

Saturday, December 11, 1858

**LEGISLATIVE COUNCIL  
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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

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what course would be taken? He confessed he was unable to answer that question. He thought it was to be regretted that opportunity had been given for the occurrence of such a contingency.

MR. GRANT said, perhaps if the Honorable and learned Judge would put the same question to himself or to any Member of the Executive Government at the next meeting, he might have such information as could be obtained on the subject from the Government records.

The Council adjourned.

Saturday, December 11, 1858.

PRESENT :

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

Hon'ble J. P. Grant,	P. W. LeGeyt, Esq.,
Hon'ble Lieut.-Genl.	E. Currie, Esq.,
Sir J. Outram,	H. B. Harington, Esq.,
Hon'ble H. Ricketts,	and
Hon'ble B. Peacock,	H. Forbes, Esq.

PILOT COURTS (BENGAL).

THE CLERK brought under the consideration of the Council a Petition of Mr. John Higgins, Branch Pilot in the Bengal Pilot Service, against the Bill "to amend the law for the trial of Officers of the Bengal Pilot Service for breach of duty."

MR. CURRIE moved that the above Petition be referred to the Select Committee to be appointed on the Bill.

Agreed to.

CANTONMENT JOINT-MAGISTRATES.

MR. HARRINGTON presented the Report of the Select Committee on the Bill "for conferring Civil Jurisdiction in certain cases upon Cantonment Joint-Magistrates, and for constituting those Officers Registers of Deeds within the limits of their respective jurisdictions."

NABOB OF SURAT.

MR. LEGEYT moved the first reading of a Bill "to amend Act XVIII of 1848 (for the administration of the

Estate of the late Nabob of Surat, and to continue privileges to his family)." He said, the object of this Bill was to modify Act XVIII of 1848, so as to give a right of appeal to the Judicial Committee of the Privy Council from any order of the Governor of Bombay in Council made under that Act. The Act (XVIII of 1848) was passed, in order to settle the family disputes of the late Nabob of Surat, who died in 1842. During the late Nabob's lifetime a law existed, by which he and his family enjoyed an exemption from the jurisdiction of the Civil and Criminal Courts of the East India Company. The exemption ceased on his death, and his heirs and the other members of his family were very desirous that it should be continued to them. In 1848 an Act was passed, giving the Governor of Bombay in Council the power

"To act in the administration of the property, of whatever nature, left by the late Nabob of Surat, in regard to the settlement and payment of the debts and claims standing against the estate of the said late Nabob at the time of his death, and to make distribution of the remaining property among his family;"

the Act further declaring that

"No act of the said Governor of Bombay in Council, in respect to the administration to, and distribution of, such property, from the death of the said late Nabob, shall be liable to be questioned in any Court of Law or Equity."

In execution of the power thus conferred upon it, the Government of Bombay appointed the Agent to the Governor at Surat to investigate all claims on the Estate of the late Nabob, and to report thereon to the Government. He did so, and reported to Government the manner in which he proposed that the property should be distributed, which was confirmed by the Government of Bombay. Some of the immediate heirs, however, were discontented with his award, and appealed to the Governor in Council for a reconsideration of the Agent's decision. Their prayer was refused, and they thereupon presented a petition of appeal to Her Majesty in Council. The Judicial Committee of the Privy Council, after

hearing arguments on both sides, delivered judgment as follows:—

“Their Lordships are of opinion, however, that the intention of this Act was not to create a Court; that the intention of the Act was to delegate, either arbitrarily, or subject to certain limitations of discretion, the administration and distribution of the Nahoo's property, but in such a way that the administration and distribution should not be judicially questioned. The expression, it will be observed, is not ‘shall be liable to be questioned in any other Court of Law or Equity,’ but ‘shall be liable to be questioned in any Court of Law or Equity.’ It may seem an anomalous and extraordinary proceeding to vest powers of this description, not liable to be checked by any ordinary course or powers of law, in any individual or in any body, but the Indian Legislature had power over the property; they might, in the exercise of that power which is inherent in Legislation, have given the whole property at once to any stranger, or devoted to any purpose, and whether with moral justice or not, is not the question. Instead of doing that, they do what to their Lordships appears substantially the same thing; they vest the power of dealing with it in a particular individual or a particular body, and declare that its acts shall not be liable to be questioned in any Court of Law or Equity.

“Their Lordships, therefore, consider that, in the ordinary exercise of their functions, they are without jurisdiction to interfere. They are of opinion, that the proceeding of the Governor of Bombay in Council has not been an act of a Court, Judge, or Judicial Officer within the meaning of the third Section of the Statute 3rd and 4th, Will. IV., C. 41, but has been the act of a person or body not in any sense Judicial, delegated and authorized to perform a particular function as to the responsibility for the exercise of which, or as to any appeal from that exercise, they were exempted by the Legislature which created them.”

Subsequently the Government of Bombay received further advice on the subject from England, and had forwarded to him, for the purpose of being brought before this Honorable Council, an opinion of Her Majesty's present Attorney-General and Solicitor-General, which stated as follows:—

“We are of opinion that, having regard to the obvious necessity that the matters referred to in the petition of Jafur Alee should, if brought before the Judicial Committee of the Privy Council, be heard by them in the presence of all the parties interested, the best mode by which to obtain the opinion of the Judicial Committee would be that pointed out in the letter of the India Board of the 19th of January 1857, namely, that the Court of Directors should instruct the Government of Bombay to take steps for procuring a modification of the

*Mr. Le Geyt.*

Act of 1848, so as to give a right of appeal to the Judicial Committee of the Privy Council from any order of the Governor of Bombay in Council made under that Act.”

This opinion was forwarded by the Honorable the Court of Directors to the Government of Bombay in a Despatch dated the 1st September last.

It was, therefore, expedient to seek for an alteration of the law from the Indian Legislature. He had, accordingly, prepared a Bill which proposed to repeal that portion of Section II of the Act of 1848 which barred the jurisdiction of the Courts; and to re-enact it with a modification. Accordingly Section III provided that the orders of the Governor in Council, made under Act XVIII of 1848, should, like orders made by Government in suits against the first-class Sirdars of the Deccan, under Regulation XXIX. 1827 of the Bombay Code, be open to appeal to Her Majesty in Council.

He proposed next Saturday to move the second reading of the Bill, and would consider, in the meantime, whether it would then be necessary to suspend the Standing Orders with a view to proceeding with the Bill forthwith.

The Bill was read a first time.

#### FRAUDULENT TRANSFERS AND SECRET TRUSTS.

MR. PEACOCK (in the absence of Sir Arthur Buller) postponed the first reading of a Bill for the prevention of Fraudulent Transfers of Property and of Secret Trusts.

#### STAMP DUTIES (BENGAL).

MR. PEACOCK postponed the motion (which stood in the Orders of the Day) for the third reading of the Bill “to amend Regulation X. 1829, of the Bengal Code (for the collection of Stamp Duties).”

#### MERCHANT SEAMEN.

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill “for the amendment of the law relating to Merchant Seamen;” 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.

Section IV defined the general business of Shipping Masters.

MR. CURRIE said, he had an amendment to propose in this Section. The Section was taken from the English Act, but somewhat abridged. In making the necessary alterations, certain words had inadvertently been omitted, which he thought it important to retain. The English Act made it the duty of Shipping Masters not only to superintend and facilitate the engagement and discharge of Seamen, but also "to provide means for securing the presence on board, at the proper times, of men who are so engaged."

He now moved that these words be added after the word "mentioned" in the 6th line of the Section.

The motion was carried, and the Section as amended then passed.

Sections V to XVI were passed as they stood.

Section XVII was passed after a verbal amendment.

Sections XVIII to XXX were passed as they stood.

Section XXXI prescribed rules regarding the production of agreements and certificates of competency or service for Foreign-going ships.

MR. CURRIE said, he had one or two amendments to propose in this Section, which had been suggested by the Governor of the Straits Settlement, in consequence of there being no Collectors of Customs at the Stations in that Settlement. He begged to move the substitution of the following words for the word "and" in the 33rd line of the Section:—

"Or if there be no Collector of Customs, to the Officer whose duty it is to grant a Port-clearance."

THE CHAIRMAN asked, what was the state of things in the Straits, since the Clause went on to say:—

"And if any such ship attempts to go to sea without a clearance, any such Officer may detain her until such certificate as aforesaid is produced."

Who was to detain her?

MR. CURRIE said, he apprehended that, in every Port, there was some Officer whose duty it was to grant Port-

clearances or documents of some kind, without which ships could not go to sea.

MR. GRANT said, that no Port-clearance was required at all in the Straits.

MR. PEACOCK suggested a general provision to the effect that, in places where there was no Collector of Customs, the duties imposed by the Act on Collectors might be performed by any Officer appointed by Government.

MR. CURRIE withdrew his motion, observing that the amendment was proposed by the Governor of the Straits Settlement, who ought to know what local circumstances required, and stating that he would make enquiries on the subject, and propose such amendments as he might find to be necessary before the third reading.

The Section was then passed as it stood.

Section XXXII was passed after an amendment.

Sections XXXIII to XXXVII were passed as they stood.

MR. CURRIE moved the introduction of the following Sections after Section XXXVII:—

#### ALLOTMENT OF WAGES.

"All stipulations for the allotment of any part of the wages of a Seaman during his absence, which are made at the commencement of the voyage, shall be inserted in the agreement, and shall state the amounts and times of the payments to be made. All allotment-notes shall be in forms sanctioned by the local Government, and shall be made for the benefit only of a relative of the Seaman or some Member of his family, to be named in the note, and shall be payable to the Shipping Master on account of such relative of the Seaman or Member of his family. Such allotment shall not, in any case, exceed one-third of the wages of the Seaman.

"The Owner or any Agent who has authorized the drawing of an allotment-note shall pay to the Shipping Master, on demand, the sums allotted by the note, when and as the same are made payable, unless the Seaman is shown in manner hereinafter mentioned to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid; and in the event of such sums not being paid to the Shipping Master on demand, the Shipping Master may sue for and recover them with costs. The Seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the Court or Magistrate, either by the official statement of the change in the Crew, caused by his absence, made and signed by the Master, as by this Act

is required, or by a duly certified copy of some entry in the Official Log-book, to the effect that he has died or left the Ship, or by a credible letter from the Master of the Ship to the same effect, or by such other evidence, of whatever description, as the Court or Magistrate trying the case considers sufficient to show satisfactorily that the Seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

"The Shipping Master, on receiving any such sum as aforesaid, shall pay it over to the person named in the allotment-note. All such receipts and payments shall be entered in a book, and all entries in the said book shall be authenticated by the signature of the Shipping Master, or his Deputy; and the said book shall be, at all times, open to the inspection of the parties concerned."

He said, the reasons for striking out the Sections relating to allotment of wages were stated at length by the Select Committee in their Report. They intimated at the same time that, possibly, it might be found advisable to replace them. The communications since received seemed to render it advisable that they should be replaced; or rather that provision should be made for the allotment of wages on the same principle as was provided for in the existing Local Act, the payment being made through the Shipping Master. The Sections, the introduction of which he had now to move, were taken partly from the Merchant Shipping Act 1854, and partly from the Local Act.

The Sections were severally agreed to. Sections XXXVIII to LIX were passed as they stood.

Section LX was passed after a slight amendment providing for the case of the Straits Settlement.

Sections LXI to LXIII were passed as they stood.

Section LXIV was passed after an amendment providing for the case of the Straits Settlement.

Sections LXV to CII were passed as they stood.

Section CIII was passed after an amendment.

Sections CIV to CXV, Tables A and B, and the Preamble and Title, were passed as they stood.

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

#### DRAINAGE OF CALCUTTA.

MR. GRANT said, on the last occasion a question had been put by the

*Mr. Currie.*

Honorable and learned Member who was absent to-day; on which he (Mr. Grant) had promised to obtain some information. It related to what had been done in the matter of the Drainage of Calcutta. The Honorable and learned Member had referred to the Report of the Messrs. Rendel, and the Honorable Member for Bengal, he believed, mentioned that it was expected immediately. He (Mr. Grant) had since learnt that a letter had been received by the last Mail, from which it appeared very probable that the Report in question was on board the steamer now expected.

He had promised to make some enquiry as to the expenditure of the money which had been set apart for the purpose from the proceeds of the House Rate. The following was the information which had been kindly furnished to him on this head:—

#### Drainage.

Collected and set apart specially for the purpose, up to 1st September 1858	...	2,35,600	0	0
Expended in Stock and Plant, Machinery, Brick-field, and Engineer's Establishment...	...	1,76,078	0	0
Balance in hand to meet the cost of further Machinery ordered out from England, making Bricks, and setting up Establishment	...	59,522	0	0

#### Water Supply.

Collected and set apart for 1857	...	30,000	0	0
Ditto for part of 1858	...	16,000	0	0
	...	46,000	0	0
Purchase of Land, Excavation of Tank, Ghats, and Railing in Chowringhee	...	35,000	0	0
Balance to be added to further Collections for a Tank in the Northern Division of the Town	...	11,000	0	0

#### PILOT COURTS (BENGAL).

MR. CURRIE moved that the Bill "to amend the law for the trial of Officers of the Bengal Pilot Service for breach of duty" be referred to a Select

Committee, consisting of Mr. Grant, Sir James Outram, Mr. Peacock, and the Mover.

Agreed to.  
The Council adjourned.

*Saturday, December 18, 1858.*

**PRESENT :**

The Hon'ble J. P. Grant, in the Chair.

Hon'ble Lieut. Genl.	P. W. LeGeyt, Esq.,
Sir J. Outram,	H. B. Harrington, Esq.,
Hon'ble H. Ricketts,	and
Hon'ble B. Peacock,	H. Forbes, Esq.

DELHI TERRITORY; RYOTWAR ARREARS (MADRAS PRESIDENCY); AND GUARDIANSHIP OF MINORS (BENGAL).

THE PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "to repeal Regulation V. 1832 of the Bengal Code, and to make certain provisions rendered necessary by the transfer of the Delhi Territory to the administration of the Chief Commissioner of the Punjab;" the Bill "for the better recovery of arrears of Revenue under Ryotwar Settlements in the Madras Presidency;" and the Bill "for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal."

**OATHS AND AFFIRMATIONS.**

THE CLERK presented to the Council a Petition from Mr. Macleod Wylie, Barrister-at-Law, praying that the Council will not pass the Bill "concerning Oaths and Affirmations," but will, on the contrary, abolish all oaths and solemn affirmations in judicial proceedings, and pass a law to provide a summary punishment for perjury, and such other laws as experience may suggest for the discouragement of existing malpractices of a like nature.

MR. FORBES moved that the above Petition be printed.

Agreed to.

THE CLERK reported to the Council that he had received a communication from the Secretary to the Govern-

ment of the North-Western Provinces, forwarding copies of letters addressed to the Sudder Court and the Sudder Board of Revenue on the subject of judicial oaths and affirmations.

MR. FORBES moved that the above communication lie upon the table.  
Agreed to.

**FRAUDULENT TRANSFERS.**

MR. PEACOCK (in the absence of Sir Arthur Buller) postponed the first reading of a Bill for the punishment of Fraudulent Transfers of Property and of Secret Trusts.

**NABOB OF SURAT.**

MR. LEGEYT moved the second reading of the Bill "to amend Act XVIII of 1848 (for the Administration of the Estate of the late Nabob of Surat, and to continue privileges to his family)."

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

**STAMP DUTIES (BENGAL).**

On the Order of the Day for the third reading of the Bill "to amend Regulation X. 1829 of the Bengal Code," (for the collection of Stamp Duties) being read—

MR. PEACOCK moved that the Bill be re-committed to a Committee of the whole Council, for the purpose of considering a proposed amendment therein.

Agreed to.

MR. PEACOCK said, since giving notice of amendments in Section III of this Bill, he had spoken to his Honorable friend on his right (Mr. Harrington), and it appeared to them that, under the Section as it would stand if amended as proposed, a review of judgment would necessarily be admitted on the application of any party considering himself injured by the decision of a Court by which any deed, instrument, or document was rejected upon the ground that the same was not stamped within the meaning of the Rule which this Act proposed to repeal. He would not, therefore, move the amendment in the precise terms proposed, but he would move an amendment by which it would be left to the Judge to grant or not the application for a review. Unless he