

Friday, September 17, 1869

ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 8

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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 Simla on Friday, the 17th September 1869.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P.,
G.C.S.I., *presiding.*

His Excellency the COMMANDER-IN-CHIEF, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL.

Colonel the Hon'ble R. STRACHEY.

EUROPEAN VAGRANCY BILL.

The Hon'ble MR. MAINE, in moving that the Report of the Select Committee on the European Vagrancy Bill be taken into consideration, said that he would submit to the Council the amendments proposed by the Select Committee, observing of them generally that they were either intended to prevent the measure from pressing too harshly on the unfortunate class to which it would apply, or meant to bring it within the scope of the Council's legislative powers—powers which, MR. MAINE had before explained, were defective in one important particular. Section 2, which provided that different parts of the Bill should come into operation at different dates, would be more appropriately mentioned after the amendments had been described, but he might now state that the bulk of the measure would not take effect till the Government of India introduced it by notification. So much of it in fact as related to vagrancy, properly so called, depended on the establishment of Government work-houses which had yet to be built. There were some parts of the country (among which possibly was the Madras Presidency) in which houses of refuge already existed which might be licensed under section 11, clause 2, and here perhaps the measure

might come into operation at once after due communication with the Local Governments. In section 3, Europeans were made to include Americans and Australasians, the last word being used because the case was just possible of a man born in New Zealand of European parents becoming a vagrant in India. The third clause of the same section had also been altered. The 'Magistrate' therein defined was not, it should be understood, the authority who made declarations of vagrancy, but the authority who punished for certain special offences committed by the vagrant class. Originally, the fear of placing the vagrants out of the reach of the arm of the law led to conferring these powers of punishment on all Magistrates, but the Committee had confined them to Magistrates not lower than Subordinate Magistrates of the first class. Section 4, and those which followed, related to declarations of vagrancy. As the Bill first stood, these declarations could be made in the Presidency Towns by any Magistrate of Police, and, outside them, by any Justice of the Peace or Superintendent of Police. The Committee, however, proposed, as regards the Mofussil, to confine the power of making declarations, which took away certain privileges, to Justices of the Peace exercising the full powers of a Magistrate, and these functionaries alone could, as such, declare men to be vagrants; but, under a later section (10), selected officers could have the power of making the declarations conferred on them by the Local Government, and there were many parts of India where this expedient would have to be freely resorted to. No other important change was made in these sections except that in section 5, when the declaring functionary had reason to believe that there had been a previous declaration of vagrancy, he was relieved from the necessity of endeavouring to find work for the vagrant (who by the hypothesis was probably a confirmed vagrant) and might send him at once to the work-house. Section 9 was new, and had been inserted at the instance of the Bengal Government. It provided that Magistrates of Police and Justices of Peace with full powers might give certificates or passports for a time not exceeding six months, which would relieve the person named in them from molestation under the Act. MR. MAINE hoped that this power would be used with discretion, or there might be a number of licensed vagrants wandering over the country. If it was abused, the exercise of the power could be regulated by a rule of the Governor General in Council under section 84. In the sections relating to work-houses, there was no change of importance proposed by the Committee.

Section 16 of the Bill, as proposed to be amended, and the sections which followed, deserved in MR. MAINE'S opinion attentive consideration. They provided

that an agreement might be entered into between the Secretary of State and any vagrant or other person of European extraction, by which the Secretary of State was to furnish such vagrant or other person with a free passage to his home, while the vagrant himself was to bind himself to proceed to a specified Indian port, to embark on board a ship to be specified in a particular way, to remain on board till the ship reached her destination, and not to return to India during five years, unless specially permitted so to do by the Secretary of State. The breach of any of the terms of the agreement was made criminally punishable. Of course, in order that the system (which was rendered necessary by the failure of the Government of India to obtain powers of compulsory deportation) might work smoothly and satisfactorily, there must be an understanding between the Local Governments up-country, and those of the territories in which the Indian ports were situated. Such an understanding would no doubt be facilitated by a rule of the Governor General in Council under section 34.

Section 23 had been materially modified by the Committee. On the one hand, it no longer applied to mere begging, on the other it applied to all persons of European extraction, even though they were British subjects. It provided that imprisonment during one month for a first offence, during two for a second, and so forth, might be inflicted on any person found asking for alms when he had sufficient means of subsistence, or asking for alms in a threatening or insolent manner, or continuing to ask for alms after being required to desist. Lest anybody should suppose that the class which was in danger of coming under these provisions was treated with undue harshness, MR. MAINE would refer the Council to the English Statute (5 Geo. IV., cap. 83, s. 3), which corresponded with these provisions. Under it any person found wandering abroad, or begging, or causing any child to beg, was to be deemed an idle and disorderly person, and might be sent to the House of Correction by a Justice of the Peace for a month's hard labour. In India, mere begging without more was not to be, as in England, an offence. Mere begging would only expose the beggar to be declared a vagrant, and to be thereupon dealt with under a process, which MR. MAINE ventured to describe, as one of peculiar tenderness.

Section 25, as amended, differed much from its original form. Originally it made it a punishable offence in the master of a ship to bring to India a man once convicted of felony. This appeared too harsh to some, and it was proposed therefore at least to insert the word "knowingly" in the definition of the offence. But the effect of this would be to throw on the prosecu-

tion the burden of proving knowledge, proof of which was, under the circumstances, virtually impossible. Accordingly, the Committee still made it a substantive offence to bring an ex-felon or ticket-of-leave man to India; but by an innovation on usage, it permitted the master of the ship to give evidence himself, and, if he satisfied the Magistrate that he had made reasonable enquiry as to the persons he had taken on board, he was not to be fined. Further, the Government of India might exempt from the provision any class of ships, or any class of passengers. It might be unreasonable to require a ship-master to ask a well-dressed person who paid a full first class fare whether he had committed a felony. Yet he might turn out to be a forger.

This last section would only come into operation on the first day of next year, by which time the Viceroy would have addressed the Governors of the Australian Colonies, and requested them to call the attention of the sea-faring classes to the new law. Certain sections of the measure would, however, come into force at once, and these MR. MAINE would read at length, so far as they were important:—

“ Any person of European extraction found asking for alms when he has sufficient means of subsistence, or asking for alms in a threatening or insolent manner, or continuing to ask for alms of any person after he has been required to desist, shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

Any vagrant or other person of European extraction may enter into an agreement in writing with the Secretary of State for India in Council, binding himself—

- (a) to proceed to such port in British India as shall be mentioned in the agreement;
- (b) there to embark on board such ship and at such time as shall be directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council;
- (c) to remain on board such ship until she shall have arrived at her port of destination; and
- (d) not to return to India until five years shall have elapsed from the date of such embarkation.

Any person entering into an agreement under section seventeen and failing to proceed in pursuance thereof to the port therein mentioned,

or refusing to embark when directed so to do under the same section,

or escaping from the ship in which he has so embarked before she shall have reached her port of destination,

shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section seventeen, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years."

MR. MAINE trusted that under the provisions he had quoted, there would be a considerable immediate clearance of the vagrant class. The violent and confirmed vagrant would often bring himself under the section first read, while many of the merely unfortunate would probably enter into the agreement provided for by the later sections. Even, therefore, before the measure came fully into operation through the establishment of Government work-houses, MR. MAINE believed it would not be inefficacious for good.

Such was the measure, as the Committee advised the Council to pass it. It did not promise to be as effectual as it would have been if the Indian Legislature had obtained the power of deportation, which was once hoped for. But even as it was, MR. MAINE believed that the new law would do much to mitigate the great evil and danger against which it was directed.

The Hon'ble MR. COCKERELL expressed a hope that the provisions of this Bill, which were necessarily of a wholly experimental character, would be found to work successfully; but he ventured to express the opinion that their success must mainly depend on the efficiency of the rules to be framed by the Government of India, under section 34, for he thought it was hardly to be doubted but that a too indiscriminate enforcement of many of these provisions in the case of the very large class likely to come under the definition contained in section 3, might very probably entail a greater evil on the tax-paying community than that which the proposed Act was designed to remove.

His hon'ble and learned friend, the mover of the Bill, had directed especial attention to the provisions of section 23, and dwelt on the advantages which he assumed would accrue therefrom. MR. COCKERELL must say that for his own part he entertained grave doubts as to the working power of these provisions. It was all very well to say that an European vagrant found asking alms "shall be punishable on conviction by a Magistrate," but how is he to be brought before the Magistrate if there was to be no power of arrest without warrant in such cases? The European, unlike the Native mendicant, had no

fixed local habitation, and, before a summons could issue on a charge of an offence under this section, he would, in all probability, be beyond its reach, and its service would be found impracticable. There was, perhaps, an indirect way of bringing the offender to account through the powers vested in the Police by section 4; but then the operation of that section was deferred, and in the meanwhile the provisions of section 23 were likely to prove inoperative. If the apprehended difficulty should arise, it might be met by the Government putting in force the provisions of section 4, and instructing all Police officers to act up to those provisions only in the case of persons who, being seen by or represented to them to be asking alms, appeared to fulfil the first of the conditions constituting vagrancy under section 3.

But the weakness of the Bill was in its provisions regarding the removal of European vagrants from India.

He thought that these provisions were defective, and that the object in view would have been preferably obtained by allowing compulsory deportation,—

1stly, because he did not share his hon'ble friend's confident anticipation that the persons whom it was desirable to remove from the country, would readily enter into contracts, to the breach of which criminal penalties were attached for their own deportation. For he always understood the main arguments against the legislative imposition of liability to criminal penalties for the breach of a civil contract to be, that there was danger of the person who would be made liable to criminal penalties not having been altogether a free agent in the formation of the contract, and that in no other case would the penalties become operative, as no person would willingly enter into a contract, for the breach of which he could be brought within the pale of the criminal law.

2ndly, he thought that Part IV was, as a piece of legislation, open to the criticism that it empowered certain parties to perform certain acts which they were, in the absence of such provision, under no natural legal disability to perform. For no legislative action was needed to enable a person to enter into a contract with the Government for his own removal, or to authorize the fulfilment by the Government of its part of the contract by removing such person in accordance with the conditions of the engagement entered into with that object.

MR. COCKERELL was not unmindful of the legal difficulties stated by his learned friend when he moved the reference of the Bill to a Select Committee, in the way of compulsory deportation. But he thought that those diffi-

culties amounted to no more than this, that, although the Legislature could enact provisions for the deportation of any person, it was powerless to provide for his protection when he had been removed to a greater distance than three miles from the coasts of India, and the reasoning, as he understood it, deduced from the defect of our legislative powers, was that it was hardly equitable to force a person into a position in which our laws could not avail for his protection.

MR. COCKERELL argued in regard to this consideration that the reasons held to justify any special legislation in the direction of this Bill, would afford a sufficient justification of the more complete measure of compulsory deportation. We had to deal with a social and political evil of an exceptional character which could only be satisfactorily met by an exceptional remedy.

At the same time, MR. COCKERELL thought that there was this to be said in favour of the standing provisions of the Bill in this matter, that they exhibited the extreme moderation of the policy of the Government towards the European vagrant class in this country, and that if they failed in achieving the desired object, their failure would be a sufficient excuse for immediate recourse to the stronger measure which he would have been prepared to adopt.

The Hon'ble MR. MAINE expressed concurrence with his hon'ble friend that the measure would greatly depend for its success on the administrative rules to be made by the Governor General in Council. It was also true that, from the wandering habits of the class, there might be occasional difficulty in bringing to justice European offenders not yet declared vagrants, but the difficulty was no greater than attended at all times the apprehension of this description of persons. But in his remarks on the system of agreements recommended by the Committee, Mr. Cockerell had imperfectly appreciated the legal consequences of the defect in the legislative power of the Council. The point was that the Indian Legislature could not legislate for the high seas. No doubt one consequence of this was that it could not provide for the comfort and kind treatment of the vagrant during his voyage home. But there was a more formidable difficulty behind. The Indian Legislature could not make legal the detention of the vagrant against his will so far as regarded the high seas. An Indian enactment would be an authority to the master of a ship to receive a vagrant on board against such vagrant's will. It would also be an authority to detain him against his will while in Indian waters. But it would cease to be an authority or justification so soon as the ship passed beyond Indian waters, and it was impossible to say that the ship-master might not be liable to a civil action in England and to damages. No such difficulty arose when the vagrant

had agreed to be deported, and this was the reason why this expedient was adopted.

Major-General the Hon'ble SIR H. M. DURAND wished to know, in regard to section 17, whether it was intended that persons of European extraction, who had been born in India and had become vagrants, should necessarily be deported ?

The Hon'ble MR. MAINE said, that there was no legal obligation thrown by the measure on the Local Governments or their officers to enter into these agreements. Unquestionably there would be certain vagrants whom it would ordinarily be improper to remove from India ; but here, again, an administrative rule of the Governor General in Council would be issued to point out what discrimination was to be made between the different classes of persons coming under the measure.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved,—

That in section 16, lines 10, and 11, for 'twenty-nine,' the word 'thirty' be substituted.

He said that this alteration was needed to correct an inadvertency in the cross-references contained in section 16.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved,—

That in section 19, line 1, for 'proceed,' the words 'accompany a police officer to or to appear' be substituted, and that in line 5, the words 'by a police officer' be omitted.

This amendment, he remarked, involved a mere verbal alteration designed to make the language of the section correspond more closely with that of section 4, to which it referred.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved,—

That after section 19, the following clause be inserted :—

" And any person who, when required under section four to accompany a police officer to or to appear before a Magistrate of Police or Justice of the Peace, commits an offence punishable under section 353 of the Indian Penal Code, may, whether he be or be not an European British subject, be tried by a Magistrate for such offence."

He observed that without the proposed additional clause, an European British subject, who assaulted a police officer when in the discharge of his duty under section 4, and thereby committed an offence punishable under

section 353 of the Indian Penal Code, would be triable for such offence only by a High Court, unless the assault was so slight as to be sufficiently punishable under the powers exercised by a Justice of the Peace under the English Statute.

We could not disguise from ourselves that, by section 4 of this Bill, we were about to impose upon Native police officers a perilous responsibility, the due discharge of which was likely to be attended with great personal hazard; for the European loafer was unquestionably apt to prove dangerous to deal with when you attempted to exercise what to his apprehension might seem an unwarrantable interference with his personal liberty, and MR. COCKERELL thought that there was good ground for anticipating that the discharge of their duty under this section would subject police officers to frequent assaults. In such circumstances, it seemed incumbent on the Legislature to make such provision as was practicable for their protection. In all countries, the policeman in a personal conflict with disturbers of the public peace was held to have this advantage over his adversary, that he was fighting under the special protection of the law. Such protection could only be efficiently afforded when redress for the injury sustained by the upholder of the law was attainable on the spot where the injury was committed, or at least as near thereto as might be practicable.

Cases of this kind would, as he had said, be probably of frequent occurrence, and the necessity for their trial by the distant High Courts would entail the constant risk of evidence breaking down and the offenders escaping punishment, the result of which must be the discouragement of the Native police for the efficient discharge of their duty under the Act; and yet that police was the chief agency relied on for its effective operation.

Moreover, the trial of such cases by High Courts would entail a very considerable expense on the State, and MR. COCKERELL apprehended that without this the working of the Act might prove too costly. For these considerations he proposed to make *all* persons charged with an assault on a police officer, in the discharge of his duty under section 4, amenable, as regards their trial for such offence, to the provisions of the Code of Criminal Procedure.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved,—

That in section 24, the words 'and if he be of opinion that such person is without sufficient means of subsistence' be omitted.

He moved the omission of these words, because, in his opinion, they involved mere surplusage; for, to be able to form any opinion on the matter

referred to, the Magistrate, before whom the released prisoner is placed, must make some such summary enquiry as was contemplated in section 5, and if, as the result of such enquiry, the converse condition to that described in these words were established, then, with reference to the conditions of vagrancy described in section 3, the further action of the Magistrate under the latter part of section 5 and section 6 would be necessarily stayed. On these grounds, he held the retention of these words to be unnecessary.

The Motion was put and agreed to.

His Excellency the COMMANDER-IN-CHIEF said that, since the Select Committee had signed their Report, his attention had been drawn to the fact that section 31 did not quite complete the idea under which it was framed. The object of that section was to attribute a certain limited responsibility to any person, firm or company who might import or land servants in this country, and in consequence of the early discharge of such servants throw them into a state of vagrancy.

It might be in the recollection of His Excellency the President that he (the COMMANDER-IN-CHIEF) had been more than once addressed by the Government of India in his executive capacity on the fact that many large companies and firms *do* recruit their establishments from the ranks of the British regiments serving in India, with the consequence of the increase of vagrancy.

The COMMANDER-IN-CHIEF did not wish to attach any blame to the course pursued by these companies. It was not forbidden by the law, and, although it had thrown very considerable expense upon the Government of India, it must be admitted there were countervailing advantages. But it became a very serious consideration when this practice was a cause of increasing vagrancy in this country; and if it be admitted that the companies and firms alluded to incurred a certain liability when they landed men whom they did not ultimately retain in their service, and who consequently became vagrants, he could not see any reasonable distinction between that and the vagrancy caused in like manner by recruiting their servants from the army in India.

Two instances had come before him very recently; indeed, since the Select Committee sat. The first was that of a great mercantile company which refused to pay the return passage to England of one of its servants. A petition was lately addressed to His Excellency, which he had forwarded to Government. In it the petitioner stated that he had been for several years in the service of this country, having been originally in the army, and he

begged of the Government to grant him a passage to England because the company declined to give him one.

The other case was that of a soldier who applied for his discharge with a view of an engagement with a Railway Company.

His commanding officer enquired whether the Railway Company would guarantee him his passage to England; but it appeared no such guarantee could possibly be given under their rules as they had some regulation according to which the pay of the Railway servant suffered a deduction of twenty rupees a month until the amount of his passage money to England was saved. His Excellency did not know whether in any other companies such a precaution is taken; but still, notwithstanding these precautions, the country was liable to suffer on account of this man if he should take to evil courses; and the cost of sending him to England, though he had been taken from the service of the Crown for which he was brought to this country, would fall upon the Government of India. If this soldier committed an offence which, according to the rules of the Railway Company, involved his discharge within a month after he has entered the company's service, we had the result that, having lost his military profession, he was thrown upon the country without any profession or trade whatever. He was probably not acquainted with any handicraft by which he could obtain the means of subsistence, and therefore he must become a beggar and a vagrant within the meaning of this Bill. It appeared to His Excellency that those who made such engagements with persons on this condition, and thus contributed to the manufacture of vagrancy, should incur the responsibility of paying their passage to England, and he did not see any reason why the section should not be amplified in order to take in the probable results of such engagements. His Excellency therefore moved that the following be substituted for section 31:—

Liability of importers of Europeans or employers of soldiers becoming vagrants.

Whenever any person of European extraction lands in India,

or, being a non-commissioned officer or soldier in Her Majesty's army, leaves that army in India,

under an engagement to serve any other person, or any company, association or body of persons in any capacity,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the army, as the case may be, then the person, or company, association or body, to serve whom he has so landed in India or left the army shall be liable to pay to the Government

the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council
 Recovery of charges. by the person, company, association or body chargeable.

The Hon'ble MR. MAINE would, *1st*, observe that under His Excellency's amendment the liability would only last for a year, and *2ndly*, that the state of the case would be much changed by this Bill becoming law. Hitherto, when a company induced a soldier to leave the Queen's service, and then dismissed him after brief employment, the general community was not directly the worse for what had been done. But after the enactment of this measure, the man might, and probably would, become chargeable to the State; and MR. MAINE could not see why the general tax-paying body should pay for the company's mistake. He should not oppose His Excellency's amendment, which he thought just and reasonable.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill as amended be passed.

The Motion was put and agreed to

GÁRO HILLS BILL.

The Hon'ble MR. COCKERELL presented the report of the Select Committee on the Bill to remove the Gáro Hills from the jurisdiction of the tribunals established under the general Regulations and Acts.

The Council adjourned to Friday, the 24th September 1869.

WHITLEY STOKES,

SIMLA,
 The 17th September 1869. }

*Secy. to the Council of the Govr. Genl.
 for making Laws and Regulations.*