

Saturday, May 29, 1858

**LEGISLATIVE COUNCIL  
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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

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tion whatever to refer the Bill to the Select Committee on the Civil Procedure Code; but, as he had stated before, it had struck him that the present subject hardly came within the scope of that Code. The suggestion made by the Bombay Government was, in effect, that an Insolvent debtor in the Mofussil should obtain relief from his debts without being taken to jail and having all his property sold under a decree in the first instance. In short, it was a suggestion that the provisions of the Insolvent Act should be extended to the Inhabitants of the Mofussil. Whether the Select Committee on the Civil Procedure Code would be disposed to consider a question so very much wider than that contained in the Code as prepared by the Commissioners in England, he did not know. The Honorable and learned Chairman of the Committee would probably inform the Council. His own idea was that they would not; and as it was expedient to consider whether such a Law as had been recommended should be passed or not, he had moved for a separate Committee. If, however, the Select Committee on the Civil Procedure Code would consider the subject of a general Insolvent Law for the Mofussil in connexion with the Code, he had no objection to amend his Motion and refer it to them.

MR. PEACOCK said, the question was hardly one of procedure at all. It was a question of extending the Insolvent Act over the whole of the territories of the East India Company. There was a separate Code of Civil Procedure for each Presidency; and although, as a matter of convenience, the Select Committees on all three met together, he did not think it advisable that the subject now brought before the Council should be referred to any one of them in particular. He thought it would be better if it were considered as a separate measure.

MR. LEGEYT'S Motion was then put and agreed to.

#### REMOVAL OF PRISONERS.

MR. CURRIE moved that the Bill "to make further provision for the removal of Prisoners" be referred to a Select Committee consisting of the Vice-

President, Mr. Peacock, Mr. LeGeyt, and the Mover.

Agreed to.

#### ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. PEACOCK moved that Mr. Forbes be added to the Select Committee on the Bill "to provide for the administration of the estate and for the payment of the debts of the late Nabob of the Carnatic."

Agreed to.

The Council adjourned.

Saturday, May 29, 1858.

#### PRESENT:

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

Hon. J. P. Grant,		P. W. LeGeyt, Esq.
Hon. Major Genl. Sir		E. Currie, Esq.
Jas. Outram,		H. B. Harrington, Esq.
Hon. H. Ricketts,		and
Hon. B. Peacock,		H. Forbes, Esq.

#### ESTATE OF THE LATE NABOB OF THE CARNATIC.

THE CLERK brought under the consideration of the Council a Petition of certain Creditors of the Estate of the late Nabob of the Carnatic praying for an amendment of Section XV of the Bill "to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic."

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

Agreed to.

#### CONTINUANCE OF CERTAIN PRIVILEGES TO THE FAMILY &c. OF THE LATE NABOB OF THE CARNATIC.

MR. FORBES moved the first reading of a Bill "to continue certain privileges and immunities to the Family and retainers of the late Nabob of the Carnatic." In doing so, he said the Council was aware that it had always been the practice and policy of the British Government in India to confer upon Native Princes, their families, and retainers, freedom from the jurisdiction of its Criminal and Civil Courts. Among

the Princes so privileged, was the late Nabob of the Carnatic; and, for many years, it was supposed that the privilege had been granted to him by a Treaty formed between him and the East India Company in 1801. But in 1843, some suits were instituted against certain Members of the Nabob's family, and it was decided by the Supreme Court of Madras that the immunities and privileges supposed to have been given by the Treaty had really no legal force, and it became necessary, therefore, if it was desirable that they should be continued, to provide some remedy by legislative enactment. The matter was reported home; the Honorable the Court of Directors gave their assent; and, accordingly, Act I of 1844 was passed by the Government of India, which provided "that no writ or process shall at any time be sued forth or prosecuted against the person, goods, or property of his Highness the Nabob of the Carnatic, or of the Nabob Regent for the time being," "unless such writ or process shall be so sued forth or prosecuted with the consent of the Governor in Council of Fort St. George first had and obtained." Under Section I of the Act, certain lists were to be published by the Government of Madras from time to time "containing the names of persons belonging to the family, household, or retinue of His Highness the Nabob of the Carnatic, or of the Nabob Regent for the time being," and these persons also were to be entitled to privilege from Civil and Criminal process. After the passing of Act I of 1844, no difficulty occurred during the life-time of the Nabob; but on the death of his Highness in 1855, it was decided that the estate and dignity of the Nabob had become vested in the East India Company. A suit was subsequently brought against the Prince who had occupied the *musnud* as Regent during the minority of his nephew the late Nabob; and, on Act I of 1844 being pleaded in bar of the Court's jurisdiction, it was decided by a Full Bench that the Act was merely personal to the Nabob, having been passed for the support of the estate and dignity of His Highness, and that that estate and dignity having become extinct, the Act had *ipso facto* ceased to have any effect. It was thereupon considered advisable by this Coun-

cil to allow a period of one year to the persons whose supposed privilege the decision of the Court would affect, for the purpose of enabling them to appeal to the Privy Council. Act XVIII of 1857 was passed with that view; but circumstances had led to that Act becoming inoperative, the single suit in which the Supreme Court had given their decision not having been appealed within six months, which was the period limited for the institution of appeals to the Privy Council, and Act XVIII of 1857 itself preventing any fresh suit being brought. Act XVIII of 1857 would expire on the 4th of next July; and unless some legislative remedy were applied, the family of the Nabob would, from that date, be subject to the process of the Civil and Criminal Courts, from which it had been the policy of the Government since 1801 to exempt them. The title of Act I of 1844 described it to be an Act "for securing certain immunities and privileges to His Highness the Nabob of the Carnatic, his family, and retinue;" and the 1st Section enacted "that it shall be lawful for the Governor in Council of Fort St. George to publish from time to time in the *Gazette* at Madras, lists containing the names of persons belonging to the Family, Household, or Retinue of His Highness the Nabob of the Carnatic, or of the Nabob Regent for the time being, who are to be entitled under this Act to privilege from Civil and Criminal process;" and the Council would probably have little difficulty in coming to the conclusion that, although the wording of the Act might be faulty, the intention of the Legislature was to give the exemption for life. The present Bill was intended to supply the omission in the former Bill, and there was a precedent for this in the Statute Book. Act XVIII of 1848, which was passed on the death of the Nabob of Surat, continued to the Members of the Nabob's family the exemption from the process of the Civil and Criminal Courts which they had enjoyed during his lifetime, and the present Bill had even a stronger claim on the attention of the Council. In the case of the Nabob of Surat, there were certain Courts of Justice in which creditors might have enforced their claims against the family of the Nabob. When those Courts

were abolished, Act XVIII of 1848 was passed, which deprived claimants of the right to resort to any Court at all. This was not the case in the present instance. The creditors of the family, and retainers of the late Nabob of the Carnatic would be placed by the Bill which he proposed, in no worse position than they had been in all their lives, inasmuch as there had never been, since 1801, any Court in which they could have preferred their claims without the permission of Government.

The first part of the Bill gave to the uncle and chief male relative of the late Nabob, and to the female members of his family, exemption from Civil and Criminal process during the term of their respective lives; and to the other male members of his family, and to his retinue, protection from suits of which the causes of action arose during the time Act I of 1844 and Act XVIII of 1857 were in operation.

The only other provision of the Bill to which it was necessary to draw the attention of the Council was one which made a slight addition to the provision contained in Section II of Act I of 1844. That Section enacted "that no writ or process shall at any time be sued forth or prosecuted against the person, goods, or property of His Highness the Nabob of the Carnatic, or of the Nabob Regent for the time being, or of any person whose name shall be included in any list published in the *Gazette*." It had been decided by the Supreme Court of Madras that a writ of summons issued from the Plea Side of the Court was not a writ against the person within the meaning of the Act; and the effect of this decision was, in the words of the Honorable Company's Solicitor, that "a plaintiff may file a plaint, issue and serve his summons, in default of an appearance by defendant enter an appearance for him, issue and serve a rule to plead, in default of plea enter his cause for trial, *ex parte* proceed to trial, obtain a verdict, tax his costs, sign his Judgment, and issue an execution upon his Judgment, before the defendant can take any step whatever for asserting his exemption from the process and jurisdiction of the Court under Act I of 1844. In the present Bill, therefore, the words "no action shall be com-

menced or prosecuted" had been inserted before the words "no writ or process shall be sued forth."

With these observations, he begged to move the first reading of the Bill.

The Bill was read a first time.

#### KURNOOL.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "for bringing the District of Kurnool under the Laws of the Presidency of Fort St. George."

Agreed to.

Sections I and II were passed as they stood.

MR. FORBES moved that the following Preamble be inserted in the Bill:—namely—"Whereas it is expedient that the District of Kurnool should be brought under the Laws of the Presidency of Fort St. George, it is enacted as follows."

Agreed to.

The Title was passed as it stood.

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

#### OATHS AND AFFIRMATIONS.

MR. PEACOCK said, some time ago, a Select Committee was appointed to consider and report on certain projects of Laws relating to Oaths and Affirmations, but it had not presented its report as yet. The same question had now come before the Select Committee on the Codes of Civil Procedure framed by Her Majesty's Law Commissioners in England, who recommended that witnesses should be examined without oath or affirmation; and they were unable to decide it in consequence of the other Committee not having made any Report. He should therefore move that the Select Committee on the Projects of Laws relating to Oaths and Affirmations be discharged, and that the question be referred to the Select Committees on the Bills for simplifying the Procedure of the Courts of Civil Judicature of the East India Company.

Agreed to.

#### MERCHANT SEAMEN.

MR. CURRIE moved that the Vice-President be added to the Select Com-

mittee on the Bill "for the amendment of the Law relating to Merchant Seamen."

Agreed to.

#### LUNATIC ASYLUMS.

Mr. CURRIE moved that Mr. Forbes be added to the Select Committee on the Bill "relating to Lunatic Asylums."

Agreed to.

#### ESTATES OF LUNATICS (MOFUSSIL).

Mr. CURRIE moved that Mr. Forbes be added to the Select Committee on the Bill "to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature."

Agreed to.

#### COTTON FRAUDS (BOMBAY).

Mr. LEGEYT moved that Mr. Forbes be added to the Select Committee on the Bill "for the better suppression of Frauds in the Cotton-trade in the Presidency of Bombay."

Agreed to.

The Council then adjourned, on the motion of Mr. Grant.

*Saturday, June 5, 1858.*

#### PRESENT :

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

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

#### CIVIL PROCEDURE.

THE CLERK presented to the Council a Petition from Inhabitants of Dacca offering suggestions for improving the Procedure of the Civil Courts.

Mr. CURRIE moved that the Petition be referred to the Select Committees on the Bills for simplifying the

Procedure of the Courts of Civil Judicature of the East India Company.

Agreed to.

#### RECOVERY OF RENTS (BENGAL).

THE CLERK also presented a Petition from land-holders and others residing in Dacca relative to the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

Mr. CURRIE moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

#### ESTATE OF THE LATE NABOB OF THE CARNATIC.

THE CLERK also presented a Petition from certain creditors of the late Nabob of the Carnatic, praying for an amendment of Section XV of the Bill "to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic."

Mr. PEACOCK moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

#### OFFENCES AGAINST THE STATE.

THE CLERK reported to the Council that he had received a communication from the Secretary to the Government of India in the Home Department, forwarding papers relative to the trial of the Zemindar of Pachete, with a view to the amendment of the law regarding preparations for levying war against the State.

#### RESTORATION OF POSSESSION OF LANDS—AND REGULATION OF NATIVE PASSENGER SHIPS.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor General had assented to 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;" and the Bill "for the regulation of Native Passenger Ships and of Steam Vessels intended to convey passengers on coasting voyages."