

Saturday, 21st January, 1860

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL OF
INDIA

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

Agreed to.

VILLAGE WATCHMEN (BENGAL).

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

Agreed to.

The Council adjourned.

Saturday, January 21, 1860.

PRESENT:

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

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

EMIGRATION (CAPE OF GOOD HOPE).

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

THE VICE-PRESIDENT moved that the communication be printed.

Agreed to.

REGISTRATION OF ASSURANCES.

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

SUCCESSIONS.

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

laws now in force relating to the grant of certificates of administration of the personal estate of deceased persons, and the Bill therefore proposed to consolidate as well as to amend those laws. The Acts proposed to be repealed and consolidated were Act XX of 1841, Act VIII of 1842, Act X of 1851, and Act VIII of 1851. In consolidating these laws into a single enactment, some alterations had been introduced other than those already mentioned; but these were entirely verbal, and as none of them were of any importance, he did not consider it necessary to occupy the time of the Council by noticing them in detail.

The Bill was read a first time.

CHITTAGONG DISTRICT.

MR. SCONCE moved the first reading of a Bill "to remove certain tracts on the Eastern border of the district of Chittagong from the jurisdiction of the tribunals established under the general Regulations and Acts." He said, the Bill which he had the honor to introduce was proposed at the urgent requisition of the Bengal Government. The tract of country which it was proposed to separate from the administrative action of the ordinary law lay on the Eastern frontier of the Chittagong district, a frontier extending over nearly a hundred and fifty miles. The country comprised in this tract consisted in itself of successive hill ranges and almost impenetrable forests. Within this tract there was scarcely any level country, and, though peopled by a certain class of inhabitants who were our subjects, and paid revenue to Government, they were, comparatively speaking, strangers to that portion of the district which had always constituted the estates from which the permanently settled revenue was derived. But it was not so much with respect to the tract itself, as to the depredations it was exposed to from the savage tribes living or supposed to live on its furthest verge, that legislation on the subject was necessary. How far that tract extended eastward

was almost unknown. In some parts it might be for fifty miles, and in others less. At any rate, so far as he knew, no one had ever attempted to define the line of separation between the Territories of the British Government and those of any adjoining state or tribe. Nor were the tribes who occupied the farther frontier personally known to us. For a series of years those tribes, known only by their barbarities, not only throughout the Chittagong frontier, but to the southward within the limits of the Province of Arracan, and also to the north, had inflicted on our people grievous injuries. They would come in great numbers and unexpectedly attack a village in the midst of their peaceful avocation, slaughtering several of the inhabitants, carrying away others as slaves, and plundering and destroying their property. On one occasion, when he was Magistrate of the Chittagong District, a case occurred in which the attacking party consisted of a thousand men. Of the villagers whom they attacked, twenty-one men, women, and children were killed, and thirty-six women and children carried off, and the village was plundered and burnt. That was only one instance within his knowledge, and happened about twenty years ago. But he knew of many others, and he understood that similar outrages were, year after year, continually perpetrated.

The first object of the Bill, therefore, was, if possible, to strengthen the hands of Government, by enabling it to frame Regulations to meet such cases as the exigency appeared to demand. With respect also to the people occupying the tract which it was proposed to place beyond the jurisdictions ordinarily exercised in the district, it was considered by the Government that they were but ill suited to the rigid rules of our ordinary laws and to the organization prescribed by these laws. Upon this point also he could not hesitate to give his assent to the project, though, to some extent, he took exception to the views of the Government of Bengal as to the course to be adopted in the abolition of the

Mr. Harrington

present system. It would be seen from the annexures to the Bill, that the Government proposed to rely mainly on the assistance of the Hill Chiefs. But he could conceive circumstances to arise in the ordinary supervision of offences in which the assistance expected from Hill Chiefs would not be adequate to the investigation of those offences. At the best, however, his view of the matter would entail on the Government the necessity of introducing establishments independent of and in addition to the jurisdiction proposed to be vested in the principal men among the Hill people.

The particulars of the Bill had been drawn very much after the model of the Sonthal Districts Act. By its operation the tracts referred to would be withdrawn from the jurisdiction of the established Civil, Criminal, and Revenue authorities, and from the scheme of procedure by which those authorities were guided.

Provision was also made to enable the Government to provide for the administration of the country by the appointment of certain Officers, and the Government would be able to direct appeals from the decisions of such Officers to be heard by any of the regular Courts of the District. With these remarks he begged to move that the Bill be read a first time.

The Bill was read a first time.

ABKAREE REVENUE (BENGAL).

MR. SCONCE moved the first reading of a Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal)." He said, it was proposed by this Bill to amend Section VII of that Act so far as it limited the duty leviable on spirits manufactured at distilleries worked according to the European method, from one to three Rupees. He might say that the Law recognised broadly two classes of spirits, one manufactured after the European process, and the other after the country process. The duty on spirits distilled at European distilleries was, by law, fixed at one Rupee

a gallon, while that on country spirits was left to the discretion of the Revenue authorities. Lately the Government had thought fit to raise the duty on country spirits from eight annas to one Rupee four annas the gallon; and as country spirits were very much inferior, both in strength and quality, to rum, which was the only liquor manufactured after the European method, it was obviously to be expected that the duty leviable on rum would be diminished if no attempt were made to raise the duty now leviable to a higher rate. It had also been considered that, as the duty leviable on imported spirits was raised from one Rupee eight annas to three Rupees a gallon, so, upon a corresponding principle, the duty on spirits of a similar quality manufactured in this country should be equalized. He himself attached less importance to the latter ground, as the quantity of rum now imported was very inconsiderable. In the course of the years 1857 and 1858 only 1,120 gallons were imported. Last year the importation of rum amounted to 3,392 gallons. But as the importation of rum into this country was so extremely limited, it was obvious that the Home manufacture could scarcely be said to be affected by the small quantity imported. He found from the best data available to him that the average quantity of rum taken out from the distilleries, on an average of the last two years, amounted in round numbers to nine lakhs of gallons; but this quantity was not all dutiable. Nine lakhs of gallons on the whole were distilled, but nearly seven lakhs of this were supplied to the Commissariat Department free of duty for the consumption of European Troops. There remained only two lakhs of gallons on which duty was levied. But of this one-half was exported, and was therefore not to be reckoned, because on exportation draw-back was allowed, so that the revenue derived by Government was paid on only one lakh of gallons. Thus it appeared that, while the distilleries turned out nine lakhs of gallons, they were called upon to pay duty upon only one-ninth of

that quantity. One lakh of gallons at one Rupee a gallon necessarily yielded a revenue of one lakh of Rupees. The duty being raised, as now proposed, to three Rupees a gallon, would give a profit of two lakhs. On the whole, therefore, the increase to the public Revenue would be at least two lakhs of Rupees, probably more. He did not apprehend—whether with respect to the measure itself as an additional impost on spirits, or with respect to other proceedings with which the distillation of rum was so intimately connected—any objection being raised to this part of the Bill.

He had added to the Bill a Clause to amend Act XXI of 1856 in another respect. In the course of the discussion on the Opium Bill in 1857, it was proposed by the late Member for Bengal to remedy a defect in the Abkaree Act, which contained no express provision for the imprisonment of an offender in default of payment of fine. Upon that occasion it was thought inexpedient to retain a Section for amending the Abkaree Act in a Bill which was specially applicable to Opium. So far as he understood, however, from the debate which took place at the time, there was no objection taken to the principle of the proposal; and as now Act XXI of 1856 was in course of amendment with respect to Section VII, it seemed to him a suitable opportunity to amend the said Act in another respect. He observed that the penalties for offenders were of various grades—some not to exceed fifty Rupees, some up to two hundred Rupees, some to five hundred Rupees, and some one thousand Rupees. He proposed, therefore, to enact that, when the forfeiture did not exceed fifty Rupees the Magistrate might order imprisonment for two months, or when it did not exceed two hundred Rupees to imprisonment for four months, or when it exceeded two hundred Rupees to imprisonment which might extend to six months.

The Bill was read a first time.

Mr. SCONCE moved that the Standing Orders be suspended, to enable him to proceed with the Bill.

Mr. Sconce

MR. HARRINGTON seconded the motion.

MR. LEGEYNT asked, if the Honorable Member for Bengal intended to carry the Bill through its stages that day in the event of its passing a second reading, or if any time was proposed to be given for the consideration of the Bill before it was farther proceeded with.

MR. SCONCE said, he had no objection to postpone the second reading until next Saturday, on the understanding that the principle of the Bill was accepted to-day. His ground for asking the Council to do so was that it was proposed by this Bill to enable the Government to raise the duty on spirits manufactured according to the European method from this date, and a Clause was inserted in the Bill indemnifying the Officers of Government who should be concerned in giving effect to that measure in anticipation of the passing of the Bill. On that understanding he had no objection to postpone the further progress of the Bill to-day.

THE VICE-PRESIDENT said, he thought it was very hard that the Council should be called upon to pledge itself to the principle of the Bill at a moment's notice. But it appeared to him that there was a still stronger objection to proceeding with the Bill, inasmuch as the Bill not only sought to raise the duty on country spirits manufactured after the European fashion, but it also proposed to modify the penalties and punishments prescribed by the Abkaree Law. That Law had been in force for some time, and he saw no necessity for a suspension of the Standing Orders, with a view to proceeding at once with that part of the Bill which proposed to effect important changes in the penalties under that Law. Under these circumstances he felt compelled to say that, if the Honorable Member for Bengal insisted on pressing his motion, he (the Vice-President) would be under the necessity of giving his vote against it.

SIR CHARLES JACKSON said, he thought it very desirable that all financial measures of Government

which affected the mercantile community, should be carefully considered. In the consideration of such measures the Council generally received valuable assistance from parties not Members of the Council, and as he could not say at present how far the Bill now proposed would affect commerce, he certainly objected to the Bill being further proceeded with to-day.

Mr SCONCE said, with reference to the remarks of the Honorable and learned Vice-President, that he had no objection to strike out that portion of the Bill which related to the recovery of fines. With respect to the objection taken by the Honorable and learned Judge on his right (Sir Charles Jackson), he would remark that, though they had been sometimes told that they might not liken themselves to a greater Legislature, nevertheless, it might not be inexpedient to conform to the practice of the Imperial Parliament in such a case as the present. In England it was the practice for Parliament, by passing a Resolution, to affirm a duty which the Government might think fit to recommend, with a view to its being subsequently put into the form of a law. It was not held necessary for the Government to give notice of the terms of any such Resolution, nor, if the action of Government would thereby be fettered, so to receive the proposition as to constrain the Government to defer giving the proposed law effect from the date of its announcement.

As he said before, he was perfectly willing to abandon the second part, being fully sensible that it would be inexpedient to adopt a new law on the subject without its passing through all its stages. But it seemed to him that he was fully warranted in asking the Council to accept the principle of the first part of the Bill, and he had no reason to doubt that the Council would accept it. He had put this question to the Council on the understanding that the Bill should be in force from this date, and if afterwards the Council should see fit to depart from the terms, that indemnity would be given to those engaged in carrying it into force. Nevertheless, if this should be the general wish of the

Council, he was not unwilling to defer the further consideration of the Bill.

The Motion to suspend the Standing Orders was then, by leave, withdrawn.

PORT-DUES (BASSEIN).

Mr. HARRINGTON moved the second reading of the Bill "for the levy of Port-dues in the Port of Bassein."

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

LAND FOR PUBLIC PURPOSES.

Mr. SCONCE moved that the Council resolve itself into a Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes) ;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I provided as follows :—

"In the case of land being required for a Road, Canal, or Railway, when it shall be certified to the Collector or other Officer appointed as provided in Section III Act VI of 1857, that in conformity with the provisions of Section XXXIV of that Act, the intended line of the Road, Canal, or Railway has been surveyed and marked out by a trench or other land-marks, the Collector or other Officer shall 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 neighboring bazars and villages, intimating that the land about to be taken for a Road, Canal, or Railway, as may be, as already notified by Section II Act VI of 1857, has been marked out to the extent and within the limits to be specified in the notice, and that a detailed measurement of the land so marked out would commence from a time to be specified in the notice, and requiring all parties interested in the land to appear at a place mentioned in the notice before him personally, or by agent, on the expiration of a specified period, not being less than fifteen days from the date of the publication of the notice, and state the nature of their interests in the land, and the amount and particulars of their claims to compensation for the same."

Mr. LEGEY moved the insertion of the words "and a survey or plan thereof has been completed" after the word "land-marks" in the 11th line of the Section. He said, the

object of this Bill, it would be remembered, was to expedite the giving over of land to Government when required for Railways, Canals, &c., and for that purpose to get rid of that provision in Sections III and IV Act VI of 1857, which required a detailed measurement of the land to be furnished to the Collector after notice to the owner that the land had been surveyed and marked out. It appeared to him that the intended measure would be improved if some words to the effect proposed by himself were introduced after the word "land-marks." He had been induced to bring forward this amendment with reference to the Petition of the Bombay Association, presented at the last Meeting of the Council. It appeared to him from that Petition, that there was a feeling prevalent in Bombay that the Bill had for its object to do away with the specification of such property as might be standing upon the land required to be taken, as prescribed by the Section of Act VI of 1857 to which he had alluded. But such was not, he believed, the case, and he thought that, if his amendment were adopted, it would remove that misimpression, for the public would then see that all precautions for the protection of private rights now required by Act VI would be carried out under the present Bill.

MR. SCONCE said, he had no objection to the adoption of those words. They amounted to no more than the preceding words of the Section were intended to convey.

THE CHAIRMAN said, it rather appeared to him that the words were out of place, and that the object in view would not be gained by their insertion as proposed.

MR. LEGEYT said, he believed that, under Section XXXIV, the Collector or other Officer might enter upon the land required to be taken for the purpose of making a survey thereof, "and, in the case of a Road, Canal, or Railway, to set out the intended line thereof, and to mark such line by cutting a trench or placing land-marks, and where otherwise the survey cannot be completed and the line marked, to cut down and clear away any part

of any jungle or tops of trees in the direction of the intended line." It appeared to him that there was an obscurity in the whole of the present Bill. He doubted very much whether the Bill would do any good at all. Looking at the Section of the Act from which he had just quoted, and as he understood from the papers which came before the Select Committee on the Bill, it was fully intended that the land should be completely and accurately delineated. It was with the view of satisfying the public that their land would not be taken until every precaution had been adopted that the "detailed measurement" was provided. If this would secure that object it was well. It appeared, however, from the Petition of the Bombay Association, that this was not understood. He was anxious, therefore, that this Section should be made as clear as possible, and he still believed that the words proposed to be inserted might have that effect.

After some further discussion the Council divided—

Ayes 2.
Mr. Sconce.
Mr. LeGeyt.

Noes 6.
Sir Charles Jackson.
Mr. Forbes.
Mr. Harrington.
Sir Bartle Frere.
Sir James Outram.
The Chairman.

So the Motion was negatived.

MR. LEGEYT then moved that the words "together with a plan thereof" be inserted after the words "marked out," in the 23rd line of the Section. His object in wishing to introduce these words was to show that the land required would be well delineated and well described before it was taken out of the hands of the owner or holder.

THE CHAIRMAN said, this amendment would be equally nugatory. The Section under consideration, in which the words were proposed to be inserted, merely related to the issue of notice to the parties interested in the land of what was going to be done.

After some conversation, the amendment was negatived, and the Section was passed as it stood.

Mr. LeGeyt

Section II (which provided how the time for the appearance of the parties was to be fixed) was passed as it stood.

Section III provided as follows :—

“When the detailed measurement of the land marked out as aforesaid shall be completed, the Collector or other Officer, at any time after the expiration of ten days following the period provided for in the above notices, may take immediate possession of the land so measured, or of any portion thereof, which shall thenceforward be vested absolutely in the Government free from all other estates, rights, titles, and interests. Provided always that on the date fixed in the notices directed in Section I of this Act to be served, the Collector or other Officer shall immediately proceed, in conformity with Section V and the following Sections of Act VI of 1857, to award the compensation due for the land marked out or taken, and shall pay the amount awarded, with interest, at the rate of six per centum per annum from the time when possession was taken.”

SIR CHARLES JACKSON said, he must oppose this Section, and, if necessary, he would move that it be omitted from the Bill. After reading the enacting clause of the Section, he observed that this was a departure from the English Acts, which provided that either the payment or deposit of the purchase-money should be made before entry on the land. If this Clause was good in England, he saw no reason why it should not be adopted here, and certainly there was no complaint of the slow progress in Railway undertakings in England. The necessity for some provision on this point had apparently been felt by the Select Committee, who had added the following words to the Section :—

“And shall pay the amount awarded, with interest at the rate of six per centum per annum from the time when possession was taken.”

He (Sir Charles Jackson) thought *six per cent.* a very small compensation to the owners of some descriptions of property, and what was the poor man who had nothing but his land to live on to do in the meantime between his ejection from his land and the payment of interest. He considered the power given by this Section very objectionable, inasmuch as it would take away the only inducement that

existed for a speedy settlement of claims of the landowners. If Government were allowed to take their own time to pay the amount of compensation, they might take a very long time to do so, and that would operate very injuriously on the owners of the soil.

Again, no plan or detailed measurement would give a specific description of all the items of value. Suppose a Railway to run into the Town of Calcutta, as in fact was now the case at Bombay, and Government entered under the Clause, and at once levelled and destroyed all buildings on the land, how could any jury estimate the amount of compensation to be awarded? Would any plan afford a correct idea of the nature and value of such buildings, whether considered in an architectural point of view or otherwise? Then, if Government should go into the country, and there take land in the same way, destroying all the land-marks, how would the several owners be able to particularize their respective property when the boundaries of their lands had been swept away, unless, indeed, the detailed measurement provided by the Act, with which he confessed he was not familiar, would obviate that difficulty. He considered this provision a most oppressive and unconstitutional measure.

MR. SCONCE said, the most important objection taken by the Honorable and learned Judge was that the provision in the Section under consideration was unconstitutional. He (Mr. Sconce) possibly might have had some difficulty in dealing with that argument, if the principle which the Section embraced had, in the first instance, been introduced by himself. But the truth was that he had followed the principle of the present law, a principle which had been adopted in 1857, when, unhappily, the Honorable and learned Judge was not a Member of this Council. He alluded to Section VIII Act VI of 1857, which provided that,

“When the Collector or other Officer has made an award or directed a reference to arbitration, he may take immediate possession of

the land, which shall thenceforward be vested absolutely in the Government, free from all other estates, rights, titles, and interests."

It might often happen that the compensation tendered by the Collector would be rejected by the owner. This might be on the very first day of his proceedings, and from the very fact of his offer having been rejected, and a reference to arbitration directed, the Collector was competent, under Section VIII of the Act, to take immediate possession of the land. Here, then, before any step at all was taken, and when on one side stood the Collector and on the other the occupant, neither of them agreeing to the terms of the other, the Collector was empowered, in anticipation of arbitration, to take immediate possession. He (Mr. Seance) had proposed no new law. What was unconstitutional now was unconstitutional before. There might be delay in the action of the law, and the same or greater delay might take place in the passing of their award by the arbitrators, but that delay notwithstanding, the Legislature did not hesitate to give the Collector the right of taking immediate possession of the land.

The other objections raised by the Honorable and learned Judge were, *first*, the possibility of Government evading payment of the award made. There might be some force in this objection if Government would benefit by it; but he rather thought that it would be to the interest of Government, not only to pay the money quickly, but also to see the matter finally adjusted with as little delay as possible. If it were to be supposed that there would be any deliberate delay on the part of Government in the payment of money, he could conceive this to be no valid objection to the Section, as a still stronger Clause might be inserted, doubling the interest after a time that might be fixed, so as to ensure early payment. But no real objection could be based on the ground of possible non-payment.

Then again it was said that, by the removal of premises, all evidence of property was destroyed. On reference to the papers which had been printed

in the annexure, it would be seen that the detailed measurement presented an ample and sufficient record of all the interests adhering to the land and of the rights of the parties concerned; and that it had been found that, in forty-nine cases out of fifty, claims were disposed of by the Railway Commissioner and his Deputy Collectors with reference to the papers before them. Practically, therefore, he saw no reason to apprehend that the adoption of the Section was calculated in any manner to affect the interests of the occupiers.

SIR BARTLE FRERE said, as he was not present at the discussion which took place at the second reading of this Bill, perhaps the Honorable Member for Bengal would be good enough to tell him the extent of additional speed that it was thought would be gained by the operation of this Bill in acquiring possession of land for public purposes. The Honorable Member had stated that the Section under discussion merely carried out the principle of the original Act. But he (Sir Bartle Frere) would remind his Honorable friend that there was this essential difference between the existing and the proposed enactments. Section VIII Act VI of 1857 provided that,

"When the Collector or other Officer has made an award, or directed a reference to arbitration, he may take immediate possession of the land, &c."

This implied that the Collector or other Officer had made up his own mind as to the compensation to be offered, or that the order for a reference to arbitration had been passed before the original owner lost possession of his land. But the Section of the present Bill to which the Honorable and learned Member opposite (Sir C. Jackson) had objected, provided that,

"When the detailed measurement of the land marked out as aforesaid shall be completed, the Collector or other Officer, at any time after the expiration of ten days following the period provided for in the above notices, may take immediate possession of the land so measured, or of any portion thereof, &c."

This Section omitted all mention of any award of compensation, and merely stated that, after the land had been marked out, possession might be taken after a certain period. All who knew the way in which business was conducted, not only here but in England, ought to know that, when once the owner had lost possession of his land, very considerable difficulty would always be experienced in settling the amount of the purchase money. He hoped, therefore, that his Honorable friend would pardon him for observing that this Section introduced an entirely new principle. He (Sir Bartle Frere) thought that the Honorable Member had not quite met the objection of the Honorable and learned Member. At the same time he (Sir Bartle Frere) would be glad to know what was the additional speed or facility proposed to be gained by this Section, which was so much stricter than the Section of the original Act which it was intended to supersede.

MR. SCONCE said, he had no difficulty to answer the question as to the saving of time. It would be seen from the papers printed with the Bill, that the delay which formerly took place before possession of the land could be assumed amounted, on the whole, to seventy-four days; and by a modification of the system then in force, the time occupied was reduced to about sixty days. By the present Bill a notice of fifteen days was required to be given, followed by ten days for the completion of the detailed measurement. Therefore, in place of sixty days, land might be taken after about twenty-five days, making a saving of at least thirty days. Considering the limited portion of the year during which field operations could be carried on, it seemed very important that every facility should be given to enable the Railway Officers to assume possession of the land with the least possible delay.

As to Section VIII he was not unaware of what had fallen from the Honorable Member opposite (Sir Bartle Frere). It was his (Mr. Sconce's) intention fully to recognize the distinction drawn by the Honorable Member between that Section and the Section

in the original Act. He had stated specifically that, according to the original Act, on the owner objecting to take the sum awarded by the Collector, the Collector should refer the matter to arbitration, and then take possession of the land. This was done, not on the arbitration being adjudged, but simply on the Collector directing a reference to be made to arbitrators. In the present Act, therefore, as in the Bill now before the Council, the land was permitted to be taken in anticipation of the award of compensation. In that sense the principle of the original Act had not been changed.

MR. HARINGTON said, he believed he was right in supposing that, if the Section under discussion were struck out, the Honorable Member who had charge of the Bill would consider it unnecessary to go on with it. The sole object of the Bill was to enable the Government to obtain possession of land required for any of the purposes mentioned in Act VI of 1857 on an earlier date than was practicable under the existing law. The principle of the Bill was therefore really involved in the present Section. In the debate which took place on the motion for the second reading, the Honorable and learned Judge opposite (Sir C. Jackson) took precisely the same objections to the Bill which he had urged to-day; but, after a very full discussion, the majority of the Council affirmed the principle of the Bill by consenting to its being read a second time. No alteration had since been proposed in the principle of the Bill, and, although the Select Committee had recommended the addition of certain words to the Section under consideration, their object was to benefit the parties to whose prejudice it was supposed that Section would operate, by requiring the payment to them of interest at the rate of six per cent. per annum on the sum awarded for their property from the time when possession was taken. Of course it was open to any Honorable Member to change his opinion at any stage of a Bill; but he must be allowed to repeat that the principle of this Bill, to which such

strong objections were now being made, had already been affirmed by the Council.

The Honorable Member for Bengal had clearly shown that, under Section VIII of Act VI of 1857, possession might be taken before a final decision was come to. As pointed out by the Honorable Member, if the parties did not agree as to the amount of compensation, instead of waiting for the award of the arbitrators, the Collector might at once take and give over the land for the purposes for which it was required. In the adjudication of such cases it was not stated that any difficulty had been experienced from the removal of buildings, trees, or crops. What difficulty, he would ask, would the Honorable and learned Judge opposite (Sir Charles Jackson) feel if he were called upon to decide cases of this nature in his own Court, because of such removal? Of course he would expect the best evidence to be given on both sides as to the existence of any buildings, trees, or crops on the ground, and as to the value of the same; and with this evidence before him he would proceed to dispose of the matter in dispute, without himself visiting or inspecting the premises. That was what would be done under the Bill as it stood. He (Mr. Harington) saw no reason to apprehend that any difficulty would be felt in coming to a fair and equitable settlement. Then, with regard to the delay which it was feared might take place on the part of the Officers of Government in disposing of the cases if this Bill passed into law, he did not think that the Council had any right to assume that there would be wilful delay. No doubt, the Officers of Government had, in most districts, very heavy duties to attend to, but he believed that they were generally most assiduous in the discharge of their duties, and so far from evincing any disposition wilfully to neglect cases of this kind, he felt sure that the contrary would be the case, and that there would be every desire to dispose of the cases without any delay that could be avoided. He should vote for the retention of the Section.

Mr. Harington

SIR BARTLE FRERE said, he would make one observation with regard to what had fallen from the Honorable Member for Bengal, as to the delay which it was expected to obviate by the passing of this Act. His Honorable friend would forgive him for reminding him that the Railway officials did not proceed to take possession of the land mile by mile. On the contrary, as soon as the general direction of the line was determined, a large body of Surveyors was spread out along the whole length of the line, and the work of marking out the ground to be taken, and endeavoring to get possession of it, proceeded almost simultaneously often along a distance of a great many miles. Every one who owned land to be taken naturally stood by his own property. The Collector, however anxious to see justice, could only be in one place at a time, and that place would generally be his Cutcheree, at a considerable distance perhaps from the line. The sole security for justice being done, and the land fairly paid for, was the present provision that the land should not be taken till the Collector had at least ascertained what it was fair to offer. If we once allowed that the delay of thirty or even sixty days was a serious objection, so serious as to require legislation, what could we say of that class of delays for which the Government and Railway officials were alone responsible; such, for instance, as the settlement of the general direction of the line? Admitting that the proposed Bill would expedite matters to the full extent expected, he did not think a case was made out for such a serious infringement of the rights of property.

With regard to what had fallen from the Honorable Member for the North-Western Provinces, he would remark that the Collector, when he found the parties unwilling to accept the compensation he offered, and determined to refer the matter to arbitration, would have to act under a heavy responsibility, and would naturally take care that nothing was done to the land which would be an obstacle to his proving before the arbitrators that his view of its value was a just one, and would so

far aid the owner to prevent the evidence of his rights from being destroyed in the manner to which the Honorable and learned Judge (Sir C. Jackson) had alluded. This was always quite sufficient to prevent the Collector from acting precipitately or harshly, and he (Sir Bartle Frere) knew that, in practice, the Collector, in all such cases, took good care to prevent the destruction of buildings or other property which would serve as evidence to guide the parties who would have to award the compensation. He (Sir Bartle Frere) could fully confirm all that the Honorable Member for the North-Western Provinces had said, that there was little fear of any wilful delay on the part of Government in paying for land taken by them. He (Sir Bartle Frere), however, referred to the delay which naturally and inevitably took place in the transaction of public business. The Railway Authorities and the Collector were naturally and properly anxious to proceed with that portion of the work—the marking out and construction of the line—which could best be done during the dry working season, and would not unnaturally, if the proposed Bill became law, defer the settlement of compensation for future consideration on the close of the working season. They all knew how much the Collector was hampered and harassed by a multitude of persons to whose business he had to attend, and there could not be a doubt but that he would be obliged to put off, from day to day, numerous claimants for compensation, without any intention on his part to cause any delay in settling their just claims.

Mr. LEGEY said, he professed he was not able to vote for this Section. He did not really see that this Bill was much wanted. It appeared to him that Act VI of 1857 contained all that was really necessary.

THE CHAIRMAN said, when this Bill was brought before the Council, on the occasion of its second reading, he recorded his vote against it, and he saw no reason now for changing his opinion. Under the law as it stood in 1842, whenever the Officer appointed by Government for the purpose recorded his opinion that the land in

dispute was required immediately for a public purpose, he was empowered to take immediate possession of it on behalf of Government, leaving the amount and distribution of the consideration to be paid for it, if not agreed to by private bargain, to be afterwards ascertained. That was the law as it stood in Act XLII of 1850. Act VI of 1857 repealed that Act; and by Section VIII it was provided:—

“When the Collector or other Officer has made an award or directed a reference to arbitration, he may take immediate possession of the land, which shall thenceforward be vested absolutely in the Government, free from all other estates, rights, titles, and interests.”

The land would require to be inspected and valued before an award could be made, or before reference to arbitration. But, as he understood, the Honorable Member for Bengal wished to get rid of delay. He (the Chairman) did not know what the delay was that the Honorable Member wished to get rid of. If land was required to be taken before an award or before a reference to arbitration, it was but reasonable that some record should be kept, by means of which Government might know precisely what buildings, tanks, or trees, had originally stood upon it. He quite agreed with what had fallen from the Honorable Member for Bombay, and would proceed to show how it was fully confirmed by the opinion of the Railway Commissioner, as contained in a report submitted by him to Government in 1851. Mr. Lushington said:—

“12. But in the case of the Railway it was altogether different. The loss attendant on keeping the Railway establishment unemployed, and the risk of losing the cold season for the embankments, rendered it essential that the work should be commenced at the earliest possible date; whilst it was obvious, from the nature of the country through which the Railway was to run, from the density of population, and the large number of the holdings, that the provisions of Regulation I of 1824 could not be carried out so as to ensure proper progress to the works. And it was consequently clear, when Act XLII was passed, that the question for consideration was not whether the lands should or should not first be taken into the possession of Government, and the claims left for after determination, but simply at what point of my proceedings it was desirable to make over the lands to the Railway Company.

"13. It was urged by the Railway Officers that possession should be given immediately after the delivery of the Surveyors' plans. I was assured that the plans, as in England, would represent accurately every feature of the country; that the boundaries of each holding, however small, would be clearly and distinctly defined; and it was argued that, with such plans, and a list of the proprietors before me, there could be no difficulty in determining the claims, either by private bargain or by arbitration in the usual course of law, although the boundary marks might, meanwhile, have been obliterated by the excavation of earth, or by the construction of the road.

"14. Experience, however, speedily removed this impression from the minds of all. The examination of the first plan showed that, for all practical purposes in respect to the decision of claims, it was next thing to useless. It professed to exhibit the boundaries of the different Mehals; but it did this, even, but partially. The main features of the country and the visibly defined boundary marks alone were given. There was no account whatever of intermediate tenancies, or of the holdings of the occupants of the lands, or of the property upon the lands; and the Railway Officers, when pressed for further information on these points, at length stated that it had been found to be impossible for the Surveyors, with their limited knowledge of the tenures and the people of the country, to ascertain the boundaries or sub-divisions of the smaller holdings, or even to obtain a list of the names of the occupants.

"15. This was no more than I had expected. I could not believe that the maps and lists of the Surveyors could be made to exhibit all the information required. There were, in some of the Hulkas, hundreds of huts and houses, and thousands of trees to be accounted for; the rights of Zemindars, Putneedars, Mouroosee Ryots, and other parties possessed of a permanent interest in the soil required to be defined; the number of trees and the description of crops upon the fields were to be entered, and when, in addition to all this, it was necessary, before the claims could be adjusted, to divide nearly every claim into two or three distinct parts, on account of the division of the lands into permanent and temporary occupation, which would necessitate separate adjustments on different principles, in each case in which the lands of any one might be situated partly in the lands for temporary, and partly in the lands for permanent occupation; I felt fully satisfied that nothing short of a detailed native measurement, under the supervision of the most able and trustworthy Deputy Collectors available, would ensure a proper definition of the various interests, and a fair adjudication of the claims."

He (the Chairman) would proceed to show what became of the claims. The Railway Commissioner commenced by saying that,

"By the end of May, about 33 miles of the line had been made over to the Railway Com-

The Chairman

pany, and I was then in a position to enter upon the adjustment of the claims upon the land that had been occupied in perpetuity;"

So that it would appear that land was given to the Railway Company, and no steps were taken for the adjudication of claims till some time afterwards. In paragraph 38 the Commissioner proceeded to show the practice of the Deputy Collectors in the adjustment of claims. He said,

"In the first instance they were to issue notices for the parties to attend upon them at a particular time and place for the purpose of recording their assent or otherwise to the terms that might be offered to them, and for the production of such proofs as they might possess of the value of the property taken into the possession of Government. On the parties attending their proofs were to be demanded, and their documentary evidence filed with the case. An enquiry was then to be made as to the manner in which missing trees, &c., removed during the cutting of the centre line, had been disposed of: and, in the event of its appearing that they had been taken by the parties themselves, they were to be required to strike them out of their demand; if not, allowance was to be made for them in the account. An estimate of the value of the lands or other property was then to be made from the statements of rates furnished from this Office. If the land was situated within villages for which rates were given in my list, those rates were to be taken as the basis of calculation; if not, the estimate was to be formed either from the rates given for villages in the immediate neighbourhood, or from the average rates of the Pergunnah as given in the lists, according as the one or the other might, in the Deputy Collector's opinion, be most applicable; and the sums obtained from these rates were to be entered as the computed value of the gross rent of the land. From this amount the estimated amount of the expenses of collection was then to be deducted, and the balance was to be multiplied by 20 as an estimate of the 'fair value' of the lands, supposing them to be lakhtiraj. When this was done, the value of the property excluded from the rent thus estimated was to be calculated at its market value from the price of timber, the annual value of fruit trees, the cost of building and materials, and from the general condition of the property, and when this had been done, the value estimated to be paid for the two properties were to be added together, and the Deputy Collector's opinion formed as to its being such as could be considered a fair value for the whole property.

"Should the Deputy Collector, on this review, see reason to suppose the estimate to be too high, he would of course reduce it to what might appear to be fit; if not, he was to announce the result of his estimate to the claimants, and offer the terms for their acceptance.

"Should they object to the value, and it appeared to the Deputy Collector that they had reason for complaint, such an alteration was to be made in the terms as might appear to be right; if not, he was to inform them, after due consideration, that he saw no ground for change, and if, after a second explanation of his views, the parties still refused to come to terms, the case was to be set aside for arbitration.

"If, on the other hand, the Deputy Collector admitted the propriety of the objections urged, or if the claimants, on hearing the Deputy Collector's statement of his views, consented to abide by the judgment expressed as to the value of the property, the Deputy Collector was to cause them to execute a Deed of Agreement, and set aside the case, with a full record of his proceedings, as a case which he considered fit for confirmation.

"In cases of dispute, where the whole or part of the property might be claimed by adverse parties, such dispute was to be considered a bar to the adjustment of the case by private bargain, and it was only necessary in such cases for the Deputy Collector to record his opinion of the value of the property and the circumstances which prevented the adjustment of the claims."

The Railway Commissioner concluded his observation on this part of his report, by saying:—

"The decision of the claims to be referred to arbitration will be allowed to lie over until the enquiries in respect to the temporarily occupied lands are completed, when the Deputy Collectors engaged in those enquiries will be appointed to act as arbitrators on behalf of Government. The parties concerned have less cause than any others to complain of delay, inasmuch as they have all refused fair and liberal terms."

In these observations he (the Chairman) could not agree. No doubt the Commissioner believed that the terms offered were fair and liberal. But that was the very question at issue, namely whether the terms were fair and liberal. The Commissioner proceeded to say that the adjustment of claims—

"Was not done this year until the measurements had advanced sufficiently to give ample work to the contractors. I think, however, now that the system of adjustment is understood, that there will be no difficulty in so open a country as that between Pundlooh and Rance-gunge in carrying on the adjustments at the same time with the measurements almost from the commencement of the operations."

This was exactly what was required by the present Act, and it appeared

to him (the Chairman) that the experience of the Honorable Member for Bombay had been fully borne out by the practice in this Presidency. In his (the Chairman's) opinion, previously to the assumption of the land, either the purchase-money should be paid, or the matter put in train towards adjustment.

Mr. SCONCE said, he so entirely agreed in the remarks made by the Honorable and learned Chairman, with reference to the greater part of the extracts which he had read to the Council, that he (Mr. Sconce) had every hope of carrying the votes of the Council with him. The first and most important portion of the extracts referred to the necessity of securing a measurement of the land in addition to the plan of the Railway Surveyors. Now this necessity he (Mr. Sconce) fully recognized, and it was the express object of the present Bill to provide that, after any section of the line of Railway had been marked out and surveyed, a detailed measurement should be undertaken in the very manner and for the very object contemplated by the Commissioner in the Report of 1851. Then as to delay in adjudicating claims to compensation, he had no excuse to make for it, nor was delay in any way promoted by this Bill. On the contrary, the Bill required an award to be pronounced at the earliest possible period, and as the payment of interest ran against the Government, so far this obligation was calculated to expedite a decision. The third point on which he (Mr. Sconce) desired to say a few words, referred to some remarks of the Commissioner as to parties rejecting a fair and liberal offer. He (Mr. Sconce) agreed with the Honorable and learned Chairman that parties were not to be blamed for refusing the compensation offered, for the law empowered any occupier of land to require his claim to be determined by arbitration, and he was under no obligation to abide by the offer of the Commissioner. But in truth nothing in the present Bill tended to impair the right which, in this respect parties possessed under the present Act.

The question being put, the Council divided—

Ayes 3.
Mr. Sconce.
Mr. Forbes.
Mr. Harington.

Noes 5.
Sir Charles Jackson.
Mr. LeGeyt.
Sir Bartle Frere.
Sir James Outram.
The Chairman.

So the Section was negatived.

MR. SCONCE then moved that the further consideration of the Bill be postponed.

The Motion was carried, and the Council resumed its sitting.

CATTLE TRESPASS.

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle);" 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.

Sections I to III were passed as they stood.

MR. FORBES said he wished to introduce a new Section after Section III. Those Honorable Members who were present at the discussion which took place in the Select Committee on the Madras Police Bill, will recollect that that Bill originally contained a Clause which provided that Section IV Act III of 1857 should be read as if the words "District Subordinate" and "Village Inspectors" were respectively substituted therein for the words "Magistrates" and "Heads of Police." It was considered at that time that some inconvenience would be felt by the insertion in a Bill relating to the Madras Police of a Clause amending or explaining the Cattle Trespass Act, and that the alteration would be better made in the Bill to amend Act III of 1857, which was then before the Council. He now therefore moved the introduction of the following new Section:—

"Section IV of the said Act shall be read throughout the General Police District of the Presidency of Madras, as if the words 'Village

Inspectors' were substituted for 'Heads of Villages.'"

Agreed to.

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

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved that a Petition from the Inhabitants of Bombay, praying for the introduction into the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the Town of Bombay)," of a Clause exempting the horses and ponies kept in the Pinjrapole or refuge for decayed and worn-out animals, be laid upon the table and printed.

Agreed to.

MARRIAGES (CHURCH OF SCOTLAND).

M. SCONCE moved that the Bill "relating to the solemnization of marriages in India by ordained Ministers of the Church of Scotland" be referred to a Select Committee consisting of the Vice-President, Mr. Harington, and the Mover.

Agreed to.

PORT-DUES (BASSEIN).

MR. HARINGTON moved that the Bill "for the levy of Port-dues in the Port of Bassain" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

BRITISH SUBJECTS.

MR. SCONCE said, he rose with the permission of the Council to put the question of which he gave notice that day week. He hoped that it would not be considered a mere matter of curiosity that induced him to enquire whether the Executive Government were prepared to submit any project of law with a view to making British Subjects amenable to the jurisdiction of the Mofussil Courts in

Criminal matters. He himself entertained a strong opinion as to the necessity of some legislation on the subject. That day week he alluded to a Despatch from the Honorable Court of Directors, in which it was suggested that legislation in the matter should, for a time, be suspended. But, as he understood, it was not in any sense the intention of the Court of Directors that so important a question—a question in which the necessity for legislation had been admitted—should be altogether laid aside; and it seemed to him, looking to the importance of the question and to the various projects of law bearing upon the subject which were now under the consideration of the Legislature, that the Council should have some assurance that they would, at no long date, be called upon to consider whether a law of the nature to which he had alluded should not be passed. In the Despatch to which he had referred he found these words:—

“Considering, however, the great importance of the question of making British Subjects amenable to the jurisdiction of the Mofussil Courts in Criminal matters, and the interest it has already excited in this Country as well as in India, we think that legislation upon that point had better be postponed until the question has been referred to us (accompanied by a statement of your views in regard to it) and a measure for carrying that object into effect has received our approbation.”

When he first spoke on this matter, he ventured on his part to say that, supposing that permanent legislation was to be for some time deferred, possibly some temporary law might be well worthy the attention of the Legislature which should be calculated to remedy the defects in the existing law, and he spoke of the possibility of a law being passed, based upon the present law. His meaning was that possibly the powers of the local Magistracy might, in some respects, be strengthened, and that in addition to this some new tribunals might be erected for the purpose of taking cognizance of the more aggravated classes of offences committed by British subjects in the Mofussil; but that at the same time in all cases the jurisdictions vested in the Courts constituted by Her Majesty's

Royal Charter should be preserved for all proper purposes of direction and supervision. Supposing always that permanent legislation on this matter would be protracted, he conceived that a temporary law, drawn in the form at which he so shortly glanced, would not be considered opposed to the views expressed in the Despatch above quoted; but, be that as it might, what he should be glad to know was whether the Executive Government have had or have any project of law in contemplation with a view to the extension of the jurisdiction of the Local Courts in Criminal matters over European British subjects.

SIR BARTLE FRERE said, he had made every enquiry on the subject of the question which his Honorable friend had just put to him, but he regretted that he had very little information to communicate, beyond what was already before the Council; and he hoped that the Honorable Member would acquit him of merely repeating what was already well known, if he proceeded very briefly to recapitulate what had been done on this question, with a view to show how the matter now stood.

It was one of the objects of the framers of the Charter Act of 1833 that

“No person whatever should, by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts in India.”

This was a leading principle of the great men who passed that Act, and from that day until very recently he need not remind the Council that it had been the constant object of those who directed the legislation of this country to pave the way for carrying out that principle. As a necessary preliminary, the Law Commission, of which Mr. Macanlay was the first Member, addressed itself to the preparation of one uniform Code of Criminal Law and of Criminal Procedure applicable to all Courts. He did not think that from 1833 to 1857 there had been much variation in the views of those who

directed the legislation of this country. It would be in the recollection of the Council that, in 1856 and the early part of 1857, the subject was discussed with considerably greater interest than before, and a very strong opposition was organized both here and at home, against the passing of any Criminal Code or Code of Procedure which should render European British subjects liable to be tried in any Courts but those established at the Presidency Towns. It was in August 1857, after the out-break of the mutinies, that the Despatch to which the Honorable Member for Bengal had alluded, was sent out to this country. As the Despatch was a very brief one, and its exact wording illustrated the present position of the question, he would, with the permission of the Council, read the whole of it, which was as follows:—

"1st. By our Legislative Despatch No. 2, dated 4th February 1852, we authorized you, 'if you should see fit, to proceed to pass a Law for giving effect to the Penal Code, as it may be finally arranged by you, with the concurrence of Mr. Peacock.'

"2nd. By our Judicial Despatch No. 40, dated 10th September 1856, we also authorized you to bring before the Legislative Council, without further reference to us, a measure for giving effect to the recommendations of the Indian Law Commissioners in regard to Procedure, with such alterations and modifications as you might consider necessary, with a view to their adaptation to the Courts of the East India Company.

"3rd. We observe from the proceedings of the Legislative Council recently received, that the Penal Code and Codes of Procedure are now under their consideration.

"4th. According to the Penal Code, the punishment for murder is death; and by the 8th Rule at page 96 of the First Report of the Law Commissioners, it is provided that 'no person whatever shall, by reason of descent, be in any Criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts.'

"5th. Should these provisions be enacted as they now stand in the proposed Codes, their effect will be to render natural-born subjects of Her Majesty subject in capital as in all other cases to the jurisdiction of the Courts of the East India Company.

"6th. To enact such a law, however, would be beyond the power of the Governor-General in Council, without the previous sanction of the Court of Directors. The sanction already given in general terms to pass the Codes, we consider to be insufficient to meet

the specific conditions of the law in regard to the infliction of capital punishment upon British subjects; and the object of our present Despatch is to supply the omission in our former Despatches, by suggesting that the Clause giving jurisdiction to the Mofussil Courts over British subjects should be followed by a proviso, to the effect that such persons, when charged with capital crimes, shall be tried as heretofore by Her Majesty's Supreme Court of Judicature. Considering, however, the great importance of the question of making British subjects amenable to the jurisdiction of the Mofussil Courts in Criminal matters, and the interest it has already excited in this country as well as in India, we think that legislation upon that point had better be postponed, until the question has been referred to us (accompanied by a statement of your views in regard to it) and a measure for carrying that object into effect has received our approbation. The reference, however, need not delay the passing of the much needed Legislative measures for the improvement of the existing procedure of the Civil and Criminal Courts."

These were the views of the Court of Directors as communicated to this Government in the Despatch which he had just read, and which was dated the 19th August 1857, and as subsequently communicated to the Legislative Council in November of the same year. It was hardly necessary for him to state that, at the time this Despatch was received, we had entered upon an entirely new phase in the aspect of Indian affairs, very great excitement prevailed both in this country and in England, and with regard to any plan which should subject British-born subjects and Natives to the same Courts and modes of procedure, a very great alteration had taken place in public feeling, which was shared even by many persons who were entitled to be classed amongst the most philanthropic well-wishers of India. Since the suppression of the Mutinies another great change had taken place in the circumstances affecting this question, owing to the presence of large numbers of Europeans in this country, some of whom were less guarded in their conduct than could be desired, and there were symptoms of an alteration in public feeling which might tend to bring back public opinion nearer to what it was before the Mutinies commenced. As the Honorable Gentleman had remarked, the subject was not one

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

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

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

NOTICES OF MOTION.

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

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

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

The Council adjourned.

Saturday, January 28, 1860.

PRESENT :

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

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

PASSENGERS; AND TRIALS BY SESSIONS JUDGES.

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

ABKAREE REVENUE (BENGAL).

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

MR. SCONCE moved that the Petition be printed.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

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