

Saturday, April 17, 1858

**LEGISLATIVE COUNCIL  
OF  
INDIA**

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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

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discussed. The Select Committee had altered the Bill in accordance with the instruction given to them when they were appointed last Saturday; and the objections now taken seemed to him to be objections of detail, which could properly be considered hereafter by the Committee. The recommendation in their Report was, not that the Bill should be adopted by the Council in the form which it now bore, but that it should be published in that form. Upon its publication, suggestions would doubtless be received from Revenue Officers and others interested; and the Committee would then be in a position to determine whether any further alteration was necessary.

The motion was then put, and agreed to.

**LIGHT-DUES (GULF OF CAMBAY).**

MR. LE GEYT moved that the Standing Orders be suspended to admit of the Bill "to repeal the laws relating to the levy of Light-dues within the limits of the Gulf of Cambay" being read a third time and passed.

MR. CURRIE seconded the Motion, which was agreed to.

MR. LE GEYT moved that the Bill be now read a third time and passed.

Agreed to.

The Bill was read a third time.

MR. LE GEYT moved that the Vice-President be requested to take the above Bill to the President in Council in order that it may be submitted to the Governor-General for his assent.

Agreed to.

**LUNATIC ASYLUMS.**

MR. ELIOTT moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "relating to Lunatic Asylums."

Agreed to.

The Council adjourned.

*Saturday, April 17, 1858.*

**PRESENT:**

The Honorable J. A. Dorin, <i>Vice-President</i> , in the Chair.	
Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon'ble J. F. Grant,	E. Currie, Esq.,
Hon'ble Major General	and
Sir J. Outram,	H. B. Harington,
Hon'ble B. Peacock,	Esq.
D. Elliott, Esq.,	

The following Messages from the Governor-General were brought by the Vice-President and read:—

**CORPORAL PUNISHMENT.**

**MESSAGE No. 132.**

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 27th February 1858, entitled "A Bill to authorize the infliction of Corporal punishment in certain cases."

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

ALLAHABAD, }  
*The 4th April 1858.* }

**MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA, AND HOWRAH).**

**MESSAGE No. 133.**

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 27th February 1858, entitled "A Bill for raising funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah."

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

ALLAHABAD, }  
*The 4th April 1858.* }

**CONCEALMENT OF GOVERNMENT PROPERTY.**

**MESSAGE No. 134.**

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed

by them on the 20th March 1858, entitled "A Bill for the punishment of persons who unlawfully possess or conceal arms or other property belonging to Her Majesty or the East India Company."

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

ALLAHABAD,  
The 4th April 1858. }

#### FORT OF TANJORE.

MR. ELIOTT moved the first reading of a Bill "for bringing the Fort of Tanjore and the adjacent territory under the Laws of the Presidency of Fort St. George."

He said, when the Province of Tanjore was assumed by the East India Company, the Fort and some adjacent villages were left in the possession of the Rajah, and he was authorized to conduct the administration of Justice within those precincts, for which purpose he established three Civil Courts—one, a Court for the trial of original suits; the second, a Court for the decision of ordinary appeals; and the third, a Court for the decision of special appeals. He also established a Criminal Court. In consequence of the death of the Rajah without male issue, the Fort and its adjacent territory had lapsed to the East India Company; and it had become necessary to provide for those precincts being brought under the Presidency of Fort St. George; which being done, it would be expedient to appoint competent Courts in lieu of the tribunals which had hitherto exercised jurisdiction within them. It was intended to establish a District Moonsiff's Court at Tanjore for the trial of original suits, and for the exercise of Criminal jurisdiction under Act XII of 1854, which authorized the Government of Madras to vest District Moonsiffs with such jurisdiction, at their discretion. The Court, it was proposed, should be under the Zillah Court of Trichinopoly, to which the Fort and adjacent territory were to be annexed; and appeals from the decisions of the District Moonsiff would be heard by the Principal Sudder Ameen of that Zillah by reference from the Judge.

The Bill recognized the Rajah's Courts as *de facto* exercising jurisdiction until

the proposed Act should come into operation.

It provided that decisions passed by such Courts in original Civil suits should be considered as final, if no appeal should have been made against them within thirty days.

Original suits, appeals other than special appeals, and proceedings in such Courts pending at the time of the Act coming into operation, would be transferred to the Courts of the District Moonsiffs.

Appeals not pending at the time the Act should come into operation, but presented within thirty days after the passing of the decisions appealed against, would be received by the Zillah Court, and disposed of in the same manner as pending appeals.

Special appeals which were pending, or which might be preferred within sixty days of the passing of the decisions appealed against, would be heard by the Zillah Judge.

Some time ago, the Government being informed that the Rajah's Courts continued to exercise jurisdiction, directed that the Commissioner should restrict their operation as much as possible; and it was probable that, since then, scarcely any original suits had been filed in them.

The Bill was read a first time.

#### EXCLUSIVE PRIVILEGES TO INVENTORS.

MR. PEACOCK moved the first reading of a Bill "for granting exclusive privileges to Inventors." He said, on Saturday last, he presented the Report of the Select Committee appointed to consider the subject of the Patent Laws; and he should now move the first reading of a Bill which was recommended by that Committee to be introduced in lieu of Act VI of 1856. The Council would recollect all the circumstances relating to the passing of Act VI of 1856, and to its repeal in consequence of the opinion given by the Law Officers of the Crown that it was not competent to the Council to pass an Act for granting exclusive privileges to Inventors in India, inasmuch as it affected the Prerogative of the Crown. In consequence of that opinion, the Honorable the Court of Directors issued orders that the Act should be repealed,

and a new one be introduced in substitution of it, to be sent home to England for the purpose of receiving the sanction of the Crown previously to being passed, under the 16 and 17 Vict., c. 95. He, accordingly, now brought in a Bill for that purpose, and proposed that it should be read a first and second time, then published with the view of eliciting suggestions, afterwards passed through a Committee of the whole Council, and finally sent home in the appointed form for the sanction of Her Majesty.

The Bill recited that—

"Whereas Act VI of 1856, entitled 'an Act for granting exclusive privileges to Inventors,' was passed by the Legislative Council of India without the sanction of Her Majesty to the passing thereof having been previously obtained and signified in pursuance of the Statute passed in the seventeenth year of the reign of Her Majesty, entitled—'An Act to provide for the Government of India:' and whereas, Her Majesty's Law Officers having given it as their opinion that the Legislative Council of India was not competent to pass Act VI of 1856 without previously obtaining the sanction of the Crown, and the Court of Directors of the East India Company having in pursuance of the power vested in them by Law disallowed Act VI of 1856, and having signified to the Governor-General of India in Council their disallowance thereof, the said Act was repealed by Act IX of 1857: and whereas it is expedient, for the encouragement of Inventors of new manufactures, that certain exclusive privileges in their inventions should be granted to them in India, and that exclusive privileges obtained under the said Act should be protected: It is enacted as follows. (The sanction of Her Majesty to the passing of this Act having been previously obtained and signified, in pursuance of the said Statute):—"

Several suggestions had been made for the amendment of Act VI of 1856, which the Committee had taken fully into consideration; and they proposed, in consequence of those suggestions, and on a re-consideration of the whole Act, to make certain amendments. These were not many, and he would shortly describe what they were.

By the Law of England, Letters Patent were void if the inventions in respect of which they were granted were of no utility. Any person who infringed a patent, might set up as a defence to an action by the patentee that the invention was not useful; or any person might apply for a *scire facias* to rescind a patent upon the same ground. The

*Mr. Peacock*

Select Committee, having fully considered the question, had not thought it right to allow the inutility of an invention to be raised as a defence to an action for the infringement of an exclusive privilege; because if an invention was useless, there was no occasion to infringe the exclusive privilege by using it; but they thought that it would be advisable, for the purpose of preventing frivolous applications for exclusive privileges, to provide that, if an invention should appear to be perfectly useless, any person might move the Supreme Court to have the exclusive privilege granted in respect of it, revoked. They had therefore provided that the want of utility of an invention should be no defence to an action for the infringement of an exclusive privilege, but that it might be a ground upon which to set aside an exclusive privilege on an application to the Supreme Court.

Section XVI of Act VI of 1856 provided that an importer into India of a new invention should be deemed an inventor within the meaning of the Act. By the Law of England, a person importing a new invention was entitled to Letters Patent in the same way as if he were the actual inventor. But the Select Committee, after careful re-consideration, were of opinion that there was no such merit in importing new inventions at the present day as to entitle importers to exclusive privileges. If a foreign invention was really good, and was in use abroad, they thought that the Public would be sure to hear of it in these days of scientific publications and facility of inter-communication between foreign countries; and that there would, therefore, be no necessity to give any person an exclusive privilege as an inducement to import it. For instance, if there were new inventions in America in the Electric Telegraph, in steam engines, in locomotives, or in other manufactures, there could be no doubt that they would become known in this country by the means to which he had referred; and consequently, there would be no advantage in giving exclusive privileges to persons for importing them. Under this Bill, therefore, if a man was an actual inventor, he would be entitled to an exclusive privilege; but if he was only the importer of an invention, he

would not be entitled to shut out the Public from the use of the invention.

By Section XVIII of Act VI of 1856, it was enacted that an invention not publicly used or known in India before the application for leave to file a specification, should be deemed a new invention within the meaning of the Act. Several objections had been made to this provision. One gentleman had said that he had intended to bring into use here an invention for wheels for locomotives which was well known in England; but that, under this Section, he would be prevented from doing so if some one else should have previously come out and patented the invention. The Select Committee thought that this would not be right, and had provided that no invention should be deemed a new invention within the meaning of the Act if it should, before the application for leave to file the specification, have been generally used in India or in any part of the United Kingdom, or been made publicly known in any part of India or of the United Kingdom by means of a printed or written publication.

By Section XIX of Act VI of 1856, it was enacted that, if an actual inventor should have taken out Letters Patent in England, his invention should be deemed a new invention within the meaning of the Act if it was not publicly known or used in India at the date of the petition for the Letters Patent, although it might have been publicly known or used in India before the time of his petitioning the Governor-General in Council under the Act for leave to file a specification thereof—provided that he filed such Petition within six calendar months from the date of the Letters Patent. The object of this provision was to extend to India the Letters Patent granted by the Crown, if the inventor applied within six months. But objections had been taken to the period of time allowed for the application. In England, a person who had obtained Letters Patent was entitled to six months within which to file a specification of the mode in which his invention was to be used; and it had been urged that, if he should be unable to complete his patent by filing a specification until shortly before the expiration of the period allowed, he would be

debarred from an exclusive privilege in his invention in India. That would be an injustice; and, therefore, the Select Committee had thought it right, and had provided, that an actual inventor who had obtained Letters Patent in England, should be entitled to an exclusive privilege under the Act if he applied to the Governor-General in Council for leave to file a specification of his invention within twelve months from the date of his patent—that was to say, he would have six months within which to complete his patent in England, and six months within which to apply for its extension to this country. On the other hand, however, they thought that, if the Letters Patent should be cancelled in England in consequence of any defect, the inventor should not be entitled to any exclusive privilege here; and they had therefore provided that an exclusive privilege under the Act should not continue beyond the time during which the Letters Patent in England should be in force, and that it should cease if the Letters Patent in England were rescinded by the Crown.

The Select Committee had made one or two slight alterations in certain other Sections of the Act to which he did not think it necessary to refer particularly, as they related to mere matters of detail.

They had omitted Section XXXV of Act VI of 1856, which declared that nothing contained in the Act should—

“abridge or affect the Prerogative of the Crown in relation to the granting, or withholding the grant, of any Letters Patent for inventions or otherwise, or affect or interfere with any Letters Patent for an invention heretofore granted, or hereafter to be granted, by the Crown.”

They had not thought it necessary to insert this Section in the present Bill, because the Bill would be sent home for the sanction of the Crown before it was passed. The Council had inserted it in Act VI of 1856, considering—whether rightly or wrongly, he would not discuss now—that it would provide against any interference with the Prerogative of the Crown. The Law Officers of the Crown, however, had given it as their opinion that it would not protect the Prerogative, and that it was beyond the competency of the Coun-

oil to pass the Act. The Act had been repealed in consequence; and the Bill which he now introduced in substitution of it would, previously to being passed, be sent home for the Royal sanction. It was unnecessary, therefore, that Section XXXV of Act VI of 1856 should be retained, and the Select Committee had accordingly omitted it.

The Select Committee had inserted a new Section, by which it was provided that all exclusive privileges granted under Act VI of 1856, and all remedies which that Act gave either for the infringement of an exclusive privilege, or for the purpose of setting one aside, should be continued in the same way as if the Act had not been repealed. The object of this provision was to put all persons who had obtained exclusive privileges on the faith of the Act, in precisely the same position in which they would have been if the Act had received the sanction of Her Majesty previously to its being passed.

It had also appeared proper to the Select Committee to extend the term of exclusive privileges already obtained under Act VI of 1856. The Act allowed an exclusive privilege for the term of fourteen years from the time of applying for leave to file a specification. But as the parties who had obtained exclusive privileges under it had been prevented from bringing them into effect in consequence of its repeal, it was but right that the term of fourteen years should be taken to commence, not from the date of the application for leave to file a specification, but from the date of the passing of the new Act; so that the parties should have what the Act of 1856 contemplated—the full period of fourteen years for the enjoyment of their exclusive privileges.

With these observations, which were all that he thought it necessary to make, he should move the first reading of the Bill.

The Bill was read a first time.

**REGULATION OF PORTS (FORT St. GEORGE).**

Mr. ELIOTT moved that the Bill “for the Regulation of certain Ports within the Presidency of Fort St. George” be now read a third time.

*Mr. Peacock*

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

**AUTHENTICATION OF GOVERNMENT STAMPS.**

Mr. PEACOCK moved that the Council resolve itself into a Committee on the Bill “to provide for the authentication of Government Stamped Paper;” 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.

The Bill passed through Committee after the omission (on the motion of Mr. Currie) of the word “Covenanted” wherever it occurred before the words “Deputy and Assistant Collector,” and the addition of the following new Section at the end of the Bill:—

“The words ‘Collector’ or ‘his Deputy or Assistant’ shall be deemed to include any Officer exercising the powers of a Collector or of his Deputy or Assistant respectively.”

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

**REGULATION OF PORTS (FORT St. GEORGE).**

Mr. ELIOTT moved that Mr. Peacock be requested to take the Bill “for the Regulation of certain Ports within the Presidency of Fort St. George” to the President in Council in order that it may be submitted to the Governor-General for his assent.

Agreed to.

The Council adjourned.

*Saturday, April 24, 1858.*

**PRESENT:**

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

Hon. the Chief Justice,	D. Elliott, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. Major Genl. Sir	E. Currie, Esq.,
J. Outram,	and
Hon'ble B. Peacock,	H. B. Harington, Esq.