill with regard to entailed estates, or estates granted upon condition that they should

descend according to the rules of primogeniture, it appeared to him to be very impolitic to declare, that after an estate has been divided by descent into minute portions and vested in numerous heirs, females as well as males, those portions should never be alienated by or seized for the debts of the owner, but must necessarily go on in the descending line for ever, however small the shares by reason of the subdivisions by descent might become. Such a privilege was much larger than had even been conferred on a Marlborough, a Nelson, or a Wellington. According to the Act of Parliament by which an estate was to be purchased for the Marquis of Wellington before he obtained a Dukedom, it was provided that the estate

"should always go along and be enjoyed with the said title, honor, and dignity of Marquis of Wellington so long as the same should endure, and that the said premises should also be inalienable until there should be a failure of issue of the body of the said Marquis of Wellington."

According to the English law in ordinary cases, when an estate was entailed, the issue in tail might be barred by the tenant in trust in possession, or by joining with the tenant for life. This, however, in the case of the Marquis of Wellington, was taken away as to the estates purchased by Government so long as he had heirs of his body. Similar provisions were made by the Act under which Strathsfieldsaye was purchased after he had obtained a Dukedom, and a further grant had been made by Parliament. Similar provisions were also made in the case of Lord Nelson. So long, therefore, as an issue of his body existed, neither the Duke of Wellington nor the heir of his body could bar the entail or sell the estate. The Act, however, went on to provide that, on failure of heirs of his body, the property should vest in fee simple, and that the remainder in fee might be sold or disposed of by deed or will by the Duke or his heirs at any time. Under that Act, therefore, the estate was rendered inalienable only so long as heirs of the body existed, but it was alienable as soon as it became vested in fee simple. This Bill, however, would render the estates to which it related inalienable for ever even though it might be sub-divided by descent amongst the general heirs. Such a law appeared to him to be very impolitic. It extended to all grants whether the estates were entailed or not; and even to estates which might descend to numerous heirs, male or female, or both, according to the Hindoo or Mahomedan Law of Inheritance. It was not even limited to estates which might have been granted to descend according to the law of primogeniture. If grants had been made to a Hindoo or Mahomedan without declaring that it should descend to particular heirs, this Council could not properly pass an Act to alter the terms of the grant.

Another important question which was involved in the case was this. By this Bill, the Council were called upon to recognise the power of the Governor-General in Council, and even of the local Governments, to grant away portions of the territories of the Crown as a reward for loyal services, or in support of titles or dignities. He (the Vice-President) had not had much time to devote to the consideration of that point. But he doubted whether even the Governor-General in Council could grant away portions of the territories in that way, and he certainly was not prepared to admit the principle. He apprehended that, at the time of the passing of the Act of 1858, the East India Company had no power to grant away the territories or revenues of the Crown without the sanction of the Board of Control, and that the Board of Control had no power to order them to do so. When the East India Company held the territories under grants from the Crown, they might have possibly had that power to the extent of the interest which was granted to them. By the 7 George III, c. 57, all the territorial acquisitions and revenues then lately obtained in the East Indies were vested in the East India Company for two years, from the 1st February 1767, on payment of an annual sum of

£400,000. By the 9 George III., c. 24, the Company were confirmed in the possession of the territory and revenues previously granted, for a further period of five years from the 1st February 1769, on payment of a like annual sum. By these Acts the territories were vested in the East India Company for the terms mentioned therein. Those Acts were continued from time to time, by various Acts passed subsequently. But when the Company ceased to be a trading Company, and became a Government only, it was provided by the Charter Act 3 and 4 William 4, c. 85, s. 1, that the territorial acquisitions and revenues mentioned or referred to in the said Act of the 53rd year of his late Majesty King George the III and all other territories then in the possession and under the Government of the East India Company, except the Island of St. Helena, should remain and continue under such Government until the 30th day of April 1854 ; and then it went on to provide that all the lands and hereditaments, revenues, rents, and profits of the said Company should remain, and be vested in, and be held, received, and exercised respectively, according to the nature and quality, estate and interest of and in the same respectively, by the said Company, in trust for His Majesty, his heirs, and successors for the service of the Government of India. Thus the territories were vested in the East India Company in trust for the Crown and for the service of the Government of India. By Sections 9 and 10, all the territorial and other debts and liabilities of the Company were charged on the territories. Section 9 provided as follows :—

"From and after the said 22nd day of April 1834, all the bond debt of the said Company in Great Britain, and all the territorial debt of the said Company in India, and all other debts which shall on that day be owing by the said Company, and all sums of money, costs, charges, and expenses which after the said 22nd day of April 1834, may become payable by the said Company in respect or by reason of any covenants, contracts, or liabilities then existing, and all debts, expenses, and liabilities whatever, which after the same day shall be lawfully contracted and incurred on account of the Government of the said territories, and all payments by this Act directed to be made, shall be charged and chargeable upon the revenues of the said territories ; and neither any stock or effects which the said Company may hereafter have to their own use, nor the dividend by this Act secured to them, nor the Directors or proprietors of the said Company shall be liable to or chargeable with any of the said debts, payments, or liabilities."

By Section 25 the Board of Control were vested with full power and authority to superintend and control all grants of salaries, gratuities, and allowances, and all other payments and charges out of or upon the said revenues or property respectively. But Section 110 provided that nothing in the said Act contained should be construed to enable the Board of Control to give or cause to be given directions ordering or authorizing the payment of any extraordinary allowance or gratuity, unless in the cases in which such directions might then be given by them. The 33 George III, c. 52, s. 18, provided as follows :—

"It shall not be lawful for the said Board to give, or cause to be given, any direction for the payment of any extraordinary allowance or gratuity from the said revenues to any person, on account of services performed in India, or on any other account whatever to any greater amount, or to any other person than shall be specified and contained in some despatch proposed by the said Court of Directors to be sent to India, and transmitted by them to the said Board for their approbation, and in every case where any such directions shall be so given, a distinct account of all such allowances or gratuities shall be added to the next list of establishments laid before Parliament by the said Court of Directors."

By the above Section and the 53 Geo. III, c. 155, s. 88, and the 55 Geo. III, c. 64, the Court of Directors, with the sanction of the Court of Proprietors, could not charge their funds with any gratuity exceeding £600 without the consent of the Board of Control. He could not find any law by which, prior to 1858, the Governor-General in Council or the local Governments could grant, or convey away, as a reward for services, lands vested in the East India Company in trust for the Crown, to an unlimited extent, without the previous authority of the

Court of Directors sanctioned by the Board of Control.

Then we came to the 21 and 22 Vic. c. 106, the law by which the territories were transferred from the East India Company to the Crown itself. Section 1 provided as follows :—

"The Government of the territories now in the possession or under the Government of the East India Company, and all powers in relation to Government vested in or exercised by the said Company in trust for her Majesty, shall cease to be vested in or exercised by the said Company, and all territories in the possession or under the Government of the said Company, and all rights vested in, or which if this Act had not been passed, might have been exercised by the said Company in relation to any territories, shall become vested in Her Majesty, and be exercised in her name ; and for the purposes of this Act, India shall mean the territories vested in Her Majesty as aforesaid, and all territories which may become vested in Her Majesty by virtue of any such right as aforesaid."

The territories were now absolutely vested in the Crown. Then it was provided by Section 2—

"India shall be governed by and in the name of Her Majesty, and all rights in relation to any territories which might have been exercised by the said Company, if this Act had not been passed, shall and may be exercised by and in the name of Her Majesty as rights incidental to the Government of India ; and all the territorial and other revenues of or arising in India, and all tributes and other payments in respect of any territories which would have been receivable by or in the name of the said Company if this Act had not been passed, shall be received for and in the name of Her Majesty, and shall be applied and disposed of for the purposes of the Government of India alone, subject to the provisions of this Act."

Then came two Clauses relating to the transfer of property. Section 39 provided :—

"All lands and hereditaments, monies, stores, goods, chattels, and other real and personal estate of the said Company subject to the debts and liabilities affecting the same respectively, and the benefit of all contracts, covenants, and engagements, and all rights to fines, penalties and forfeitures, and all other emoluments which the said Company shall be seised or possessed of, or entitled to at the time of the commencement of this Act, except the capital stock of the said Company and the dividend thereon, shall become vested in Her Majesty to be applied and disposed of subject to the provisions of this Act, for the purposes of the Government of India."

Section 40 went on to provide :—

"The Secretary of State in Council, with the concurrence of a majority of votes at a Meeting, shall have full power to sell and dispose of all real and personal estate whatsoever for the time being vested in Her Majesty under this Act as may be thought fit, or to raise money on any such real estate by way of mortgage, and make the proper assurance for that purpose, and to purchase and acquire any land or hereditaments or any interests therein, stores, goods, chattels, and other property, and to enter into any contracts whatsoever, as may be thought fit for the purposes of this Act ; and all property so acquired, shall vest in Her Majesty for the service of the Government of India, and any conveyance or assurance of or concerning any real estate to be made by the authority of the Secretary of State in Council, may be made under the hands and seals of three Members of the Council."

Whether the words "sell and dispose of" authorized the Secretary of State in Council to dispose of lands by way of gratuity, it was unnecessary to consider ; for even if they did, the power could not be exercised without the concurrence of a majority of the Council present at a Meeting.

Then came Section 41 by which it was provided :—

"The expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a Meeting of the Council."

He thought it was a matter of very serious importance, whether we ought to pass an Act recognizing and admitting the right of the Governor-General in Council and of the local Governments, to grant lands by way of gratuity, either as a reward for loyal services, or in support of titles or dignities. He was not prepared at present to give a decisive opinion on the subject. He rather thought that this Council had no such power. On these grounds he was not prepared to assent to the Bill as it stood at present.

The Vice-President

There was one other question which had been adverted to by the Honorable Member from the North-Western Provinces. If executions issued from the Supreme Courts before the passing of the Act were to be exempted, he saw no reason why executions issued by Courts of equal jurisdiction in the Mofussil should not also be exempted.

SIR BARTLE FRERE said, having already spoken once on this occasion, he believed he was precluded by the Standing Orders from speaking a second time on the same question without the permission of the Council.

THE VICE-PRESIDENT said, he thought the Honorable Member was entitled to make a reply. He (the Vice-President) should be glad to hear what the Honorable Member had to say in answer to what had fallen from himself.

SIR BARTLE FRERE said, he had spoken before under the impression that all the objections to the principle of the Bill had been stated, and that he was consequently the last speaker in the debate. With the leave of the Council he would now reply to the observations which had just fallen from the Honorable and learned Vice-President. He (Sir Bartle Frere) must, with all due deference, take exception in the first place, both as regarded law and fact, to the Honorable and learned gentleman's remarks with regard to Hindoo inheritance of landed estates. He could not speak with certainty with regard to this part of the country, but he could speak with regard to the largest portion of India that there were two modes of inheritance of grants of landed property, which were universally known and recognized by every Court. There was first of all the ordinary Hindoo or Mahomedan law of inheritance which had been correctly stated by the Honorable and learned Vice-President; and there was that of what was called by Hindoo lawyers the Sawusthan, which involved a right of primogeniture and of strict entail. This latter law was not confined to kingdoms or chiefships, but extended sometimes to very minute portions of land. It depended on the terms of the original grant which placed it as regards inheritance on a different footing from ordinary landed property. The terms had nothing to do with the extent of the grant; whether that extent were large or small, the law of primogeniture might, and frequently did, form a condition.

With regard to the parallel which had been drawn by the Honorable and learned Vice-President between the case of the grants to which the Bill referred and those of Blenheim and Strathsfieldsaye, he would submit whether there was not in the argument of the Honorable and learned Vice-President a confusion between the law with regard to such grants and the grant itself. The Acts of Parliament quoted by the Honorable and learned gentleman were in fact the grants, and answered to what would be called in this country the sunnuds, and had no relation to the general law relating to succession of landed property. A sunnud might be drawn up in the very words of the Blenheim or Strathsfieldsaye Acts quoted by the Honorable and learned gentleman, and yet it would be necessary to have a law defining the legal position of these grants in relation to the ordinary laws and Courts of this country.

He would merely remark, with regard to one observation which fell from the Honorable and learned Vice-President, that in these matters we were not simply to consider the interests of the parties to whom the grants were made. The grantees and their deeds had become national property, and it was not for the sake of endowing future Wellesleys and future Nelsons, but of recording the memory of great services rendered to the State, that these grants were made. The same argument applied in a greater or smaller degree to every grant made for public services, and we should not lose sight of the fact that the object was not to endow this or that family, but to keep alive, in a manner peculiarly intelligible to the native community, the memory of good service rendered to the Government. With regard to

all these grants, it was quite competent to the Government to restrict them to heirs male according to the law of primogeniture, and this Bill would have nothing to do with such restrictions.

It was not his purpose to enter in detail on the very large question which had been mooted by the Honorable and learned Vice-President, without any notice or any very obvious connection with the matter in hand, as to the right of the Governor General in Council to make any grants of land. He confessed he was not prepared for any such mines being exploded under his feet, and he must protest against the line of action taken by the Honorable and learned gentleman.

THE VICE-PRESIDENT said, the second reading of the Bill was moved only this morning, and he had no other opportunity of stating his objections before.

SIR BARTLE FRERE said, the Honorable and learned gentleman had stated that he had doubts as to the power of the Governor General in Council to grant away any portions of the territory of India. At the same time he confessed that he had not time to examine the question, and could not speak decisively even as to his own opinion. If the Honorable and learned gentleman thought it necessary to raise this very large question, and if he entertained doubts on a point of such very grave importance, he (Sir Bartle Frere) could only regret that the Honorable Vice-President had not asked him to defer the second reading of the Bill to-day, till those doubts were settled. He need not inform the Council that this was no light matter. It involved estates of great value in all parts of the country, and he must question the right of any one, especially of one whose opinion carried such a great and deserved weight of legal authority, to throw out doubts affecting the rights of property so large in amount, without the gravest and most careful consideration. The question so unexpectedly raised to-day was as to the right and power of Government to alienate any portion of land. Whether the view which the Honorable and learned Vice-President seemed inclined to take was or was not correct, the Council was aware that that power had in all time past been extensively used not only by the present Governor-General but by all his predecessors, and the dictum they had just heard must throw a doubt on the validity of all such titles.

With regard to the assertion that the East India Company possessed no such power, he would not enter on all the arguments used by the Honorable and learned Vice-President; but as regarded the fact that the East India Company did make such grants under each successive Charter, he could himself call to mind cases in which they had exercised such power both while they had Charters as a trading Company and under each subsequent Charter; and he could hardly doubt that in so doing they acted with the concurrence of competent legal advisers, as they did of course with the consent of the Crown Minister, the President of the Board of Control.

THE VICE-PRESIDENT said, he had spoken of grants made since the passing of the Act of 1858.

SIR BARTLE FRERE said, he would not follow the Honorable and learned Vice-President through his argument as to the effect of the Act of 1858. Whether powers which were certainly exercised without question under the Charter of 1854, and previous Charters which constituted a "*trust*," were restricted or annulled when the trust became a prerogative of the Crown—what was the exact extent of the "rights incidental to the Government of India" which the Viceroy now exercised on behalf of the Crown—were questions he would not discuss. He could only express his sense of the extreme importance of the question, and his great regret that it should have been raised in an incidental and indirect manner as it had been to-day.

THE VICE-PRESIDENT said, he wished to ask the Honorable Member in charge of this Bill, whether the grants which were referred to in Section I, as having been made by Government, had

been made descendible according to the law of primogeniture.

SIR BARTLE FRERE said, he conceived it was perfectly competent to the Government to make grants descendible in that or any other manner. He was aware of such grants having been made to descend according to the law of primogeniture; but whether all the grants were so limited, it was impossible for him to say without examining them.

THE VICE-PRESIDENT begged to explain, with reference to the observations of the Honorable Member, that he did not look into the question until this morning. It was not his intention to oppose the second reading of the Bill. He merely wished to state that in voting for the second reading, he did not consider himself bound to the principle involved in it.

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

PORT-DUES (AMHERST.)

MR. SCONCE moved that the Bill "for the levy of Port-dues in the Port of Amherst" be read a third time and passed.

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

REPEAL OF REGULATIONS AND ACTS.

The Order of the Day being read for the third reading of the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter"—

MR. HARINGTON said, before making the Motion that this Bill be now read a third time, he must ask the Council to allow the Bill to be recommitted to a Committee of the whole Council, to enable him to move the omission from the Schedule of a Section of one of the Regulations included therein. The Section to which he alluded was Section XIV Regulation IV of 1793. The Section related to the offence of perjury when committed in a Civil Court. At the time the Section was introduced into the Schedule appended to the Bill, it was supposed that the Indian Penal Code and the Code of Criminal Procedure would come into operation on the 1st May next, and as the former of those Codes defined the offence of and prescribed a punishment for perjury, and the Procedure Code contained rules for enquiring into and trying the offence when committed in a Civil Court, there would be no necessity for retaining any of the existing laws relating to the offence of perjury when committed in the Civil Courts after the new Code came into operation. But as the Council had determined that the introduction of the Penal Code and with it the Code of Criminal Procedure should be postponed until the 1st January next, they could not intermediately dispense with any of the Criminal laws or laws relating to Criminal offences now in force, and it was necessary therefore to exclude from the repealing Schedule of the Bill the Section to which he had been referring.

Agreed to.

After some conversation, the further consideration of the Bill was postponed till Saturday next.

MINORS.

MR. SCONCE moved that the Bill "to amend the law relating to Minors" be read a third time and passed.

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

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Section 18 was passed as it stood.

Section 19 was passed after a verbal amendment.

Section 20 provided that only Covenanted Servants and European British subjects should hold a preliminary enquiry into a case triable by a Supreme

Court, or commit or hold to bail any European British subject to take his trial before such Court.

MR. SCONCE said, he had intended to move the omission of this Section. But the Council were probably aware that, two years ago, a Section similar to the present excited a considerable discussion, in which the Honorable and learned Judge (Sir Charles Jackson) who was this day absent took a great part; and if the Council had no objection, he would propose that the consideration of this Section be postponed.

THE CHAIRMAN said, he had in his hand a note from the Honorable and learned Judge (Sir Charles Jackson) to the address of the learned Clerk of the Council, stating that he was prevented by indisposition from attending the Council to-day.

The consideration of Sections 20 to 24 was then postponed.

Sections 25 to 45 were passed as they stood.

MR. HARINGTON moved the introduction of the following new Section after Section 45, observing that there was in the Bill a similar provision relating to Warrants:—

"A summons shall ordinarily be issued through a Police Officer; but the Magistrate issuing the summons may, if immediate service be necessary and no Police Officer be immediately available, direct the summons to be served by any other person."

Agreed to.

MR. SCONCE suggested the expediency of providing for the pre-payment of the cost of issuing summonses and warrants with respect to offences not heinous. In the first instance a provision to effect that purpose had been introduced into the Police Bill but was subsequently omitted, he believed, for re-consideration when the Precedure Bill should come before the Council. He had been in communication on the subject with the Magistrate of the 24-Pergunnahs, from whom he had ascertained that the total charge on that account in that District in 1860, had been about Rupees 1,700. If that was the amount in one District, the amount must be very much more in the other Districts. He had no wish to make a Motion on the subject at present, but he mentioned the matter that it might not be lost sight of, and it would be perhaps for the Government to consider whether the charge in question should fall upon the public Treasury.

The Section was passed as it stood.

Sections 46 and 47 related to the mode of serving a summons on an accused person.

MR. FORBES moved the incorporation of these two Sections into one, after the omission of words requiring the summons, in case the accused could not be found, to be left with some adult male member of his family residing with him. It appeared to him sufficient to require, as was provided in the latter Section, that the summons should be affixed to some conspicuous part of the house in which the accused ordinarily resided, and that it was not expedient that one member of a family should be served with a Criminal process, because another member of the family was charged with some offence. A summons was after all only a notice, and it appeared to him that the simplest and quickest way of making a notice known to the party to whom it was issued was to affix it on his house in case his absence might prevent a personal service.

After some discussion, the Council divided :—

Aye 1.	*Noes* 6.
Mr. Forbes.	Mr. Erskine.
	Mr. Sconce.
	Mr. Harington,
	Mr. Laing.
	Sir Robert Napier.
	The Chairman.

So the Motion was negatived and the Sections were then passed as they stood.

Sections 47, 48, and 49 were passed as they stood.

MR. HARINGTON moved the introduction of the following new Section after Section 49 :—

"The provisions relating to a summons and its issue contained in this Chapter shall be applicable to every summons issued under this Act."

Agreed to.

Sections 50 to 57 were passed as they stood.

Sections 58 and 59 were incorporated after amendments.

THE CHAIRMAN moved the introduction of the following new Section after the above :—

"If the place of arrest under the preceding Section be within 20 miles from the place at which the warrant was issued, the person accused may be carried in the first instance before the Magistrate who issued the warrant."

Agreed to.

Sections 60, 61, and 62 were passed as they stood.

Section 63 was passed after a verbal amendment.

Sections 64 to 68 were passed as they stood.

Section 69 was passed after amendments.

Section 70 was passed as it stood.

Section 71 was passed after a verbal amendment.

Section 72 was passed as it stood.

MR. HARINGTON moved the introduction of the following new Section after Section 72 :—

"The provisions relating to a warrant and its issue contained in this Chapter shall be applicable to every warrant issued under this Act."

Agreed to.

Section 73 was passed after amendments.

Section 74 empowered Officers in charge of a Police Station to arrest vagabonds and others without orders from a Magistrate and without warrant.

MR. FORBES thought that the Section should be extended by giving all Police Officers power to arrest vagabonds. The Officer in charge of a station would hardly ever leave his station and would scarcely ever be able to arrest vagabonds, and the ordinary Police Officers would have better opportunities of observing and arresting them. He should therefore move an amendment to that effect.

MR. SCONCE said, it was a mere matter of repute and suspicion as to who was a vagabond, and he would not therefore give such a power to every common Police Officer.

MR. HARINGTON said, it would not be necessary for the Police Officer in charge of a Station in every case himself to go and arrest a vagabond; he might depute a subordinate Police Officer to make the arrest. He did not think it would be safe to give the power of arrest in the cases which would fall under this Section to every Police Officer.

MR. ERSKINE said that the effect of the amendment would be that any Policeman might arrest any person on the ground that he was of bad livelihood, although the person was not charged with the commission of any offence. He should object to give that power indiscriminately to any Police in the world.

MR. FORBES observed that all parties, the greatest criminals, even murderers, were in the first instance apprehended only on suspicion, and every man was considered innocent until he was proved guilty. For his part, his sympathies were all with the honest portion of the community, and he did not share the excessive tenderness felt by some for those who were reputed robbers, house-breakers, thieves, receivers of stolen property, and of notoriously bad livelihood, and it was with these classes that the Section now under consideration was to deal. Furthermore in this Bill it was proposed to give power to imprison any one of the characters he had just referred to for three years, and it did seem to him to be very inconsistent to allow of three years' incarceration in one part of the Bill for an offence for which the ordinary Police might not arrest under another part of the Bill.

The question being put, the Council divided :—

Ayes 3.	*Noes* 4.
Mr. Forbes.	Mr. Erskine.
Sir Robert Napier.	Mr. Sconce.
Sir Bartle Frere.	Mr. Harington.
	The Chairman.

So the Motion was negatived, and the Section then passed after a verbal amendment.

Sections 75 to 88 were passed as they stood.

Section 89 was passed after an amendment.

Section 90 related to the mode of executing a search warrant out of the jurisdiction of the Magistrate issuing the warrant.

MR. FORBES said, this Section provided that, when a Magistrate wished to issue a warrant for execution out of his jurisdiction, the warrant must be endorsed by the Magistrate of the District in whose jurisdiction it was to be executed, before it could be executed. In most cases stolen property would be converted into such a shape that it could not be recognized before this process could be gone through. We allowed the thief whose personal appearance could not be altered, to be followed from one jurisdiction to another, and refused to allow the property he stole, the appearance of which could be altered, to be followed in the same manner. It was true that another Section allowed of a search warrant being executed in another jurisdiction in emergent cases; but in his opinion all search warrants were emergent, and he should propose so to amend this and the following Section as to allow of search warrants being executed beyond the jurisdiction of the Magistrate who might issue them.

After some discussion, the further consideration of this and the following Section was postponed.

Section 92 was passed after a verbal amendment.

Section 93 was passed as it stood.

Sections 94 and 95 were passed after amendments.

Section 96 was passed as it stood.

The consideration of Section 97 was postponed.

Sections 98 to 102 were passed as they stood.

The further consideration of the Bill was then postponed, and the Council resumed its sitting.

ROHILCUND DIVISION.

MR. HARINGTON postponed the Order of the Day for the adjourned Committee of the whole Council on the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts."

STAGE CARRIAGES.

MR. HARINGTON also postponed the Order of the Day for a Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

PORT-DUES (AMHERST).

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill "for the levy of Port-Dues in the Port of Amherst" to the Governor-General for his assent.

Agreed to.

MINORS.

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill "to amend the law relating to minors" to the Governor-General for his assent.

Agreed to.

GRANTS OF IMMOVEABLE PROPERTY.

SIR BARTLE FRERE moved that the Bill "for securing certain grants of immoveable property made by the State" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Erskine, and the Mover, with an instruction to submit a preliminary Report under Standing Order No. 70.

Agreed to.

WRECKED BOATS.

MR. FORBES moved that a communication received by him from the Madras Government, be laid upon the table, and referred to the Select Committee on the Bill "for the preservation of property recovered from Wrecked Boats."

Agreed to.

The Council adjoured.