

Saturday, January 09, 1858

**LEGISLATIVE COUNCIL
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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858

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1858.

PORT-DUES (CUTTACK).

MR. CURRIE moved that Mr. Peacock be requested to take the Bill "for the levy of Port-dues in certain Ports in the Province of Cuttack" to the Governor-General for his assent.

Agreed to.

NATIVE PASSENGER SHIPS.

MR. ELLIOTT moved that Mr. Currie be added to the Select Committee on the Bill "for the regulation of Native Passenger Ships."

NOTICES OF MOTION.

MR. PEACOCK gave notice that he would, on Saturday the 9th Instant, move the second reading of the following Bills, namely,

The Bill "to remove from the operation of the general Laws and Regulations the Delhi Territory and the Meerut Division, or such parts thereof as the Governor-General in Council shall place under the administration of the Chief Commissioner of the Punjab."

The Bill "to authorize the infliction of corporal punishment in certain cases."

And the Bill "for the punishment of certain offenders who have escaped from Jail, and of persons who shall knowingly harbour such offenders."

Also that he would on the same day move that the Standing Orders be suspended to enable him to proceed with the above Bills.

The Council adjourned.

Saturday, January 9, 1858.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*,
in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General	E. Currie, Esq.
J. Low,	and
Hon. B. Peacock,	H. B. Harrington,
D. Elliott, Esq.	Esq.

BOMBAY WATER-WORKS.

MR. LEGEYT moved the first reading of a Bill "to give effect to an

agreement between the Government of Bombay and Her Majesty's Justices of the Peace for the Town of Bombay in relation to certain Water-works in the Islands of Salsette and Bombay." The principal object of this Bill, he said, was to give the Government of Bombay some security for the repayment of a very large sum of money disbursed by it in the construction of certain water-works known as the Vihar Valley Water-works. It would be in the recollection of the Council that, on several occasions of late years, the scarcity of water in Bombay towards the end of the hot season, had produced much painful anxiety and distress; and that, only two years ago, it was called on to pass a Bill which was rendered necessary by an extreme drought in the Island at that time, and which materially affected private comfort and property.

The population of Bombay had, of late years, increased very largely and very rapidly. Within the last twenty years, it had nearly doubled, and it now amounted to about 600,000. The Island being entirely dependent for its supply of water on the periodical rains which fell from the middle of June till the end of September, any failure of those rains necessarily produced extreme scarcity and distress. This state of things had been an object of great solicitude with the Government and the Inhabitants of the Island for some years past. Several projects for remedying the want of water had been submitted from time to time to the Government, and tested by scientific enquiry. After a careful examination of several, one, in which it was proposed to collect water in a large reservoir in the neighboring Island of Salsette, and bring it into Bombay by means of iron pipes, a distance of about fourteen miles, — was found to present the most effectual and feasible results. The cost of this work was then estimated at twenty-five lakhs of Rupees. It was obvious that an outlay of this kind, being solely for the benefit of the Inhabitants of Bombay, was one which should fall, not on the general revenues of the country, but on the Inhabitants of the place who would benefit thereby. It was accordingly proposed that the sum of twenty-five lakhs should be advanced by

the Government, and that a water-rate should be levied on occupiers of houses and grounds in the Island which would yield four per cent., to be paid as interest on the outlay, and one per cent., to be set apart as a sinking fund for the gradual liquidation of the capital. This scheme received the sanction of the Government of India, and of the Honorable Court of Directors. Contracts were entered into by the Honorable Court in London for pipings &c., and the reservoir was commenced upon in Salsette, and was now on the eve of completion. But, as usually happened in such matters, the estimate of cost had been considerably exceeded. Already, the outlay had been more than thirty-five lakhs, and he believed it was probable that the work, before it was finished, would cost four or five lakhs more. The Municipality was called upon to provide funds for the repayment of the whole of this sum, and of interest at the rate of four per cent. The Justices demurred to making the municipal funds responsible for more than twenty-five lakhs, and interest upon that amount, contending that the funds had been bound only to that extent. The Government of Bombay, however, and the Government of India took a different view of the case, and thought it fair that the whole sum expended should be recovered from the inhabitants of the Island by means of a local tax. A discussion extending over a considerable space of time ensued, and the final proposal from the Justices was that the Municipality should be made responsible for the repayment of twenty-five lakhs, and half the excess over that sum. The Government of Bombay still contended that the whole should be repaid by them. On the urgent representation of the Justices, however, they had since referred the proposition to the Honorable Court of Directors with all the circumstances connected with it, with a recommendation that it should be acceded to. No answer had been received to that representation yet.

Meanwhile, the Government of India had intimated to the Government of Bombay that it was indispensable that some security should be provided for the repayment of the whole advances made, with interest at four per cent., and had called upon them to obtain with

that view legislative sanction to a water-rate being levied in the Island. In conformity with that direction, the Government of Bombay had framed the Bill which he had now the honor to bring before the Council, and which was entitled "A Bill to give effect to an agreement between the Government of Bombay and Her Majesty's Justices of the Peace for the Town and Island of Bombay and Colaba, in relation to certain water-works in the Islands of Salsette and Bombay."

The Preamble of the Bill recited that—

"Whereas the Governor in Council of Bombay has contracted with Her Majesty's Justices of the Peace for the Town and Island of Bombay and Colaba to erect and complete at an estimated cost of twenty-five Lakhs of Rupees or thereabouts, certain water-works for the purpose of supplying the said Town and Island with water from the Vehar Valley in the Island of Salsette, and to procure and lay down the piping required for that purpose, and to maintain the said works and piping when completed, on the terms and conditions that the whole of the money disbursed by the Governor in Council in the provision, erection, and completion of the said works shall, whether such sum be greater or less than the said sum of twenty-five Lakhs of Rupees, be repaid with interest at the rate of four Rupees for every one hundred Rupees per annum; and that for that purpose the said Justices shall, by and out of the Municipal Fund of Bombay, pay to the said Governor in Council in each year, until the whole of the money disbursed as aforesaid shall be repaid and satisfied, a sum equal to five Rupees on every hundred of the whole sum expended by the Governor in Council in the erection and completion of the said works and piping; that is to say, a sum equal to one-twentieth part of the whole sum disbursed as aforesaid, out of which such a sum as shall be equal to interest at four per cent. upon the principal amount of the debt remaining unpaid in each year, shall be appropriated to the payment of such interest, and the residue shall be appropriated towards reduction of such principal amount; and that the said Justices shall also, in addition to the above sum so to be annually paid by them as aforesaid, pay also annually to the said Governor in Council of Bombay out of the said Municipal Fund the actual annual cost of maintaining the said works;—

"To give effect to the said agreement; it is enacted as follows:—"

The Sections which followed authorized the Justices, with the sanction of the Governor in Council, to levy a special tax on all occupiers of houses, grounds, and tenements within the Islands of Bombay and Colaba of the annual value of forty-eight Rupees and upwards at

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a rate not exceeding three and a half per cent., and required the Board of Conservancy, or such other persons as should for the time being have the control of the Municipal Funds, to pay therefrom to the Governor in Council, on a certain day in each year, the amount of that water-rate in payment of the sum advanced for the water-works, and interest thereon at four per cent.

It was necessary for him to state, in introducing this Bill—and he had been instructed by the Government of Bombay to state it—that it was hoped it would not be found necessary to enforce the water-rate contemplated by it if the Municipal Bill for Bombay, which was now before a Select Committee, and about to be reported on, should pass in its present shape. In that event, it was believed that ample funds would be forthcoming, not only for ordinary municipal purposes, but also for repayment of the advances for constructing these water-works; and if this should be the case, the provisions of the present Bill would not be brought into operation. The Bill, therefore, might be regarded only as providing a grant-in-aid to the Municipal Fund as it was expected to be constituted under the Municipal Bill now before the Council, in case that Fund should be found unequal to meet the demands on it for repayment and interest. But as the sources from which the funds proposed by the Municipal Bill had not yet been determined, both the Government of Bombay and the Government of India considered it indispensable that a Bill like this should be passed in the meantime, to give the former a positive security for the payment of the money which they had advanced, but for which they at present had no security.

The Bill was read a first time.

DELHI AND MEERUT.

Mr. PEACOCK moved that the Bill “to remove from the operation of the general Laws and Regulations the Delhi Territory and the Meerut Division, or such portions thereof as the Governor-General in Council shall place under the administration of the Chief Commissioner of the Punjab” be read a second time.

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

CORPORAL PUNISHMENT.

Mr. PEACOCK moved that the Bill “to authorize the infliction of corporal punishment in certain cases” be read a second time.

THE CHIEF JUSTICE said, any objection or discussion which he might be inclined to raise on the Bill, would rather be with respect to particular provisions, and to the question whether the operation of the measure should be permanent and general as to locality, than to its principle of which he entirely approved. Before speaking on the motion for the second reading, therefore, he should be glad to know whether the Honorable and learned Member proposed to proceed with the Bill at once, or to refer it to a Select Committee in the first instance.

Mr. PEACOCK said, he proposed to move—first that the Standing Orders be suspended in regard to the Bill, and then that the Bill be referred to a Select Committee with instructions to them to report upon it within a fortnight.

THE CHIEF JUSTICE said, the doubt which he had in his mind—but that might be discussed in Committee very well—was whether Section I of the Bill went far enough, and whether Section II did not perhaps go too far. Section I only gave the Magistrate power to inflict corporal punishment in cases of simple theft. The reason for the Bill being declared by the Preamble to be the destruction of jails, there might be many offences in the nature of felony other than cases of simple theft, but at the same time not so serious as to justify the infliction of capital punishment, or to call for that of transportation, which it might be very desirable to deal with by such summary punishment as corporal punishment. There would be the same reason derivable from the destruction of jails for authorizing such punishment in those cases as there was for authorizing it in cases of simple theft. For instance, ourglary, as practised in this country, often differed very little in gravity from simple theft. In many cases, it was committed by the mere severance of a string or the cutting of a mat-wall, and was accompanied with no danger to life, or injury to person. He could put many other cases to which, for the

same reason, the provision of this Section might be made applicable as well as to cases of simple theft.

With respect to Section II, he felt considerable doubt about including in it the words "or for any petty offence, such as abusive language, calumny, inconsiderable assaults or affrays." He was quite prepared, particularly if the operation of the Act were limited to certain districts, to accede to the suggestion of the Chief Commissioner of the North-Western Provinces, and to give the power of inflicting corporal punishment for offences against particular Sections of the special enactments named in the Section. Those would be offences threatening danger to the State and to the public peace. But it seemed to him very doubtful whether the Bill should give this power in the case of abusive language, calumny, and inconsiderable assaults or affrays. He could not find that, before Lord William Bentinck interfered with the infliction of corporal punishment in other cases, those offences had been, at least in this Presidency, so punishable. Section VIII of Regulation IX. 1793 provided as follows:—

"The Magistrates are empowered to hear and determine, without any reference to the Courts of Circuit, all complaints or prosecutions brought before them for petty offences, such as abusive language, calumny, inconsiderable assaults or affrays, and to punish the offender, when convicted, by committing him to prison for a term not exceeding fifteen days, or by imposing a fine upon him not exceeding fifty Sicca Rupees."

Under this, therefore, the imprisonment was limited to fifteen days, and, as far as he could see, was simple imprisonment. If a Magistrate were to inflict thirty stripes with a rattan upon a man because he was unable to pay the fine imposed, he would be punishing his poverty rather severely; for the man would doubtless feel thirty stripes with a rattan to be much more severe than simple imprisonment for fifteen days, independently of the degrading nature of the punishment.

The objections which he felt to the Bill would be very much removed if its operation were limited to those districts in which, by reason of the destruction of jails, there was an absolute necessity for administering this rough kind of

justice instead of the regular punishment of imprisonment.

MR. ELLIOTT begged to direct the attention of the Honorable and learned Mover of the Bill to Standing Order No. LXX, which was as follows:—

"Any Member, however, may move a special instruction to the Select Committee immediately after its appointment, directing it to submit forthwith a preliminary Report, suggesting any alterations which it may deem expedient to make in the Bill previous to the publication thereof in the *Calcutta Gazette*. If such preliminary Report of the Committee shall be adopted by the Council, the Bill shall be amended accordingly, and published for general information."

He wished to know whether the Honorable and learned Member would consent to the Bill being referred to a Select Committee with such a special instruction. He asked this question with reference to the observations of the Honorable and learned Chief Justice, in which, for the most part, he entirely concurred, and, concurring therein, he could hardly bring himself to vote for the second reading of the Bill as it stood, except on the understanding that it would be referred to a Select Committee for a Report preliminary to publication; for those observations went to confirm his own impression that the Bill went farther than was necessary on the grounds stated for it—an impression which he believed was shared by other Members.

MR. PEACOCK said, he did not see any necessity for referring the Bill to a Select Committee for the purpose of amending it previous to publication. He did not propose to have the Bill published.

MR. ELLIOTT said, the Bill was considered by several Members open to considerable objection, all which objections might be removed before the Council committed itself to the Bill by publishing it in the *Gazette* in its present shape.

His main objection to the Bill was that, whereas the reasons given for it in the Preamble were only local and temporary, the Bill itself was general and permanent. The first reason recited in the Preamble, was "the destruction of the jails in many parts of India, and the consequent want of prison-discipline." But this reason did not apply to the greater part or the whole of Bengal, or to Madras, or to Bombay.

The first provision contained in the Bill was a provision authorizing the infliction of corporal punishment in cases of simple theft. Surely, that was a matter which, if there was no pressing reason to the contrary, had better be considered in connection with the Penal Code. The same remark applied to the provision made by Section II, which authorized the infliction of corporal punishment for (among certain other offences) abusive language, calumny, and inconsiderable assaults or affrays. It was quite clear that no pressing reason for applying corporal punishment in these cases existed either in Bengal, or at Madras, or at Bombay, if any did exist in the North-Western Provinces. The cause of the necessity in the North-Western Provinces was stated to be the destruction of jails. But the Council did not know to what extent jails in those Provinces had been destroyed. At all events, arrangements might be made for replacing all those which had been destroyed. He thought it unadvisable, therefore, that the Council should, in such a question, commit itself to a permanent and general measure when the actual exigency could be met by a temporary and local one.

THE CHIEF JUSTICE said, he confessed he thought that no great harm would be done by reading the Bill a second time now, and publishing it in the ordinary course. The questions raised by the Honorable Member for Madras might, at the same time, be considered in Committee. They were really questions of detail rather than of principle; and all were agreed that a Bill of some kind on this subject was necessary. It did appear to him, therefore, that the course he suggested might be adopted with advantage. He did not think that, in assenting to the second reading to-day, any Honorable Member would be pledged to vote for it in its present shape on the Motion for the third reading, or precluded from proposing such amendments in it in Committee as he might consider expedient.

MR. CURRIE said, he concurred with the Honorable Member for Madras in the observations which he had made. It did not seem to him that the point at issue was, as suggested by the Honorable and Learned Chief Justice, a matter of

detail. It surely was not a matter of detail whether a Bill should be a temporary and local measure, or whether it should be a general and permanent one. That seemed to him to be essentially a question of principle; and, therefore, he thought that the course suggested by the Honorable Member for Madras was a right and proper one.

For his own part, he thought that corporal punishment might with advantage be substituted for imprisonment with respect to certain offences, but he did not think the offences selected in the Bill the only or perhaps the most appropriate ones to which such punishment could properly be made applicable. But the question was a large one, requiring careful consideration; and he thought that the proper opportunity for considering it would be in settling the Penal Code. If, therefore, the Bill was to be read a second time to-day, he should prefer that it be referred to a Select Committee for preliminary Report, as proposed by the Honorable Member for Madras. At any rate, it must be understood, that, in assenting to the second reading, the Council did not pledge itself to accept the Bill as a permanent and general measure, but might, if it thought expedient, insert amendments in Committee with the view of making it temporary and local.

MR. PEACOCK said, he thought that the better course would be to take the opinion of the Council now as to whether the Bill should be read a second time or not. It certainly was not his intention to refer the Bill to a Select Committee for the purpose of being amended previously to publication. He did not think that there was any reason for taking it out of the usual course in that way. The only principle to which Honorable Members would be bound by voting for the second reading was that corporal punishment was a proper punishment in some cases. If any Honorable Member considered that it was an improper punishment to inflict in any case, it would be his duty to vote against the second reading; but if he considered that it was a proper punishment to inflict in certain cases, his voting for the second reading would not commit him to the opinion that it was a proper punishment to inflict in every case specified in the Bill.

With respect to the recitals in the Preamble, the first was as follows:—

“Whereas, in consequence of the destruction of the jails in many parts of India, and the consequent want of prison-discipline, it is expedient to substitute corporal punishment for imprisonment in cases of simple theft.”

The Council had already recognized and adopted the principle that corporal punishment was a proper punishment in cases of theft in which the value of the property stolen did not exceed fifty Rupees. Having done that, he could not see what objection it could have to that punishment in cases of theft in which the value of the property stolen exceeded fifty Rupees. If corporal punishment was improper in cases of theft involving more than fifty Rupees on the ground that it was a degrading punishment, surely, it was equally improper on that ground in cases of theft involving less than fifty Rupees. There was no good reason why a man who stole sixty Rupees ought not to be degraded just as much as a man who stole one Rupee. The Honorable Member for Madras was himself one of those who had voted for the insertion of the Clause authorizing corporal punishment in the Police Act.

If it were considered that the corporal punishment proposed by the Bill was improper in cases of simple theft on the ground that thirty stripes with a rattan was an insufficient punishment in which the property stolen was of large amount, that question might be further considered by a Select Committee in the ordinary course; but he did not think it necessary to refer the Bill to a Select Committee for the purpose of amending it previously to publication.

The next recital in the Preamble was as follows:—

“And whereas it is expedient in certain cases that offenders should not be imprisoned for the non-payment of small fines.”

Was it right, or was it wrong, that corporal punishment should be inflicted in certain cases in lieu of imprisonment for the non-payment of small fines? He proposed that it should be inflicted in any case in which a fine should be imposed under the provisions of Section VIII Act XI of 1857, if the fine should not be paid forthwith. Section VIII Act XI of 1857 provided a fine not exceeding fifty Rupees, or imprisonment for a period not exceeding six months,

for unlawful possession of arms in districts ordered by Government to be disarmed. He also proposed that it should be lawful to inflict corporal punishment in cases of non-payment of fines imposed under the provisions of Sections XXII and XXV of the Arms Act No. XXVIII of 1857. The former of these Sections provided imprisonment with or without hard labor for a term not exceeding two years, and a fine not exceeding five thousand Rupees, for willfully neglecting to give notice of possession of ammunition in certain cases; and the latter provided imprisonment with or without hard labor for a term not exceeding two years, in addition to any other penalty which might be awarded under the Act, for not producing or for concealing arms or ammunition when search was made. Now, the question was, ought persons convicted under these Sections to be imprisoned if they did not pay the fine imposed? The Council had been told by the Chief Commissioner of the North-Western Provinces that it would be impossible to carry out these provisions in those Provinces unless corporal punishment were allowed to be inflicted in lieu of, or in addition to, fine and imprisonment. If it would be impossible to carry out these provisions in the North-Western Provinces unless corporal punishment were allowed, it would be equally impossible to carry out the provisions of Section VIII of Act XI of 1857 in any district which the Government might order to be disarmed. If the Government should think it right, under the provisions of Act XI of 1857, to prohibit the possession of arms in certain parts of the country—and he thought that it would be necessary to do so—it would be almost impossible to imprison every one who neglected to pay a fine imposed upon him for endeavoring to evade the law. The question, therefore, resolved itself into this—were such offenders to go unpunished, or was corporal punishment to be permitted, under the circumstances? He did not contend that corporal punishment was absolutely a proper punishment for refusing to deliver up arms, or for carrying them contrary to law: but under the circumstances stated by the Chief Commissioner of the North-Western Provinces, he thought that corporal punishment ought to be permitted in such cases. For the same

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reason, he thought that it would be better to authorize the infliction of corporal punishment in default of payment of small fines in certain cases, than to overcrowd the jails, or to inflict imprisonment, when they had not the means of carrying out a proper system of prison-discipline. Whether the Council would agree with him in this opinion, he did not know; but, in moving for the second reading of the Bill, he did not ask them to pledge themselves to the details of it. All he asked them to declare was that corporal punishment was a proper punishment to inflict in some cases, without committing themselves to any opinion as to what those cases were.

In conclusion, he would repeat that he did not think it necessary to take this Bill out of the ordinary rules, and to refer it to a Select Committee in order that they might say, before it was published, whether it went too far in some cases, or not far enough in others. That would be the duty of the Select Committee, to whom the Bill would be referred; and he thought it was not necessary that, previously to publication, the Bill should be put into such a shape that the Council might be prepared to say to the world—"Here is the Bill as we have finally determined to pass it." He should, therefore, press his Motion for the second reading.

THE CHIEF JUSTICE said, he wished, before the vote was taken, to remind Honorable Members that this discussion had been rather irregularly mooted. He did not think it was right to put it to any Honorable Member—"Will you consent to a certain something being done to the Bill after the second reading? If you will not, I shall vote against the second reading." The second reading of a Bill ought to be determined independently of any thing to be done to it at a subsequent stage. The question whether this Bill should now be read a second time, and that which the Honorable Member for Madras had raised, were two distinct questions, and ought to be determined on their own respective merits. The latter should be raised by a specific Motion, or by way of amendment on the Motion to refer the Bill to a Select Committee.

MR. PEACOCK said, he had only spoken in reply to the question which

the Honorable Member for Madras had asked.

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

ESCAPED OFFENDERS.

MR. PEACOCK moved that the Bill "for the punishment of certain offenders who have escaped from Jail, and of persons who shall knowingly harbour such offenders" be now read a second time.

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

DELHI AND MEERUT.

MR. PEACOCK moved that the Standing Orders be suspended to enable him to proceed with the Bill "to remove from the operation of the general Laws and Regulations the Delhi Territory and the Meerut Division, or such parts thereof as the Governor-General in Council shall place under the administration of the Chief Commissioner of the Punjab."

THE CHIEF JUSTICE seconded the Motion, which was then agreed to.

MR. PEACOCK moved that the above Bill be referred to a Select Committee consisting of the Vice-President, Mr. Harington, and the Mover, with an instruction to report thereon after six weeks.

Agreed to.

ESCAPED OFFENDERS.

MR. PEACOCK moved that the Standing Orders be suspended to enable him to proceed with the Bill "for the punishment of certain offenders who have escaped from Jail, and of persons who shall knowingly harbour such offenders."

THE CHIEF JUSTICE seconded the Motion, which was then agreed to.

MR. PEACOCK moved that the above Bill be referred to a Select Committee consisting of Mr. Currie, Mr. Harington, and the Mover, with an instruction to report thereon within a fortnight.

Agreed to.

CORPORAL PUNISHMENT.

MR. PEACOCK moved that the Standing Orders be suspended to enable

him to proceed with the Bill "to authorize the infliction of corporal punishment in certain cases."

THE CHIEF JUSTICE seconded the Motion, which was then agreed to.

MR. PEACOCK moved that the above Bill be referred to a Select Committee consisting of the Chief Justice, Mr. Elliott, Mr. Currie, Mr. Harington, and the Mover, with an instruction to report thereon after six weeks.

MR. ELIOTT moved as an amendment that the words "with an instruction to report thereon after six weeks" be left out of the question, and that the words "with a special instruction to submit forthwith a preliminary Report suggesting any alterations which it may deem expedient to make in the Bill previously to its publication in the *Calcutta Gazette*" be substituted for them. Though this was not an ordinary course, it certainly was not an irregular one, because it was prescribed in the Rules for Bills the general principles of which required to be maturely considered before publication. He thought this a case requiring such consideration. His objection to the Bill was that it was general and permanent, whereas he thought it should be local and temporary. It did not appear to him that it would be competent to any Member of the Select Committee to say in Committee—"I object to the Bill, because it is general and permanent, and I propose that it be altered so as to be made local and temporary," for that would be an alteration of principle. He (Mr. Elliott) agreed that the principle of corporal punishment should be adopted in certain cases; and he had intended to move as an amendment in the Penal Code that a provision making it lawful should be introduced into it. He was prepared to go farther in the application of the principle than this Bill went. He would apply it to other cases besides those of simple theft. But he would not, as at present advised, extend it, as this Bill did, to such petty offences as abusive language and inconsiderable assaults; and he thought that the proper time for considering the whole question of the expediency of adopting the principle of corporal punishment would be when the Penal Code should come up for consideration. Was there any necessity for authorizing corporal pun-

ishment over the whole of India while the Penal Code remained still unsettled? The necessity appeared to be only in the North-Western Provinces, and for special causes. These causes did not exist in Bengal, or at Madras, or at Bombay. The Preamble of the Bill said:—

"Whereas, in consequence of the destruction of the jails in many parts of India and the consequent want of prison-discipline, it is expedient to substitute corporal punishment for imprisonment in cases of simple theft."

Was the destruction of jails in the North-Western Provinces any reason for taking up the whole question of corporal punishment now? He said it was not. The Honorable and Learned Mover of the Bill, indeed, had quoted the Preamble as affirming generally that "it was expedient in certain cases that offenders should not be imprisoned for the non-payment of small fines," without reference to the destruction of the jails as a reason for it; but in his own Statement of the Objects and Reasons of the Bill, he had explained that

"It has been found desirable in the present state of the Country, and especially in the absence of the means of enforcing proper prison-discipline, in consequence of the destruction of the Jails in many of the Districts in the North-Western Provinces and other parts of India, to allow corporal punishment in case of the non-payment of fines imposed under the Sections above referred to, and also in the other cases mentioned in the Bill."

He was not prepared, at present, to go the length this Bill would go; he thought the subject required far more consideration than had been given to it; he considered that it would not be competent to the Select Committee to limit the Bill as he would limit it; and therefore he moved his amendment.

MR. CURRIE said, if the Honorable Member for Madras was correct in his belief that it would not be competent to the Select Committee to whom this Bill would be referred in the ordinary course to make the alteration—that was to say, to limit the operation of the Bill in point of time and locality, instead of leaving it, as it stood now, a permanent and general measure—then, he should certainly vote that the Select Committee be instructed to make a preliminary Report. He had understood the Honorable and learned Chief Justice to take the same objection that the Honorable Mem-

ber for Madras had taken, and to intimate an opinion that it might probably be advisable to limit the operation of the Bill; and he (Mr. Currie), in speaking on the Motion for the second reading, had stated that if Members consented to it, they must be understood as reserving their opinion upon that point. But if the functions of the Select Committee to whom the Bill should be referred would be so limited that it would not be competent to the Committee to alter it from the permanent and general measure it now was, to a temporary and local one, if it should consider such alteration expedient, he should vote for a preliminary Report prior to publication.

He would add that the Honorable and learned Mover of the Bill had removed one objection of his in reference to the second reading, when he had stated that he did not propose to have the Bill published; for he should be sorry to see it published as it now stood.

THE CHIEF JUSTICE said, it appeared to him that Honorable Members were starting at a shadow of their own imagination in supposing that it would not be competent to the Select Committee to limit the Bill as the Honorable Member for Madras would limit it, if they should consider it expedient to do so. Suppose this were the ordinary case of a Bill to be published for three months in the *Gazette*, and that during that period, representations were received from a particular Presidency or particular Districts shewing that it was, for reasons affecting such Presidency or such Districts, inapplicable to them. Surely, if the Select Committee felt convinced that these representations were well founded, it would have power to insert a Section limiting the operation of the Bill as desired, subject, of course, to the opinion of the Council at large when it went into a general Committee on the Bill. He had not understood the Honorable and learned Mover of this Bill to say that he did not propose to publish it.

MR. PEACOCK said, he did not propose to do so at first; but looking at the discussion which had taken place, he thought it right that the Bill should be published for six weeks.

THE CHIEF JUSTICE said, it had occurred to him that, assuming that the

Bill was to be published, that was rather a reason against the course proposed by the Honorable Member for Madras, because it might be desirable, with reference to the reasons on which the Bill was founded, that it should be got through as soon as might conveniently be. If it were to be referred to the Select Committee for a special Report, and that Report were to be followed by the publication of the Bill for a period of time sufficient to admit of opinions and suggestions being sent in by the Public, the passing of the Act would be delayed to a certain extent. It seemed to him that, after the discussion which had taken place to-day, and which would go forth to the world, it would clearly appear that Honorable Members, in assenting to the second reading, were not pledged to the adoption of the Bill as a general and permanent measure; and that, therefore, there could be no objection to publishing the Bill in its present form, but that, on the contrary, that very publication would elicit opinions which might guide the Council in determining the question of limiting its operation.

MR. PEACOCK said, the Standing Orders provided that, upon a Motion for the second reading of a Bill, a debate might be taken on the general merits and principles of the Bill; and that if the motion was carried, the Bill should be referred to a Select Committee. But he apprehended that any Member of the Select Committee, or any Member of the Council, who might vote in favor of the second reading, would not be precluded by his vote from changing his mind regarding even the general merits and principles of the Bill, and moving to insert such amendments in it as might, on further consideration, appear to him to be necessary, before it was read a third time and passed. It was very erroneous and unsafe, in his judgment, to suppose that he would be so precluded. The second reading of a Bill implied that the Council generally had no objection to the leading principles of the Bill. But if any Member should afterwards, in consequence of opinions elicited by the publication of the Bill, or for any other cause, change his opinion, there could be no reason why he should not present his views to the Council, and propose any amendments in the Bill which he might consider ne-

cessary. It was always more convenient that a Member should state his objections to the leading principles of the Bill at the time of the second reading. But there was nothing in the Standing Orders to prohibit him from stating his objections either to the principle or to the details of a Bill at any other stage. If the Select Committee on a Bill could not alter the principle of the Bill because its Members had voted for the second reading, a Member who brought in a Bill could not move any amendment in it which was opposed to its general principle although he might think it right to do so upon reflection, or after considering the opinions of others more intimately acquainted with the subject.

Under these circumstances, and especially for the reasons which had been adduced by the Honorable and Learned Chief Justice, it appeared to him that it would be mere waste of time to refer the Bill to a Select Committee for a preliminary Report previous to publication; and he should therefore press his original Motion.

The amendment was then put and negatived, and the original Motion was carried.

✓The Council adjourned.

measures

Saturday, January 16, 1858.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*,
in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major Genl. J. Low,	Hon. Sir A. W. Buller, and
Hon. B. Peacock,	H. B. Harrington, Esq.
D. Elliott, Esq.,	

COTTON-FRAUDS (BOMBAY).

MR. LEGEYT moved the second reading of the Bill "for the better suppression of frauds in the Cotton-trade in the Presidency of Bombay."

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

IMPRESSMENT OF LABORERS, &c.

MR. PEACOCK moved that the Standing Orders be suspended to enable him to bring in and proceed with a Bill 'to authorize the impressment of artisans

The Chief Justice

and laborers for the erection of Buildings for the European Troops in India, and for works urgently required for military purposes."

GENERAL LOW seconded the motion, which was then carried.

MR. PEACOCK then moved the first reading of the Bill. He said, in the early part of this week, he had received a letter from the Lieutenant-Governor of the Central Provinces shewing the necessity which existed for securing compulsory labor for the erection of buildings for European troops in India. At Benares, buildings were necessary, though, according to the statement of His Honor the Lieut.-Governor, existing buildings to a great extent might be made available there. Barracks had to be provided at Mirzapore, for one Regiment; at Ghazepore, for another; and at Allahabad, for four Regiments, and five companies of European Artillery. The buildings, to be of any use, must be constructed within the next three months, and it was almost impossible that this could be done unless some means were provided for obtaining compulsory labor. No return had been received as to the progress which had been made in the North-Western Provinces. No doubt, measures similar to those proposed by this Bill would be required there. The subject had been laid before the Governor-General in Council. His Lordship in Council concurred in the views of the Lieutenant-Governor and considered that some means should be provided for securing compulsory labor. No one who knew the Lieutenant-Governor of the Central Provinces, or had listened to his speech on the Bill to amend the law regarding the impressment of carriage and supplies for Troops, could believe that he was a person to propose such a measure unless he considered it to be absolutely necessary. With respect to carts and supplies, it might be said that Government ought to provide them without impressment with the carriage necessary for troops on their march under ordinary circumstances; but no Government could have anticipated what had taken place in India during the last few months, or could have had in readiness barracks for the accommodation of the forty thousand additional European soldiers which it had been necessary to