

Saturday, December 31, 1859

**LEGISLATIVE COUNCIL
OF
INDIA**

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1859

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the Day) for a Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

MILITARY POLICE BATTALIONS.

MR. SCONCE moved that the Bill "to provide for the good order and discipline of the Battalions of Military Police" be referred to a Select Committee consisting of Sir James Outram, Mr. Harington, Sir Charles Jackson, and the Mover.

Agreed to.

IMPORT DUTY ON SALT (N. W. P.)

MR. HARINGTON gave notice that he would, on Saturday next, move the second reading of the Bill "to empower the Governor-General in Council to raise the Duty on Salt imported into the North-Western Provinces of the Presidency of Bengal," and, in the event of that Motion being carried, the suspension of the Standing Orders with a view to the Bill being passed through its remaining stages forthwith.

DISSOLUTION OF MARRIAGES BY CHRISTIAN CONVERTS.

SIR CHARLES JACKSON gave notice that he would on the same day move the first reading of a Bill to provide for the dissolution of certain Marriages entered into by Christian Converts before their conversion.

ZILLAH COURT OF FURRUCKABAD.

MR. HARINGTON give notice that he would on the same day move the second reading of the Bill "to repeal certain Laws relating to the jurisdiction of the Zillah Court of Furruckabad."

KING OF OUDE.

MR. HARINGTON gave notice that he would on the same day move the second reading of the Bill "to provide for the execution of process within the precincts of the residence of His Majesty the King of Oude."

WATER-SUPPLY (KURRACHEE.)

MR. LEGEYT moved that Sir Bartle Frere be added to the Select Committee on the Bill "to provide for better supplying with water the Town and Suburbs of Kurrachee."

Agreed to.

PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Bombay Government respecting the power of Zillah Judges to award sentences of solitary confinement, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned.

Saturday, December 31, 1859.

PRESENT :

The Hon'ble Sir Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. B. Harington, Esq.,
Hon. H. Ricketts,	H. Forbes, Esq.,
Hon. Sir H. B. E. Frere,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

DISSOLUTION OF MARRIAGES BY CHRISTIAN CONVERTS.

SIR CHARLES JACKSON begged leave to move the the first reading of a Bill "to provide for the dissolution of certain Marriages entered into by Christian Converts before their conversion." The object of the Bill was to remove certain disabilities affecting Native Christian Converts. Owing to the custom of early marriages in this country, most Converts were married at the time of their conversion. The consequence of a Mahomedan or Hindoo becoming Christian was simply this, that the Hindoo or Mahomedan who remained true to his own faith was considered freed from the marriage tie, the marriage itself being dissolved; while on the other hand, according to Christian doctrine, the Convert was

bound by his marriage before conversion and was not able to re-marry. If it were not an Hibernian form of expression, he would describe his position as that of a married man without a wife. Such a state of things produced most serious consequences. It either led to concubinage amongst the Converts, or else to irregular marriages which gave neither a legal or religious sanction to the subsequent connection. A short statement of how matters stood, would, he thought, satisfy the Council that legislation on this subject ought not to be delayed. There were some Missionaries who treated these Native marriages as idle ceremonies, and did not hesitate to re-marry their Converts. In the Tinnevely Missions it appeared that a distinction was drawn between marriages contracted between children and not afterwards followed up by cohabitation at maturer years, and marriages which were afterwards followed up by cohabitation. If children became converts they were not allowed to wear the symbols of marriage in the schools, and were taught that they were idle ceremonies, and when they attained maturity the Missionaries did not hesitate to re-marry them, and it was only when the marriage was followed by subsequent cohabitation that the Converts were prevented from marrying again. He (Sir Charles Jackson) did not see the force of this distinction. The validity of the Hindoo marriage must be decided by the Hindoo law, and according to that law, the first marriage in childhood is the real marriage and the child-wife becomes a widow even if her husband dies before the consummation of the marriage. These confused views on so important a subject as the law of marriage—a subject which affected so deeply the morality and the property of the Native Christian community—would produce still greater mischief and confusion by and bye, when the number of Native Christians increased. Besides, if a Convert were to re-marry, he would, according to an opinion given by Sir James Colville when Advocate General, render himself liable to an indictment for bigamy under Act 9 Geo. IV. c. 74, s. 70. He had not the Statute before him, but the Clause contained provision to the effect that any person “pro-

fessing the Christian religion,” being married, should marry during the life of the former husband or wife, should be guilty of felony and liable to transportation for seven years, or to imprisonment for two years. He (Sir Charles Jackson) would express no opinion upon the point, but it might be that a Judge would be astute to see whether the Native Convert in such a case, though within the letter, was within the meaning of the Act. Be this however as it might, this state of the law is another reason why the present state of things should not be allowed to continue.

It might be said by some that this was a case for the legislation of the Imperial Parliament. He certainly thought that in cases affecting Europeans it is very desirable that the marriage law should be uniform, and that uniformity would best be secured by leaving questions relating to the marriage law of Europeans to the Imperial Legislature. But he did not think that this held good with respect to the Native Christian community. He very much doubted whether Parliament would ever undertake to legislate for them, and he felt quite sure that the consequences would be most disastrous if they were ever induced to make the attempt.

This subject* had attracted the attention of the present Diocesan shortly after his arrival in this country, and he had asked him (Sir Charles Jackson) to obtain the assistance of that Council in order to remedy the evil. He (Sir Charles Jackson) had since then communicated with the Bishop and also with a Committee of Clergymen who had been appointed to confer with him on the subject, and the enactment which he now proposed met generally with their consent.

Before going farther, he wished to guard himself against any misconstruction. This Bill would not in any way affect either the Mahomedan or Hindoo party to the marriage who remained true to their original faith. According to the principles of the law to which they still adhered, the marriage was dissolved already, and it ought to be, and he believed it was, a matter of indifference to them whether the Convert did or did not marry again. The Bill only proposed to do that for

the Convert which the Mahomedan and Hindoo law had already done for the other party to the marriage contract. He thought however that as the Mahomedan or Hindoo party to the marriage contract did not in fact want this Bill, they might reasonably object to pay any of the expenses of the proceedings contemplated by this measure, and he had therefore inserted a Clause in the Bill, which expressly provided that the costs of all proceedings taken under the Act should be paid by the Convert.

In considering the question, he (Sir Charles Jackson) had looked round to see what was done in former times, when Christianity and Heathenism were side by side in Europe; but he was sorry to say there was little to be found. The law books of our own country were quite silent on the subject. There was, however, a case cited in Potlier which was in point. That was the case of a converted Jew, who in 1754, after his conversion, required his wife to return to cohabitation with him, but she refused. The Jew, thereupon, appealed to a tribunal in Strasbourg, and that tribunal granted him a divorce, with a declaration that he was at liberty to marry again. Four years afterwards, in 1758, he entered into an engagement to marry a young lady of Soissons, and all went merrily as a marriage bell till the parties applied to the Curé who refused to marry them. The matter was then referred to the Courts and the case was ultimately appealed to the Parliament of Paris who decided that the Curé was right and the parties could not be married. This was the only legal authority which was to be found on the subject, but he found it stated in the opinion of Mr. Colville, when Advocate General, to which he had already alluded, that the question had been agitated before the Council of Trent who did not appear to have arrived at any decision respecting it.

The Council would not expect him to go into the religious part of the question. That was not the time or place for such a discussion, and he did not feel himself qualified to discuss it. He would just remark, however, that he had seen a large mass of papers, from which it appeared that the whole controversy turned upon the 14th and

15th verses of the 7th Chapter of 1st Corinthians.

“If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him. But if the unbelieving depart, let him depart. A brother or a sister is not under bondage in such cases.”

And he (Sir Charles Jackson) thought he might add that the great majority of the Clergy deemed this a sufficient authority for the present measure.

With these few observations, he begged to introduce the Bill to the Council. It was, he thought, characterised by two distinct features.

1st.—That there was the greatest time given to the parties for deliberation, particularly when there were any children of the marriage.

2nd.—That great care had been taken to throw all the burden of the proceedings taken under the Act upon the Convert.

He would not go at length into the provisions of the Bill, but he would simply state that it provided that, when a Mahomedan or Hindoo husband or wife refused to cohabit with a Christian Convert, the latter was allowed to apply by petition to the Zillah Judge, who would issue an order compelling the appearance of the party refusing to cohabit, for the purpose of being interrogated whether he or she refused to cohabit with the Convert. If the party, on being interrogated by the Judge, answered in the negative, the Judge was required to postpone making any final order for the dissolution of the marriage for a period of four years if there were any children, or of two years if there were none. At the end of the period ordered, the party would be again brought up and interrogated by the Judge, and if he or she still refused to cohabit with the Convert, the Judge was empowered to declare the marriage dissolved.

The Convert would be obliged (if the Zillah Judge should think fit so to order) to maintain his wife during the period which might intervene between the first and second interrogation, and the Bill expressly saved the rights of children born of the marriage which

was dissolved. These were the main provisions of the present Bill, and he would only say in conclusion that, if the Council should allow it to pass the second reading and be referred to a Select Committee, he should be very glad to receive any suggestions on the subject.

MR. SCONCE seconded the Motion, which was put and carried, and the Bill read a first time.

MARRIAGES (CHURCH OF SCOTLAND.)

MR. SCONCE said, the Bill of which he was about to propose the first reading, did not embody any new principle of law, but rather was intended simply to correct what appeared to him to be a defect in the present law relating to the celebration of Marriages by ordained Ministers of the Church of Scotland. The present law by which Marriages were solemnized by Ministers of that Church was enacted in England in 1818, and it might be readily understood that the general principles of legislation which were then adopted towards Europeans were much more restrictive than those of the present day. In the Act to which he had alluded, it was provided that Marriages "shall be had and solemnized within the British Territories in India by ordained Ministers of the Church of Scotland as by law established." Thus it was already recognized that Ministers of the Church of Scotland were competent to solemnize Marriages in this country; but the following words were added "and appointed by the United Company of Merchants of England trading to the East Indies, to officiate as Chaplains within the said territories." The purpose of the present Bill was simply to withdraw the restriction contained in those latter words, so that Marriages might be solemnized by any ordained Minister of the Church of Scotland in this country, whether Chaplains upon the Establishment or not. More recently, Chaplains or rather Ministers had been introduced into India on a footing not contemplated by the Legislature when the Act of 1818 was passed. Lately several Chaplains had been appointed by the Secretary at War to the Highland Regiments in this country; and it was apprehended that, under the strict terms of the law, those Chaplains,

though ordained Ministers of the Church, were not competent to marry soldiers attached to their Regiments. He did not apprehend that any objection could arise to effacing words from the Act which afforded no greater security than the ordination of the Church gave. With these remarks, he begged to move the first reading of a Bill "relating to the celebration of Marriages in India by ordained Ministers of the Church of Scotland."

The Bill was read a first time.

IMPORT DUTY ON SALT (N. W. P.)

MR. HARINGTON moved the second reading of the Bill "to empower the Governor-General in Council to raise the duty on Salt imported into the North-Western Provinces of the Presidency of Bengal."

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

MR. HARINGTON moved, pursuant to notice, that the Standing Orders be suspended to enable him to carry the Bill through its remaining stages to-day. The Council had already been informed that the extra duty proposed to be imposed upon Salt imported into the North-Western Provinces from across the Frontier, was being levied at the present time under an order of the Supreme Government, and a Section had been added to the Bill to indemnify all persons concerned in levying the higher rate of duty under that order. But it was obviously desirable that the sanction of law should be given to the measure as soon as possible, and he trusted therefore that the Council would not object to give their assent to the Motion which he had just made.

SIR BARTLE FRERE seconded the Motion, which was put and carried.

MR. HARINGTON then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee after a verbal alteration in the Title, and, the Council having resumed its sitting, was reported.

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

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

MR. HARRINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

ZILLAH COURT OF FURRUCKABAD.

MR. HARRINGTON moved the second reading of the Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of Furruckabad."

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

KING OF OUDE.

MR. HARRINGTON moved the second reading of the Bill "to provide for the execution of process within the precincts of the residence of His Majesty the King of Oude."

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

JAMSETJEE JEJEEBHOY BARONETCY.

MR. LEGEYTT moved that the Council resolve itself into a Committee on the Bill "for settling Promissory Notes of the Government of India producing an annual income of one lac of Rupees and a Mansion House and Hereditaments called Mazagon Castle in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him and the heirs male of his body, by Her present Majesty Queen Victoria, and for other purposes connected therewith."

Agreed to.

The Bill passed through Committee after a verbal amendment in the Preamble, and, the Council having resumed its sitting, was reported.

MR. LEGEYTT moved that Mr. Ricketts be requested to take the above Bill, as now settled in Committee of the whole Council, to the President in Council in order that it might be transmitted to the Secretary of State for India, with the request that he would obtain the sanction of Her Majesty to the same.

Agreed to.

PASSENGERS.

MR. LEGEYTT moved that the Council resolve itself into a Committee on the Bill "to amend the law relating to the carriage of Passengers by Sea."

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

MEERAS LANDS.

MR. LEGEYTT moved that the Report of the Select Committee on the Bill "to limit the period within which a Meerasdar may assert his claim to lands which he has abandoned or for which he may have failed to pay assessment," be adopted.

Agreed to.

KING OF OUDE.

MR. HARRINGTON moved that the Bill "to provide for the execution of process within the precincts of the residence of His Majesty the King of Oude" be referred to a Select Committee consisting of Mr. LeGeyst, Mr. Forbes, and the Mover.

Agreed to.

ZILLAH COURT OF FURRUCKABAD.

MR. HARRINGTON moved that the Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of Furruckabad" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAIT SETTLEMENT.)

MR. FORBES 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 "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

WATER-SUPPLY (KURRACHEE).

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 "to provide for better supplying with water the Town and Suburbs of Kurrachee."

Agreed to.

EXCISE ON SALT (MADRAS PRESIDENCY).

MR. FORBES 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 "to establish a Duty of excise on Salt manufactured in the Presidency of Fort Saint George."

Agreed to.

The Council adjourned.