

Friday, February 9, 1866

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

VOL. 5

JAN. - DEC.

1866

P. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 9th February 1866.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, *presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble H. Sumner Maine.

The Hon'ble W. Grey.

The Hon'ble G. Taylor.

The Hon'ble Colonel H. M. Durand, C.B.

The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádúr of Vizianagram.

The Hon'ble Rájá Sáhíbh Dyál Bahádúr.

The Hon'ble W. Muir.

The Hon'ble Mahárájá Dhíraj Mahtab Ohand Bahádúr, Mahárájá of Burdwan.

The Hon'ble D. Cowie.

The Hon'ble Stewart St. John Gordon.

The Hon'ble George Ross.

ARMS' ACT CONTINUANCE BILL.

The Hon'ble MR. MAINE introduced the Bill to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that it was originally his intention, after giving ample time to the Council to consider the papers which had been circulated, to pass the Bill under suspension of the standing orders without reference to a Committee. But he had had conversations with several Members of the Council particularly with the Hon'ble Mr. Gordon, and he found that that Hon'ble Member, whose experience in the working of the Act was considerable, thought that it might be usefully amended in various minor particulars. He (MR. MAINE) should be sorry to make any alterations in an Act which seemed to have been carefully prepared and which had been sharply criticised at the time of its enactment. But he was himself desirous to refer the Bill to

a Committee, partly because it was desirable to follow the Rules for the Conduct of Business and partly because he had introduced a Section empowering the Magistrates to grant licenses subject to such conditions as they might consider necessary.

He did not commit himself to unreserved approval of what was called in the papers Mr. Forbes' condition. But he thought that licenses to carry arms might often be usefully granted on such conditions, or on one slightly modified from Mr. Forbes' form. MR. MAINE did not share in the alarm of those who thought that the measure would be rendered nugatory by the local officers granting fanciful or capricious licenses. The Local Government could by proper action secure that such licenses should not be granted.

The Hon'ble MR. MUIR said that, before the Bill went to Committee, he should like to say a few words regarding a point little touched upon in the reports which had been circulated, namely, the defenceless state in which the people in outlying tracts might be placed by a too stringent enforcement of the law.

He fully and entirely agreed in the great advantages which the country had gained by the measure which it was intended to perpetuate. He fully agreed that it had already caused a greater amenity of manners among the people; that habits of ferocity and violence formerly prevailing among the criminal population had been ameliorated; that security of life and property had been promoted, and peaceful and industrious pursuits advanced. He had had some opportunity of observing the results of the measure in the districts to which disarming operations had been extended. The mass of arms taken from the people in the process of disarming was enormous. The purposes to which these had been turned were sometimes curious. In one district the barrels of matchlocks had been used for the construction of a record room; and in looking at the long array of racks thus formed, like an armoury, out of warlike weapons, one could not help reflecting on the immense amount of arms which had been in the possession of the people, and the deeds of violence and bloodshed to which they might have been turned in times of disquietude or rebellion. Elsewhere large sums had been realized from the sale of broken up swords, spears and other arms; the money thus obtained was not appropriated by Government, but had been usefully employed in works of benefit to the people. From this fund a large and handsome building had been erected, for example, at Allahabad, as the traveller might see, constructed according to the design of his friend the Secretary in the Home Department, then Magistrate, for the accommodation of witnesses and other persons attending the Courts.

Considering the vast amount of arms which had been given up by the people, the use to which they were formerly turned, and the change of habits which had come over the population since their disarmament, he (Mr. MUIR) considered that the advantages resulting from that operation had not been over-stated. One might almost say the proverb had been fulfilled, that swords had been turned into plough-shares and spears into pruning-hooks. Emphatically the arts of war and violence had given place to the arts of civilization and peace.

MR. MUIR also agreed in what had been said about the increase of wild animals in many of the districts where the disarming operations had been carried on. But the provisions made in the Bill would meet this objection. At the same time, there might be a danger lest conditions should be capriciously introduced into licenses by Magistrates; but no doubt care would be taken in administering the Act to avoid unnecessary interference with the people in this respect. The Local Governments might be trusted to watch the working of the Act and prevent any arbitrary action of the kind apprehended.

But it was not only from wild animals that men deprived of their arms would be exposed to attack and injury in life and property. They were exposed to danger from robbers, dacoits, or other bands of armed men.

We had taken away arms from the people and had left them defenceless. We had prohibited the people from the practice of arms, and made them forget their use. Formerly, we could say in times of difficulty, when obliged to withdraw our outposts—"You have swords and matchlocks; you can use them at least from behind your walls, and you must protect yourselves as best you can." We are no longer able to say that; we have withdrawn their arms and left the people defenceless.

In those parts of the country which he might term the interior districts, those namely that were fully and permanently protected by our Police and Military posts, MR. MUIR did not think that this objection had any weight. The Government must accept the position that they are responsible for the defence and security of the people. There was, he believed, only one Officer (the Magistrate of Goruckpore) who had urged the objection. In arguing against the continuance of the Act, that Officer had said :—

"If the whole population were to be allowed according to their means to purchase and keep arms, no great danger is, I think, likely to arise in a political point of view, whereas there would be less chance of a few lawless persons being able to attack and plunder villages as is now done. Dacoities would not, I think, be so frequent if the mass of the people were not so defenceless as they are."

This, however, had been well met by Mr. Batten, the Commissioner of Agra, where he said :

“ Of course Magistrates must be careful to see that the predatory classes do not gain the upperhand of the honest classes by the loss on the part of the latter of the means of defence.”

That was the true state of the case. The Government must recognise the obligation (having deprived the people of the means of protecting themselves) of providing at all times and under all circumstances for the tranquillity of the country. The people, on their part, must accept the altered state of circumstances, and recognize the new régime as upon the whole conferring vastly greater advantages than the old ; seeing that it promoted to the utmost the peace and happiness, the civilization and prosperity of the country.

These remarks had reference to what he (MR. MUIR) had termed the interior districts. But there were parts of the country adjoining Native States where the population was exposed to incursions and lawless attacks from armed robbers or enemies ; and where especially in times of disquiet and commotion they would always from their very situation be liable to raids of this nature, and be beyond the power of ordinary defence from us. We have deprived them of the means of defending themselves, and yet we leave them in the power of men who possess arms and practise their use, and may at any time attack them. MR. MUIR did not think that our subjects thus situated should be placed at so great a disadvantage. It was quite true that such localities had not been generally subjected to the disarming process. But at the same time they were fully amenable to those parts of the law which required a license to warrant their carrying arms without question by the Police. He would refer to the passages in the district reports which touched on this subject. And he might notice in passing that the infrequent mention of the topic in these papers was a remarkable proof of the profound security which prevailed throughout the empire.

The Commissioner of the Agra Division said :—

“ The Magistrate of Muttra reports that, east of the Jumna, every village was disarmed ; but to the west of the river only 15 Goojur villages, and the towns of Muttra and Bindrabun, were disarmed, and all the other villages were allowed to return their arms—one of the causes being the neighbourhood of the independent State of Bhurtpore ; *but the people were not allowed to carry them without a license, and were only to keep them in their houses.*”

If they were allowed only to keep their arms in their houses, and not carry them and use them, they would soon altogether forget their use, and in

time of danger would be unable to protect themselves, except under very great disadvantages, against their neighbours who were in the constant use and practice of arms.

So also at page 20 the Commissioner of the Allahabad Division said :—

“ In localities infested with wild animals, or even liable to raids from dacoits, free permission has been accorded for the carrying of arms. The only restriction placed on the inhabitants of such places has been a demand for information as to the number and nature of the weapons required.”

Here there would appear to be given a larger license than in the district of Muttra.

So the Commissioner of the Benares Division wrote :—

“ In Mirzapore, the Arms' Act is only partially introduced, that portion south of the Ganges being unaffected under the terms of the Governor General's Notification No. 5326, dated 21st December 1853.”

And the Commissioner of Jhansi said :—

“ Possession of arms is unrestricted, and, as a matter of fact, the people have plenty of both swords and matchlocks. *Wearing arms is prohibited without a license, and the effect of the prohibition is obviously beneficial in many ways.*”

Of course the prohibition was beneficial in certain parts of Jhansi, as in the larger cities and towns, and should be continued there. But in the outlying and exposed positions, there ought to be no restriction against the carrying of arms ; that ought to be allowed without any license.

As we were now prolonging the Act indefinitely, it appeared to him (MR. MUIR) that this point should not be overlooked. It might be met by empowering the local authorities, under proper sanction, to give not merely individual and personal licenses for carrying arms, but to grant a local license or exemption in respect of certain villages or tracts, which would enable all within such limits to carry arms.

If this suggestion were deemed worthy of attention, it could be taken up by the Select Committee to whom the Hon'ble Introducer of the Bill had just moved that it should be referred. And he (MR. MUIR) would only repeat that he entirely concurred in the general purport of the Bill.

The Hon'ble MR. MAINE said that it seemed to him that the observations of his Hon'ble friend were entitled to great consideration. As far as he could

understand him, his Hon'ble friend thought that not only classes but districts and villages should be exempted. MR. MAINE thought the words of the Act sufficiently wide to admit of such exemptions, and his present impression was that all that was necessary was an administrative order.

He would, however, examine the suggestion in Committee, and, if necessary, consent to it. So far as he understood the proposed amendment he at present fully agreed to it.

The Motion was put and agreed to.

CRIMINAL PROCEDURE ACT AMENDMENT BILL.

The Hon'ble MR. MAINE also introduced the Bill to amend Act No. XXV of 1861 (for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter), and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that the Council would recollect that this Bill was intended to remedy some slight defects in the Code of Criminal Procedure, which provides that certain offences that might well be tried by Magistrates of a lower grade should only be tried by Magistrates of a higher grade. Of course it would be understood that, if the punishment required to be inflicted was greater than a subordinate Magistrate was competent to award, the case would be sent up to be dealt with by a Magistrate of the higher grade. The Bill had been introduced at the representation of the Governments of Bengal, Madras, and Bombay, and the Government of the North-West also thought that some such measure was necessary.

The Motion was put and agreed to.

PLEADERS AND MOOKHTARS' ACT EXTENSION (N.-W. P.) BILL.

The Hon'ble MR. MAINE also introduced the Bill to extend Act No. XX of 1865 (to amend the law relating to Pleaders and Mookhtars), to the Sudder Court of the North-Western Provinces, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that this Bill was introduced at the instance of the Sudder Court of the North-Western Provinces, and, as he had before explained, it was only necessitated by the establishment of the High Court of the North-West having been delayed longer than was anticipated. From information lately received, which he believed to be trustworthy, he had doubts whether the Bill would ever come into operation. The Letters Patent for the High Court to be established in the North-West Provinces were little less advanced than the new Letters Patent for the

High Courts in the Presidency Towns. Still there was no harm in referring the Bill to a Committee. It had been sent up to the Sudder Court of the North-West, and he had no doubt that, before the time for report arrived, the Council would be in receipt of their opinion on the measure.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes—The Hon'ble Colonel Durand, the Hon'ble Messrs. Muir and Gordon and the Mover.

On the Bill to amend Act No. XXV of 1861 (for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter)—The Hon'ble Mr. Grey, the Hon'ble the Maharájá of Vizianagram, the Hon'ble Mr. Gordon and the Mover.

On the Bill to extend Act No. XX of 1865 (to amend the law relating to Pleaders and Mookhtars), to the Sudder Court of the North-Western Provinces—The Hon'ble Messrs. Grey and Taylor, the Hon'ble Rájá Sáhib Dyál Bahádur and the Mover.

The Council adjourned till the 16th February.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA ;
The 9th February 1866. }