

Saturday, May 8, 1858

**LEGISLATIVE COUNCIL
OF
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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

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1858.

Aye 1.
Mr. Ricketts.

Noes 7.
Mr. Harington.
Mr. Currie.
Mr. LeGeyt.
Mr. Peacock.
Sir James Outram.
Mr. Grant.
The Chairman.

So the motion was negatived.

MR. RICKETTS moved that, in the concluding part of the Section—which declared that all proceedings of a Collector under the Section should be subject to the control and revision of “the superior Revenue Authorities”—the words “Commissioner of Revenue whose orders shall be final” be substituted for the words “superior Revenue Authorities.”

After some conversation, the Motion was by leave withdrawn.

MR. RICKETTS then moved that the words “superior Revenue Authorities” at the end of the Section be left out, and the words “next superior Revenue Authority whose order shall be final” be substituted for them.

The amendment was agreed to, and the Section then passed.

Sections XII to XIV, and the Preamble and Title, were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

NATIVE PASSENGER SHIPS.

On the Order of the Day for a Committee of the whole Council on the Bill “for the regulation of Native Passenger Ships” being read, it was moved by Mr. LeGeyt that the consideration of the Bill be postponed.

Agreed to.

AUTHENTICATION OF GOVERNMENT STAMPS.

MR. PEACOCK moved that Sir James Outram be requested to take the Bill “to provide for the authentication of Stamped Paper issued from the Stamp Office in Calcutta” to the President in Council, in order that it might be submitted to the Governor General for his assent.

Agreed to.

The Council adjourned.

Saturday, May 8, 1858.

PRESENT :

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

Hon. Major General	P. W. LeGeyt, Esq.,
Sir James Outram,	E. Currie, Esq.,
Hon. H. Ricketts,	and
Hon. B. Peacock,	H. B. Harington, Esq.

The following Message from the Governor General was read by the Vice-President:—

REGULATION OF PORTS (FORT ST. GEORGE).

MESSAGE No. 139.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 17th Instant, entitled “A Bill for the Regulation of certain Ports within the Presidency of Fort St. George.”

By order of the Right Honorable the Governor General

G. F. EDMONSTONE,
Secy. to the Govt. of India,
with the Governor General.

ALLAHABAD;
The 27th April 1858. }

MERCHANT SEAMEN.

THE CLERK brought under the consideration of the Council a Petition of the Peninsular and Oriental Steam Navigation Company against Section LXVI of the Bill “for the amendment of the law relating to Merchant Seamen.” The Petition objected to the space allowed to lascars, and prayed that, before the passing into law of so much of the Bill as related to providing the number of cubic feet of accommodation to all Seamen, Europeans or Asiatics, indiscriminately, the Council would allow the Petitioner to be heard by himself, his Counsel, agents, and witnesses, either before the Select Committee on the Bill, or before a Committee of the whole Council.

MR. CURRIE said, the case was one in which there did not seem to be the slightest necessity for the Petitioner to be heard by Counsel, even if it were usual for parties to be so heard. If the

Superintendent of the Peninsular and Oriental Company had stated in the Petition what he desired should be done, the Select Committee on the Bill would report his propositions to the Council. At present, he (Mr. Currie) should only move that the Petition be printed and referred to the Select Committee.

THE VICE-PRESIDENT said, he thought that this was all that was necessary at present. The Petition stated that the vessels of the Company had been built expressly to meet the requirements of the existing law in respect of accommodation for lascars; and, assuming that the Bill, in requiring larger space to be provided, would so affect the interests of the Company that the case was one in which the Superintendent of the Company might be heard by Counsel under No. XXIX of the Standing Orders, it by no means followed that, when the Select Committee on the Bill read the Petition, they would not see the propriety of making the alteration proposed. If they did not, the Petition might then be referred to the Standing Orders Committee for the purpose of considering and reporting whether it came under the Standing Order to which he had referred.

The question was put, and agreed to.

ARMY AND STATE OFFENCES: MUTINY AND DESERTION.

On the Order of the Day being read for the first reading of a Bill "to continue in force for one year Act XIV of 1857 (for the trial and punishment of certain offences relating to the Army, and of offences against the State), and Act XVII of 1857 (for the apprehension and trial of Native Officers and Soldiers for Mutiny and Desertion)"—

MR. PEACOCK said, he proposed to bring in a Bill for the purpose of continuing for one year longer Act XIV of 1857 and Act XVII of 1857. The Council were aware that, when these Acts were originally passed, it was declared that they should continue in force for one year only. Act XIV would expire on the 6th, and Act XVII on the 20th of June next. Although these Acts were not so absolutely necessary now as they were at the time they were passed, it was not desirable to weaken the hands of the Govern-

Mr. Currie

ment at the present moment by allowing them to expire. In point of fact, numerous trials were now going on under them, in Delhi and other places. He had in his hand a letter from the Chief Commissioner of the Punjab, under whose control the Delhi territory was now placed, in which that Officer said—

"It might have been anticipated that at Delhi, of all other places, these prisoners"—meaning prisoners charged with offences against Acts XIV, XVI, and XVII of 1857—"would be numerous; and, accordingly, although some five hundred have been disposed of summarily, there are some fifteen hundred men awaiting trial; and although upwards of one hundred were tried last week by the Commission, yet the aggregate of prisoners has not been diminished, owing to the number of new arrests."

It appeared to him (Mr. Peacock) necessary, therefore, that Act XIV should be continued if only for the purpose of carrying on the trial of these cases.

With respect to Act XVI, it would not expire as early as Act XIV, and he did not think it necessary that it should be continued in its present form. On Saturday next, he proposed to bring in a Bill to continue it in an amended form.

Act XIV of 1857 related to the offence of seducing or endeavoring to seduce any Officer or Soldier in the service of the East India Company from his allegiance to the British Government, or his duty to the East India Company, and rendered the offender liable either to the punishment of death, or of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years; and also to forfeiture of all his property and effects. It further authorized the Governor General in Council, by an Order in Council, to empower any General or other Officer in command of Troops to appoint a Court Martial for the trial of any such offender. Another important provision of the Act was Section VII, which enacted as follows:—

"It shall be lawful for the Governor General in Council, or for the Executive Government of any Presidency or place, or for any person or persons whom the Governor Gene-

ral in Council may authorize so to do, from time to time to issue a Commission for the trial of all or any persons or person charged with having committed within any district described in the Commission, whether such district shall or shall not have been proclaimed to be in a state of rebellion, any offence punishable by Sections I and II of Act XI of 1857, or by this Act, or any other crime against the State, or murder, arson, robbery, or other heinous crime against person or property."

By Section VIII, the Commissioner or Commissioners appointed might hold a Court for the trial of persons guilty of these offences. As matters settled down, it would be advisable that Courts held under a Commission should consist of more than one Commissioner, especially for the trial of capital offences; but he did not propose to tie up the hands of the Executive Government by introducing any new provision into the Act requiring that every such Court should consist of more than one Commissioner. He thought that the more expedient course would be to leave it to the Executive Government to lay down rules upon the subject. The Chief Commissioner of the Panjaub had already laid down rules upon the subject in the Delhi territory. He had directed that, in the Delhi district, not less than three Officers should sit to try persons charged with offences punishable with death, or with transportation for life, or with a more lengthened term of imprisonment than three years; and in other parts, he had directed that two Officers at least should sit. He had appointed the Magistrate and the Joint Magistrate to act as Commissioners. It might be necessary in many parts of the country, where troops were now marching accompanied by Civil Officers, and in cases of emergency, that a single Officer should have power to try offenders even in cases involving the punishment of death or of lengthened imprisonment; and he therefore thought that it would be better to leave it to the Executive Government to appoint one, two, or more Commissioners in each instance, as the necessities of the case might require, than to lay down any precise rule upon the subject by the Act.

Act XVII of 1857 authorized Sessions Judges and others to try Officers and Soldiers belonging to the Native Army,

who were guilty of Mutiny and Desertion; and also empowered the Executive Government to issue Special Commissions for the trial of such offenders. It might not be so necessary at the present moment as it was when the Act was passed, to authorize Civil Officers to try persons guilty of these offences; but he still thought it advisable that the Act should be continued. The Council were probably aware that Mr. Wilson and other Officers had been appointed in the North-Western Provinces for the purpose of tracing out and trying mutineers. If this Act were not continued, the functions of that Officer would altogether be suspended.

Act XVI of 1857 subjected all persons who were guilty of any of the heinous offences described in it, to the punishment of death, or of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years; and also to forfeiture of all their property and effects. At the present time, he did not consider it necessary to continue the Act, so far as it authorized the punishment of death for some of the offences named therein; and he, therefore, proposed to bring in a Bill at the next Meeting of the Council to amend it in this respect, and extend its duration in that modified form.

That Act also allowed persons guilty of the offences specified therein, to be tried under Special Commissions. He did not see any objection to that provision being continued. The object of the Government was that all offences, except offences against the State, should as soon as possible be referred to the ordinary Civil tribunals; but at the same time, cases might arise in which it would be necessary to issue Special Commissions. It was only very lately that the Governor General had issued a direction to the Commissioner of Meerut in which His Lordship stated that the time had now arrived when, from the improving condition of the country, the functions of Special Commissioners might with advantage be restricted to the trial of offences against the State. He did not think that there was any objection to continuing to Government the power of appointing Special Commissioners for the trial of offences against Act XVI of 1857, so that it might be used if any emergency should arise

He felt certain that they would not exercise it, except in emergent cases in which it might appear necessary to do so.

With these observations, he begged to move the first reading of the Bill to continue Act XIV of 1857 and Act XVII of 1857 for a further term of one year.

The Bill was read a first time.

STAMP DUTIES (BENGAL).

MR. PEACOCK moved the first reading of a Bill "to amend Regulation X. 1829 of the Bengal Code relating to the collection of Stamp Duties." He said, by a recent Petition from the Rajah of Burdwan, the attention of the Council had been called to a General Rule contained in Schedule A. Regulation X 1829, which declared as follows:—

"If any Deed, Instrument, or Document, specified in this Schedule, shall not be contained in one sheet or piece of paper or other material, it shall suffice that one sheet shall bear the stamp, provided that the signatures or seals of the parties and witnesses be thereupon."

In the case alluded to by the Rajah of Burdwan, it appeared that a Deed was brought forward in support of a claim, in which the names of the witnesses were not written on the sheet which bore the stamp. The names of the parties to the Instrument were on that sheet, but those of the witnesses were on another. The Rule in question required that the signatures of both the parties to a Deed and of the witnesses should be written on the same sheet on which the stamp was affixed. Native Deeds were usually attested by a number of witnesses; and there might be many cases in which it would be almost impossible to comply with the Rule. There might be no room in the sheet bearing the stamp for the signatures of all the witnesses; and if the signatures of some of them should be written on another paper, the Deed would be useless. A decision of Sir Robert Barlow was referred to in the Petition, in which that learned Judge had held that the circumstance of the signatures of the witnesses not being upon the sheet bearing the stamp, ought not to invalidate the Deed. He (Mr. Peacock), however, believed that the decision of

Mr. Peacock

the Courts now was that the rule laid down in Regulation X. 1829 was so strict that no Deed in which it had not been complied with could be given in evidence. Probably, that was the proper construction; but, be that as it might, he believed that the ruling of the Courts had been as he had just stated it. He was not aware of the precise object of the Rule, nor did he see that any facility would be afforded for frauds against the Revenue if it were abolished. He found no such Rule in the Stamp Act relating to Calcutta. The English Stamp Acts did not require that the *ad valorem* stamp upon conveyances should be impressed upon the sheet which bore the names of the parties to the Instrument, or of the witnesses; and he was not aware that any fraud had been attempted in England in the absence of such a Rule, or that any could be attempted here if the rule in Regulation X. 1829 were abolished. He thought it advisable that it should be abolished; and that Deeds which bore the full Stamp-duties required by Government, should be admissible in evidence even though the seals or signatures of the parties thereto and of the witnesses should not be upon the sheet on which the stamp was impressed. The Bill which he now introduced provided for that object; and he begged to move its first reading.

The Bill was read a first time.

RESTORATION OF POSSESSION OF LANDS (N. W. P.)

MR. HARRINGTON moved that the Bill "to facilitate the recovery of land and other real property, of which possession may have been wrongfully taken during the recent disturbances in the North-Western Provinces of the Presidency of Bengal" be now read a third time and passed.

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

NATIVE PASSENGER SHIPS.

MR. LEGEYNT moved that the Council resolve itself into a Committee on the Bill "for the regulation of Native Passenger Ships;" and that the Committee be instructed to consider the Bill in the amended form in which the Se-

lect Committee had recommended it to be passed.

Agreed to.

Section I was passed after a verbal amendment.

Sections II to X were passed as they stood.

Sections XI and XII were passed after verbal amendments.

Sections XIII to XIX were passed as they stood.

Section XX provided that "nothing in this Act contained" should apply to Her Majesty's or the East India Company's Ships of War, or to ships under contract with the Government of any European State, or to sea-going steam vessels conveying public mails under a contract.

MR. LEGEYT moved that the words "the foregoing provisions of" be inserted after the words "Nothing in" and before the words "this Act" in the first line of the Section. He said, he moved this amendment because, as appeared from a communication from the Government of Bombay, which had been printed as No. 8 of the Further Papers annexed to the Bill, a discussion had arisen in that Presidency in connexion with this Bill, relative to the steamers under contract with Government to convey the public mails between Bombay and Kurrachee; and it appeared to be desirable that, though the provisions preceding this Section, which were intended particularly for ships conveying Pilgrims, should not extend to the class of vessels mentioned here, the provisions contained in certain of the subsequent Sections should be made applicable to them.

The amendment was agreed to, and the Section then passed.

Section XXI (which provided that Certificates should be furnished to steam vessels intended to carry passengers on coasting voyages before they proceeded on such voyages) was passed as it stood.

Section XXII prescribed how and after what enquiries the Certificates were to be granted.

MR. LEGEYT said, the communication to which he had just referred would have shewn Honorable Members that the Commissioner of Scinde had laid some stress on steamers carrying passengers on coasting voyages being provided with boats for the safety of passengers in cases of accident. It appeared to him (Mr. LeGeyt) that it

was very proper and desirable to provide for that object by this Bill; and he should therefore move that the words "and properly equipped with boats and otherwise" be inserted after the words "that such Steam-Vessel is sea-worthy" in the 14th line of the Section.

The amendment was agreed to, and the Section then passed.

Sections XXIII and XXIV were passed as they stood.

Sections XXV and XXVI were transposed.

Sections XXVII to XXIX were passed as they stood.

Section XXX was passed after a verbal amendment.

Sections XXXI and XXXII were passed as they stood.

Section XXXIII was passed after amendments.

On the Motion of Mr. Peacock, the following new Section was added to the Bill:—

"This Act shall commence and take effect from and after the 1st day of August 1858."

Agreed to.

The Preamble was passed as it stood.

The Title was passed after the addition of the words "and of Steam-Vessels intended to convey passengers on coasting voyages."

The Council having resumed its sitting, the Bill was reported.

CRIMINAL PROCEDURE (BENGAL).

MR. CURRIE moved that a communication received by him from the Bengal Government, on the subject of preventing hindrance to justice sometimes occasioned by a defect of medical evidence in criminal trials, be laid upon the table, and referred to the Select Committee on the Bill "for extending the jurisdiction of the Courts of Criminal Jurisdiction of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction."

Agreed to.

RESTORATION OF POSSESSION OF LANDS (N. W. P.)

MR. HARRINGTON moved that Mr. Peacock be requested to take the Bill "to facilitate the recovery of land and

other real property, of which possession may have been wrongfully taken during the recent disturbances in the North-Western Provinces of the Presidency of Bengal" to the President in Council, in order that it may be submitted to the Governor General for his assent.

Agreed to.

MERCHANT SEAMEN.

MR. LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "for the amendment of the law relating to Merchant Seamen."

Agreed to.

The Council adjourned.

Saturday, May 15, 1858.

PRESENT :

The Honorable the Chief Justice, <i>Vice-President</i> , in the Chair.	
Hon'ble J. P. Grant,	E. Currie, Esq.,
Hon'ble Major General Sir James Outram,	H. B. Harrington, Esq.
Hon'ble H. Ricketts,	and
Hon'ble B. Peacock,	H. Forbes, Esq.
P. W. LeGeyt, Esq.,	

NEW MEMBER (MADRAS).

MR. FORBES was duly sworn, and took his seat as Legislative Councillor of the Council of India for the Presidency of Fort St. George.

REMOVAL OF PRISONERS.

MR. CURRIE moved the first reading of a Bill "to make further provision for the removal of Prisoners." He said, the power of removing persons under sentence of imprisonment from one place of confinement to another had always existed, though it had not always been vested in the same authority. By Regulation LIII. 1803, the Court of Nizamut Adawlut was declared competent to order the removal of all convicts under sentence of imprisonment to any jail or district within the Company's possessions in which it might be thought proper to keep or employ them during the period of their respective sentences, although no specific sentence of banishment might have been passed

Mr. Harrington

against them. Under this Regulation, therefore, the Sudder Court had the power of ordering the removal of a prisoner beyond the bounds of the Presidency to which the Court's jurisdiction was limited, provided the place of removal was within the Company's possessions. The Regulation had been virtually superseded by Act VII of 1850, which provided that—

"When any person is under sentence of imprisonment within the territories under the Government of the East India Company, or any other authority other than that of one of the Supreme Courts of Judicature established by Royal Charter, the Governor or Governor in Council, or other person administering the Government of the Presidency or place, may order the removal of such prisoner from the prison or place in which he is confined, to any other public prison or place of confinement within the same Presidency or Government."

Thus, the power of removal which was formerly vested in the Sudder Court, was transferred to the local Governments—with this restriction, however, that the removal must be to some public place of confinement within the same Presidency or Government.

The Lieutenant-Governor of Bengal, therefore, under the law as it now stood, might remove prisoners to Arracan; but he could not remove them to Moulmein, or any other place beyond the limits of the Bengal Presidency.

In the late troubles, when the Dinapore troops broke out into mutiny, and the prisoners had been liberated by the mutineers and rioters from two of the Jails in the Behar Division, it became necessary to consider what should be done with the prisoners at Deeghur and other places, which were or might be threatened by the rebels. It was not necessary for him to remind the Council that, when the mutineers and rebels obtained any temporary success, their first step always was to break open the jails, and liberate the prisoners, with the view of increasing the confusion; and it was, therefore, obviously the duty of Government to render such an occurrence as little injurious as possible, by removing the worse description of criminals, whose liberation, in the event of a disturbance, would be sure to aggravate and prolong it.