

Saturday, February 26, 1859

LEGISLATIVE COUNCIL
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MR. HARRINGTON moved that the words "which shall have been" be inserted after the word "award" in the second line of the Clause.

Agreed to.

The Clause as amended was then read by the Chairman and passed.

MR. CURRIE moved that the following proviso be added to Section II, namely:—

"Provided that in the case of purchases from a depositary, pawnee, or mortgagee, no such suit shall be maintained unless brought within the time limited by Clause 14 Section I."

He thought that the Section was not quite correct as it stood, the maximum time in which suits could be brought against a depositary, pawnee, or mortgagee, by Clause 14 of Section I of the amended Bill, was thirty years for moveable and sixty years for immoveable property; so that, as it at present stood, if the immoveable property was sold after the expiration of fifty-five years, a new time of limitation would commence and run for twelve years more, making a total of sixty-seven years, which was never intended; but it was intended, if property was transferred by a *bonâ fide* purchase, that the period should be shortened, but not in any case lengthened.

After some discussion, the amendment was agreed to, and the Section as amended then passed.

MR. CURRIE moved that Section IV be omitted, and that the following new Section be substituted for it, namely:—

"In suits to avoid incumbrances or under-tenures in an estate sold for arrears of Government revenue due from such estate, or in a putnee talook or other saleable tenure sold for arrears of rent, which, by virtue of such sale, becomes freed from incumbrances and under-tenures, the cause of action shall be deemed to have arisen at the time when the sale of the estate, talook, or tenure became final and conclusive."

Agreed to.

MR. CURRIE moved that Sections II, III, and IV be transposed, so as to stand after Section VII.

Agreed to.

MR. PEACOCK said that Section IX provided, that in cases of fraud "the time limited for commencing the action

against the person guilty of the fraud, or accessory thereto, or against any person claiming through him otherwise than in good faith, or for a valuable consideration, shall be reckoned from the time when the fraud first became known." It had been suggested to him by his Honorable friend on the right (Mr. Harrington), that the words "by purchase" be inserted before the words "in good faith."

The motion was afterwards by leave withdrawn.

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

MR. HARRINGTON then moved that the Bill be republished for a period of two months.

Agreed to.

The Council adjourned.

Saturday, February 26, 1859.

PRESENT :

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

Hon. Lieut.-Gen. Sir	E. Carrie, Esq.,
J. Outram,	H. B. Harrington, Esq.,
Hon. H. Ricketts,	H. Forbes, Esq.,
Hon. B. Peacock,	and
P. W. LeGeyt, Esq.,	Hon. Sir C. Jackson.

OATHS AND AFFIRMATIONS.

THE CLERK reported to the Council that he had received a communication from the British Indian Association, relating to the Bill "concerning Oaths and Affirmations."

MR. FORBES moved that the communication be printed.

Agreed to.

MADRAS POLICE.

MR. FORBES said, he rose to make the motion of which he had given notice under some embarrassment, because he was about to move the first reading of a Bill, of the principle of which he must, at the outset, tell the Council that he did not approve.

The measure of separating the executive from the judicial functions of the Magistrate was one which the Government of Madras had for some years had in contemplation, and had, on more than

one occasion, pressed upon the Government at home, and upon the Supreme Government of India. It was one which, as was admitted by the Honorable Court, had divided the opinions of the most able men, and he must freely admit that his own opinion sided with those who doubted its political prudence.

But, as he had already said, many far abler men had been in its favor; the Madras Government was most desirous of its introduction; and the Home Government had sanctioned the arrangement, in order that a practical solution might be had of what was now a disputed point.

It had appeared to him that he was thus placed in circumstances which, in the position which he had the honor to hold as a representative Member of this Council, made it his duty to bring forward a measure which, although not approved by himself, was earnestly desired by the Government, and sanctioned by the Home Authorities; and he was very glad to be able to say that those friends whom he had consulted on the occasion had coincided in the view he had taken.

He thought that, under all circumstances, he should be doing more justice to the Bill which he introduced, if, instead of speaking on the question himself, he let the Madras Government be heard in support of their own measure.

In 1854 the Honorable Court of Directors addressed a Despatch to the Government of Fort St. George, in which they said that their attention having been called to the arrangements proper to be adopted for the local administration in Bengal and Bombay, they had been led to believe that the system in force in Madras might also stand in need of revision, and, after describing the systems followed in the three Presidencies, they said—

“As the Bombay system of placing the Police Establishment under the immediate direction and control of a Superintendent of Police, although still experimental, has been reported to work satisfactorily, we are desirous that you should consider whether a similar arrangement might not be advantageously introduced into Madras.”

In replying to this Despatch, the Government of Madras admitted that

the state of their Police was most unsatisfactory. They said—

“The Judges of the Fouzdary Adawlut have, with truth, remarked that the evil most felt in the administration of Criminal Justice, and which most loudly calls for remedy, is the want of an efficient preventive and defective Police. The materials for such a Force, the Judges said, no doubt exist, which, if sufficiently strengthened and placed under adequate supervision, might be rendered all that is required: but its present organization is extremely defective, and the degree of supervision which the Magistrates are able to exercise is by no means adequate. The time of the Magistrates is principally devoted to their Revenue duties, and those who take the most active interest in the Superintendence of the Police, are debarred, by the other calls upon their attention, from devoting to it that unremitting care and supervision which are essential to the prevention and detection of crime.”

The Government went on to say—

“Of the correctness of this representation by the Judges there can be no question, nor can it be denied that the inability of the present Police Establishment to cope with the prevailing amount of crime, or to ensure protection to person and property, has latterly become more than ever marked and notorious.”

“For the re-organization of the stipendiary Police, and putting it upon an efficient footing, two measures seem to be indispensable, first, to separate Police from Revenue functions, and to confine the District Police absolutely to Police duties; and, secondly, to place the force thus set apart under close and undivided European superintendence. The first of these measures will not only tend to secure that efficiency which is not to be expected when the Officer is liable to be employed on different and sometimes conflicting duties, but will serve to obviate the oppression which the late enquiry before the Commissioners for the investigation of Torture has shown to be incident to and favored by the concentration of Fiscal and Police powers in the same hands. The second will ensure that discipline in the Force, and that promptitude and vigor in its action, which are indispensable to an efficient Police administration.

“Commencing, then, with the Native District Police, we think that in every District those who are henceforth to be employed in Police duty should be wholly separated from Native Revenue servants.

“For the management of the Force we would advocate recourse to the plan obtaining in the Bombay Presidency, and suggested to our consideration by your Honorable Court. It is highly approved by the Judges of the Fouzdary Adawlut, who say that ‘the separation of the judicial duties of the Magistrate, from those which relate to the prevention and detection of crime, appears an excel-

lent arrangement. It is, moreover, most desirable to have an Officer who may be available on any emergency to trace out serious crime on the scene of its occurrence, and in whose proceedings full confidence may be placed. This duty at present devolves on Native functionaries, whose proceedings are ordinarily very ineffective, and command no confidence, so that the judicial authorities have constantly to be on their guard against the machinations of the Police, by whom confessions are extorted and evidence concocted to save themselves from the stigma and consequences of failure in the detection of crime.

"In these views we quite concur."

* * * * *

"The success of the scheme will, however, largely depend upon its being efficiently supervised by some central controlling authority. For this purpose we are disposed most strongly to advocate the appointment of a Commissioner of Police for the whole Presidency. * * He would make occasional tours in the Provinces, and ascertain, by personal inspection, the defects in the working of the system. He would be the referee and adviser of the Government in all matters of Police, and the channel through which all reports would be made to them. At present the Police of the country is nominally under the Fouzdary Adawlat, whose constitution is by no means peculiarly fitted for the trust, and who are too much occupied with other duties to give it much of their attention."

With reference to those parts of the Despatch from the Government of Madras which had been quoted above, the Honorable Court, in addressing the Government of India, on the 24th of September 1856, said—

"To remedy the evils of the existing system of Police, the first step to be taken is, wherever the union at present exists, to separate the Police from the administration of the land revenue. No Native Officer should be trusted with double functions in this respect.

"In the second place the management of the Police of each District should be taken out of the hands of the Magistrate, and be committed to a European Officer with no other duties, and responsible to a General Superintendent of Police for the whole Presidency."

And, finally, in a Despatch, No. 13 of 1857, the Honorable Court said that, although the principle of separating the judicial from the Police functions of the Magistrate had been strongly opposed by men of intelligence and experience, who considered that their views were more in accordance with Oriental ideas which recognized no division of functions, and regarded the ruler with as many deputies as might

be needed, as exercising in his own person all the powers of the Government—a satisfactory solution of a question which had been fully and ably discussed on both sides, would be best obtained by a practical application of the two systems in different localities; and as the Court considered that the systems would be tried with the best advantage under the supervision of those who respectively favored them, they authorized the Madras Government to organize the Police of that Presidency on the plan they had recommended.

The Bill provided for the separation of the executive and judicial functions of the Magistrate in any part of the Presidency to which the Government might extend the Act, and in this respect was mainly based on Act XIII of 1856. It contained also several Sections regulating the procedure of the Police, some of which were provided for in the Penal Code, and some in the Code of Criminal Procedure. As it was uncertain when either of those Codes would pass into law, he had left these Sections in the Bill, and they could be struck out in Select Committee, if the passing of the Penal or Criminal Procedure Codes should render their retention unnecessary, or, if retained, they could be remodelled to suit such parts of those Codes as might be intended to have similar effect, and might have been finally amended and agreed upon by the Select Committee.

With these remarks he begged to move the first reading of a Bill "for the better regulation of the Police within the territories subject to the Presidency of Fort St. George."

The Bill was read a first time.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYNT rose to move the first reading of a Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a Fund for Municipal purposes in the town of Bombay)." He said, the object of the present Bill was to amend the Act passed last year, for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in Bombay, which had been found to be defective in several respects. Provisions had

been introduced into this Bill to amend those defects. Very soon after the passing of the Act, the Justices of Bombay represented to the Government that, by Section VI of the Act, the Governor in Council had power to appoint one Commissioner, who was removeable at his pleasure; and by the succeeding Section of the Act, the two other Commissioners who were to be elected by the Justices were to remain in office for a period of three years, but no power of removal was given. This they complained of, and said that, as the election to the office was triennial, an unfit person might be elected, whom it might be very desirable to get rid of. Some discussion had taken place on this point, and the Government had finally concurred that such power of removal ought to exist, when such should be recommended by the Justices;—provision for this had been made in the present Bill.

The next object of the Bill was to provide for the levy of town duties on bricks and tiles, which were not included in the Schedule of Act XXV of 1858, and which were articles on which, in the opinion of the Municipal Commissioners, such duties ought to be levied.

The Government had also considered it expedient that the Municipal Commissioners should possess a discretionary power of compounding, for a given period, for the payment of a lump sum on articles imported by them, instead of each article being paid for separately. It was found, however, that, without an express enactment, this could not be done; provision to meet the requirement had been made in the Bill now introduced.

It had also been brought to the notice of the Bombay Government, by the Chief Engineer, that the Bill caused the levy of a duty on the importation of timber, the property of Government, and that this timber was almost invariably brought into Bombay for re-exportation, or (when kept) for the purpose of ship-building for the Indian Navy, and ought not to be liable to any duty. It had, consequently, been suggested by the Government, and concurred in by the Commissioners, that power should be given to them to remit the duties on timber and all other articles re-exported or issued from a Government dépôt for the Indian Navy, or any other Government purposes.

He (Mr. LeGeyt) would move the first reading of the Bill.

The Bill was read a first time.

AHMEDABAD MAGISTRACY.

MR. LEGEYT moved that the Bill “to empower the Governor of Bombay in Council to appoint a Magistrate for certain districts within the zillah Ahmedabad” be read a third time and passed.

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

SMALL CAUSE COURTS.

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 “for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature, established by Royal Charter.”

Agreed to.

LEASES OF GHATWALEE LANDS (BEERBHOOM).

MR. CURRIE moved that Mr. Ricketts be requested to take the Bill “to empower the holders of Ghatwalee lands in the district of Beerbhoom to grant leases extending beyond the period of their own possession” to the Governor-General for his assent.

Agreed to.

AHMEDABAD MAGISTRACY.

MR. LEGEYT moved that Mr. Ricketts be requested to take the Bill “to empower the Governor of Bombay in Council to appoint a Magistrate for certain districts within the zillah Ahmedabad” to the Governor-General for his assent.

Agreed to.

VILLAGE-WATCHMEN (BENGAL).

MR. RICKETTS gave notice that he would, on Saturday next, move the first reading of a Bill to regulate the appointment, employment, and dismissal of village-watchmen in the territories under the Government of the Lieutenant-Governor of Bengal.

The Council adjourned.