

Saturday, September 4, 1858

**LEGISLATIVE COUNCIL
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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

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Queen's sanction to it in that form. On receipt of the sanction, words similar to those now proposed might be inserted hereafter if necessary.

MR. PEACOCK said he was not sure that the Council would be justified in altering the Bill after Her Majesty had given her sanction to it.

THE CHAIRMAN said that, when the facts were more correctly known, the Council would be able more clearly to see what course should be pursued. It was in every respect desirable that there should be no doubt as to the power of the Council to pass the Bill. The question might hereafter be raised in a Court of Law by one of the descendants of Sir Jamsetjee Jeejeebhoy and decided adversely to the entail.

MR. PEACOCK said, the better plan would be to put the Bill in a proper form for going home, so that, if sanctioned by Her Majesty, it might be passed at once in that form. The Council pledged itself, he thought, to pass it in the form in which it was submitted for sanction. If a sanction should be sent out before the Bill should arrive at home, there would be no objection to the Honorable Member moving the third reading, and on that Motion it might be also re-committed. There could be no objection to the introduction of the words proposed by him.

THE CHAIRMAN said, if the sanction should be different, though it might vary somewhat in form from the terms of the Bill, the Bill might be re-committed and its provisions made to correspond to the sanction sent.

MR. PEACOCK'S motion was carried.

The Bill passed through Committee after a further verbal amendment in the Preamble, and a similar amendment in Section III and the Title.

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

MR. LEGEYT moved that Mr. Peacock be requested to take the Bill to the President in Council in order that it might be transmitted to England for the sanction of Her Majesty.

Agreed to.

INDIAN NAVY.

MR. PEACOCK moved that Sir James Outram be requested to take the

Mr. LeGeyt

Bill "to amend Act XII of 1844 (for better securing the observance of an exact discipline in the Indian Navy)" 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, September 4, 1858.

PRESENT:

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

Hon'ble H. Ricketts,	H. B. Harrington, Esq., and H. Forbes, Esq.
Hon'ble B. Peacock,	
P. W. LeGeyt, Esq.,	
E. Currie, Esq.,	

ESTATE OF THE LATE NABOB OF THE CARNATIC—SETTLEMENT OF AL- LUVIAL LANDS (BENGAL)—AND FORT OF TANJORE.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor General had assented to the Bill "to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic;" the Bill "to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal;" and the Bill "for bringing the Fort of Tanjore and the adjacent territory under the Laws of the Presidency of Fort Saint George."

PENSIONS.

THE CLERK reported to the Council that he had received from the Home Department a copy of a communication from the Secretary to the Government of India with the Governor General on the policy of applying the provisions of the Government Order of 1st December 1857, which affect Military pensioners, to pensioners in the Civil Department, and to the holders of rent-free lands.

CIVIL PROCEDURE.

MR. PEACOCK had the honor to present a Joint Report from the Select Committees on the Bills for simplifying the Procedure of the Courts of Civil Judicature of the East India Company.

He said, there were several Bills on the subject—one for the Lower Provinces of Bengal, another for the North-Western Provinces, a third for Madras, and a fourth for Bombay. The Bills were all separately published in the manner in which they had been prepared by Her Majesty's Commissioners. The Select Committees had sat together and had found it convenient and proper that they should prepare one Bill and present one Joint Report applicable to all the Presidencies.

ARTICLES OF WAR (NATIVE ARMY).

MR. PEACOCK begged to move the first reading of a Bill to amend Act XIX of 1847, which contained the Articles of War for the Native Army.

He said, there were several points which had been suggested by the Commander-in-Chief and the Governor General with reference to these Articles. He thought it might be necessary hereafter that the whole of the Articles should be revised, and an Act passed to amend them and to consolidate all the alterations which had recently been made. But this was a work which would require much consideration, and many Officers would have to be consulted. He now only proposed to amend the Articles in a few particulars, some of which had been suggested by the Commander-in-Chief and approved by the Governor General.

The first object was to give Commanding Officers larger powers than they now possessed. Under the law as it now stood, Commanding Officers had no power to dismiss or to reduce to the ranks any Native Officer or Soldier, except by the sentence of a Court Martial or by order of the Commander-in-Chief at the Presidency to which he might belong.

Article 2 provided—

"No Commissioned Officer shall be dismissed except by the sentence of a General Court Martial. No Non-Commissioned Officer or Soldier shall be discharged as a punishment except by the sentence of a Court Martial, or by order of the Commander-in-Chief at the Presidency to which he may belong. Every such dismissal or discharge shall include forfeiture of all claim to pension. Provided also, that the Governor General in Council in his Executive capacity, and the Governor in Council of any Presidency to which a Commissioned or Non-Commissioned Officer or Soldier

may belong, shall have power to order his dismissal or discharge."

By Article 110—

"No Non-Commissioned Officer shall be reduced to the ranks but by the sentence of a Court Martial, or by order of the Commander-in-Chief of the Presidency to which the offender shall belong. Provided that no Non-Commissioned Officer shall be reduced to the ranks for any limited period; nor suspended from his rank, nor reduced from higher to a lower grade of Non-Commissioned Officer; nor sentenced to suffer Corporal Punishment, or imprisonment, without being first reduced to the ranks."

The proposal now was to allow Commanding Officers to dismiss or reduce to the ranks Native Non-Commissioned Officers, and to dismiss Soldiers, without the sentence of a Court Martial. He therefore proposed to repeal so much of Article 2 as required that no Non-Commissioned Officer or Soldier should be discharged except by the sentence of a Court Martial, and so much of Article 110 as required that no Non-Commissioned Officer or Soldier should be reduced to the ranks but by the sentence of a Court Martial, and also to authorize Commanding Officers to dismiss or reduce to the ranks.

The next amendment related to transportation. By the present law, whenever the punishment of transportation was awarded, it must be for life. The Council had recently before it a law which provided that, in any case where there might be a sentence of imprisonment for not less than three years, the prisoner might be transported. He now proposed, with reference to the Clauses which required that sentences of transportation must be for life, to authorize the Court, whenever it might think it necessary to award transportation for a limited period, to award transportation for any term not less than three years. There had been some sentences of Courts Martial which had acted upon the principle of awarding transportation for less than life. He apprehended, however, that these sentences were illegal. Though the sentences were beneficial to the prisoners, still they were not legal. He recollected a case in England, where a Court of Quarter Sessions sentenced a prisoner to transportation for life when the legal sentence was death.

The prisoner brought a writ of error, and the Court of Queen's Bench reversed the judgment on the ground that death was the legal sentence, and transportation for life could not be given, and discharged the prisoner. It would be very mischievous to act upon that principle in the cases to which he had adverted. He, therefore, proposed to render those sentences valid, and to provide that, whenever a prisoner had been sentenced to transportation for a less period than life for an offence punishable with transportation for life, the sentence should be as effectual and valid as if it had been for life. What he proposed was merely to render such sentences legal. It was an advantage to the prisoner to have received sentence of transportation for a term of years instead of for the whole term of his life. He (Mr. Peacock) had no doubt that, if a sentence passed by a Court were illegal, and the conviction were reversed, the prisoner might be tried again and receive the legal sentence. It was no hardship on him, therefore, to render legal the sentence of transportation for the term of years which had been passed upon him.

There was another class of cases in which prisoners had been sentenced to imprisonment with hard labor instead of simple imprisonment, and it had been stated by the Judge Advocate General that, in the opinion of the Commander-in-Chief, the only way in which the cases could be disposed of by him was to direct the prisoners' release from jail when they might be summarily discharged. The Commander-in-Chief proposed that, in order to guard against the ends of justice being defeated, it would be desirable, in all cases in which simple imprisonment might be awarded, that it should be lawful to add hard labor. The Governor General did not quite agree in this view of the Commander-in-Chief, but proposed that in a certain class of cases imprisonment with hard labor should be substituted for simple imprisonment; and His Lordship proposed that the Act should give validity to the sentences of imprisonment with hard labor which had been passed. There were some cases in which simple imprisonment or corporal punishment or both might be inflicted. In such cases there could be no objection, in his (Mr. Pea-

Mr. Peacock

cock's) opinion, to adding hard labor to imprisonment. It might be going too far if imprisonment with hard labor were authorized in all cases of imprisonment for purely Military offences. He proposed only to add it in certain classes of cases, which would include cases of absence without leave, and cases of the nature suggested by the Governor General. He thought it would be advisable to consider the expediency of providing that, whenever corporal punishment might be inflicted, imprisonment with hard labor might be given. It appeared to him that it was not more degrading to be punished by imprisonment with hard labor than by corporal punishment.

He also proposed to legalize the sentences in which imprisonment with hard labor had been given instead of simple imprisonment. In one case, a Soldier in one of the disarmed Regiments had been found in possession of arms which he had concealed. He was tried and found guilty and sentenced to imprisonment with hard labor. The Judge Advocate thought that the sentence was not legal. The Governor General had recommended that validity should be given to the sentences of imprisonment with hard labor which had been passed, and he (Mr. Peacock) saw no objection to the addition of a provision to this effect.

There was another Article of War (Article 112) which provided—

"In case of light offences, a Commanding Officer may, without the intervention of a Court Martial, award extra drill, with or without pack, for a period not exceeding fifteen days; restriction to Barrack limits not exceeding fifteen days; confinement in the Quarter Guard or Defaulter's Room, not exceeding seven or eight days; removal from staff situations or acting appointments; or may order Soldiers to be employed in piling and unpling shot and in cleaning accoutrements of men in Hospital; but none of these descriptions of punishment shall be awardable by sentence of a Court Martial. And a Commanding Officer may award solitary confinement not exceeding seven days."

It had been suggested by the Officiating Military Secretary that this Article should be amended, and that the Commanding Officer should not be restricted to awarding extra drill for fifteen days only. It was a matter of Military discipline, and he thought that so much of this Article as contained any restriction

should be repealed, and that Commanding Officers should have power to order extra drill or any other Military duty without restriction, provided it was not contrary to any General Order of the Commander-in-Chief. He (Mr. Peacock) therefore proposed that the Article should be so modified. The Bill would be published and sent to the Commander-in-Chief. This provision had not been suggested by His Excellency but by the Officiating Military Secretary; and the Commander-in-Chief would have an opportunity of stating whether he saw any objection to it.

Another suggestion by the Judge Advocate General and recommended by the Commander-in-Chief was to make the Articles of War for the Native Army correspond in a certain particular with the Articles of War for the Queen's and Company's European Troops. By Article 147 of the Articles of War for the European Troops, it was provided that—

"If any Soldier shall have been illegally absent from his duty for the space of two months, a Regimental Court of Enquiry of three Officers shall forthwith assemble and, having received proof on oath of the fact, declare such absence and the period thereof, and the Officer Commanding the Corps shall enter a record of such absence, and of the declaration of such Court of Enquiry thereon in the Regimental books: and if such Soldier should not afterwards surrender or be apprehended, such record shall have the legal effect of a conviction for desertion;—and if such Soldier should surrender or be apprehended after such record shall have been so entered, such record, or a copy thereof purporting to bear the signature of the Officer having the custody of the Regimental books, shall, on the trial of such Soldier on a charge for desertion, be admissible in evidence of the fact therein recorded, and on proof of the identity of the prisoner with the Soldier therein mentioned, he may be found guilty of desertion;—and if he be convicted, the sentence of any such Court shall be inserted in the Soldier's discharge;—provided nevertheless, that such trial may be dispensed with in any case in which it shall appear to the Commander-in-Chief that there are special circumstances to justify the exception."

There had been considerable difficulty in regard to Soldiers in the Native Army absent without leave. In some cases they had been found guilty of desertion. It had been thought that the Courts Martial had overstrained the evidence by finding such persons guilty of desertion when their offence was absence without leave. The object of the

provision just quoted was to ascertain whether a Soldier was absent, the length of such absence, and whether he was absent without leave or not. The finding of the Court of Enquiry would be evidence in other Courts; and if a Soldier should be found at a distance from his own Regiment, it would be evidence of his absence without leave; and until he surrendered, it would be tantamount to a conviction for desertion. He (Mr. Peacock) had adopted that Section and introduced it into the present Bill.

There was another provision which the Judge Advocate General had recommended to be inserted in a General Order, but it was considered to be one requiring legislative sanction. The substance of it was that, if you prove a Soldier absent for two months, that absence should be *prima facie* evidence of desertion, and would warrant a conviction for desertion, unless it appeared that he was detained in his village whether by sickness or other cause, or unless he could show clearly that he was not guilty of desertion. It also provided that, if a Soldier, to show that he was not guilty of desertion, should refer to a Civil or Military Officer of Government for the purpose of proving sickness or some good excuse for not returning to his duty, the Civil or Military Officer to whom the reference was made should certify to the fact, and that certificate should be made evidence in the Soldier's favor, and should have the same effect as if the Government Officer certifying was present. It appeared to him (Mr. Peacock) that this would be found very convenient. It could not be supposed that any Government Officer would give a wrong certificate, and he would be saved the inconvenience of being compelled to attend.

These were the principal alterations which he proposed to make; and he begged to move that the Bill be read a first time.

The Bill was read a first time.

PROCEEDINGS IN LUNACY (SUPREME COURTS).

MR. CURRIE moved that the Bill "to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter" be now read a third time and passed.

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

CARE OF ESTATES OF LUNATICS NOT SUBJECT TO THE SUPREME COURTS.

MR. CURRIE moved that the Bill "to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature" be now read a third time and passed.

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

LUNATIC ASYLUMS.

On the Order of the Day being read for the third reading of the Bill "relating to Lunatic Asylums"—

MR. CURRIE said, before moving the third reading of this Bill, he would ask leave to re-commit it for the purpose of making an amendment therein.

Agreed to.

MR. CURRIE said, the Section which required alteration was a new Section which stood after Section XVI. The Bill applied not merely to the several Presidencies but also to the Straits Settlement; and the Section as it stood, excepting only the Presidency Towns, would prevent any one, without the order of a Judge or Magistrate made in pursuance of the Act, from being received into a Lunatic Asylum in any Station of the Straits Settlement. This was inconsistent with Section VII, which allowed a person to be received into a Lunatic Asylum in any Presidency Town or in any Station of the Straits Settlement under the order of an individual accompanied by the prescribed Medical Certificate.

Instead of altering the wording of this Section as it stood, he proposed to introduce the restrictive provision in Section VIII so as to make it correspond with Section VII, and to omit the new Section altogether. Section VII was for the Presidency Towns and Straits Settlement; and Section VIII was for places other than the Presidency Towns and Straits Settlement. He therefore moved that the words "when a Lunatic is possessed of property" after the word "Section" in the 3rd line of Clause 1, Section VIII be left out, and the following words substituted for them, namely:

"no person shall be received into a Lunatic Asylum, except as otherwise hereinbefore provided, without an order of the Civil Court.

Clause 2. When any person has been adjudged to be a Lunatic"—

The motion was carried, and the Section as amended was agreed to.

MR. CURRIE then moved that the new Section after Section XVI be left out.

Agreed to.

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

MR. CURRIE moved that the Bill be read a third time and passed.

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

STAMP DUTIES (BENGAL).

MR. PEACOCK said that a very important alteration had been introduced in the Bill "to amend Regulation X. 1829 of the Bengal Code (for the collection of Stamp Duties)," after its publication, making it applicable to suits previously tried. He should therefore move that the Bill, as settled in Committee of the whole Council, be published for general information, and that it be re-considered after a month.

Agreed to.

CIVIL PROCEDURE.

MR. LEGEYNT gave notice that he would, either on Saturday the 11th Instant or before the Council should resolve itself into a Committee on the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter," move that the Bill be republished for general information.

LIMITATION OF SUITS.

MR. CURRIE moved that a communication received by him from the Bengal Government, on the subject of amending Act XIII of 1848 (for limiting the time within which a suit may be brought to contest the awards of the Revenue authorities in the Presidency of Bengal), be laid upon the table and referred to the Select Committee on the Bill "to provide for the acquirement and extinction of rights by prescription, and for the limitation of suits."

Agreed to.

GUARDIANSHIP OF MINORS.

MR. CURRIE gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal."

PROCEEDINGS IN LUNACY (SUPREME COURTS); LUNATICS (MOFUS-IL); AND LUNATIC ASYLUMS.

MR. CURRIE moved that Mr. Ricketts be requested to take the Bill "to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter;" the Bill "to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature;" and the Bill "relating to Lunatic Asylums"—to the President in Council in order that they might be submitted to the Governor General for his assent.

Agreed to.

PENSIONS.

MR. PEACOCK moved that the communication from the Home Department reported this day be referred to a Select Committee consisting of the President of the Executive Council, Mr. LeGeyt, Mr. Currie, Mr. Harington, and the Mover.

Agreed to.

The Council adjourned.

Saturday, September 11, 1858.

PRESENT :

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

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

NABOB OF THE CARNATIC.

THE CLERK reported to the Council that he had received from the Foreign Department a copy of a Despatch from the Court of Directors to the Government of Madras on the subject of

the affairs of the late Nabob of the Carnatic.

EMIGRATION TO ST. VINCENT.

THE CLERK also reported to the Council that he had received from the Home Department a copy of a Despatch from the Court of Directors and of its enclosures, regarding the proposed Emigration of Indian Laborers to the Colony of St. Vincent.

MR. PEACOCK moved that the above communication be printed.

Agreed to.

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

MR. FORBES presented the Report of the Select Committee on the Bill "to continue certain privileges and immunities to the family and retainers of His late Highness the Nabob of the Carnatic."

EXCLUSIVE PRIVILEGES TO INVENTORS.

MR. PEACOCK presented the Report of the Select Committee on the Bill "for granting exclusive privileges to Inventors."

BREACHES OF CONTRACT BY WORKMEN, &c.

MR. CURRIE moved the first reading of a Bill "to provide for the punishment of Breaches of Contract by Artificers, Workmen, and Laborers in certain cases." He said, the preparation of this Bill was suggested to him by a Petition of the Calcutta Trade Association praying for a law to prevent Breaches of Contract by workmen and others, which was presented to the Council some weeks ago.

The Petitioners complained of the loss to which they were subjected by the fraudulent conduct of their workmen in wilfully failing to perform work for which they had received advances. The Petitioners represented the utter inefficacy of a civil action to afford redress in cases of this nature, and they prayed for a summary remedy by application to a Magistrate.

Now it seemed to him that taking