

Saturday, 4th July, 1857

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

VOL. III.

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1857.

Corps, whenever he might be on duty, to prevent any disturbance of the public peace, and to disperse any persons whom he might find assembled together to the number of five or more, without reasonable cause, between sunset and sun-rise in any public place; and also to apprehend any person against whom there should be reasonable grounds to suspect that he was about to commit an offence against the State, or to incite others to mutiny or rebellion.

For the purpose of protecting Members of the Corps in the discharge of their duty, he proposed to enact that any person who should assault or resist, or aid in assaulting or resisting, or incite any person to assault or resist any Member of the Corps in the execution of his duty, should, on conviction before a Magistrate or a Justice of the Peace, be liable to a fine not exceeding two hundred Rupees, or to imprisonment for any term not exceeding six months with or without labor. This was the penalty provided by the Police Act for offences against Police Officers; and it appeared to him that it would be no less an offence to assault or resist a Member of the Volunteer Corps in the discharge of his duty than it would be to assault or resist a Police Officer in the same position.

The powers vested by the Act in the Governor-General of India in Council might, as regarded Corps enrolled either in Madras or Bombay, be exercised by the local Government, and, if the Governor-General in Council should so order, by the Lieutenant-Governor of Bengal, or by the Lieutenant-Governor of the North-Western Provinces, or by the Chief Commissioners of the Punjab and Oude respectively, or the Commissioner of Nagpore.

He had thought it right to insert in the Bill a Clause to indemnify Members of the Corps for any acts done in the discharge of their duty which they would have been justified in doing if the Act had been in force at the time. It was not his intention to-day to carry the Bill farther than the second reading, and referring it to a Select Committee. In the interval which must occur before it was passed, he thought it necessary to provide some indemnification for Members of the Corps for

Mr. Peacock.

any acts which they might do in the mean time; and to that extent the Act would be retrospective.

GENERAL LOW seconded the motion that the Standing Orders be suspended.

Agreed to.

MR. PEACOCK moved that the Bill be read a first time.

The Bill was read a first time.

On the Motion of MR. PEACOCK, it was also read a second time, and referred to a Select Committee consisting of General Low, Mr. Currie, Mr. LeGeyt, Sir Arthur Buller, and the Mover—with instructions to the Committee to report upon it on or before next Saturday.

The Council adjourned.

—
Saturday, July 4, 1857.

PRESENT :

The Honorable J. A. Dorin, *Vice-President*,
in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General	E. Currie, Esq.
J. Low,	and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

SINGAPORE PORT-DUES.

The Clerk reported that he had received from the Officiating Under-Secretary to the Government of India in the Home Department a copy of a correspondence with the Court of Directors respecting the levy of Port-dues at Singapore.

VOLUNTEER CORPS.

MR. PEACOCK presented the Report of the Select Committee on the Bill "to provide for the good order and discipline of certain Volunteer Corps, and to invest them with certain powers."

JOINT-STOCK COMPANIES.

MR. PEACOCK moved that the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof" be now read a third time and passed.

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

SMALL CAUSE COURTS.

MR. LEGEYT moved that the Bill "to amend Act IX of 1850" be read a third time and passed.

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

POLICE AND CONSERVANCY (SUB-URBS OF CALCUTTA, AND HOWRAH.)

MR. CURRIE moved that the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah" be now read a third time and passed.

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

BOMBAY UNIVERSITY.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to establish and incorporate an University at Bombay," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

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

THE NABOB OF THE CARNATIC.

MR. PEACOCK moved that the Standing Orders be suspended, in order that he might bring in and carry through its several stages a Bill "relating to the issuing of writs or process against certain Members of the Family, Household, and Retinue of His late Highness the Nabob of the Carnatic."

GENERAL LOW seconded the Motion.

Agreed to.

MR. PEACOCK said, it would be in the recollection of the Council that, after the death of the late Nabob of the Carnatic, the Government of Madras, being of opinion that Act I of 1844 continued to extend to those Members of the Family, Household, or Retinue of His Highness whose names were inserted in the last list published by the Madras Government under the provisions of the Act, recommended that a Bill should be brought in for

repealing the Act; and, accordingly, a Bill for that purpose was introduced into this Council by his Honorable friend Mr. Elliott on the 15th of November last, and read a first time. The effect of Act I of 1844 was to give the Government of Madras the power of publishing, from time to time, lists containing the names of such persons belonging to the Family, Household, or Retinue of His Highness as they might consider entitled under the Act to exemption from Criminal or Civil process sued forth or prosecuted without the consent of the local Government; and the Act declared that the list which should have been the last published should be the list which, for the time being, should be in force and effect. It then declared that no writ or process should at any time be sued forth against the person or property of any person whose name should be included in the list which for the time being should be in force and effect for the purposes of the Act, unless such writ or process should be sued forth or prosecuted with the consent of the Government of Madras. The Government of Madras, considering that it was not right that the protection, which was supposed to extend to the persons named in the list last published under the Act, should be continued after the death of the Nabob, proposed that the Act should be repealed. But, at the same time, it was considered both by that Government and by the Government of India that it would be unjust to make these persons liable for debts which they might have contracted while the Act was in existence. In his Statement of Objects and Reasons, Mr. Elliott said:—

"The repeal of Act I of 1844 is intended to have effect prospectively only, leaving all persons hitherto protected by it still exempt from the jurisdiction of the Courts in respect of all acts done, or liabilities incurred, prior to the passing of the repealing Act, save, as before, in such cases as they may be made subject thereto by direct order of Government. The Government of India, in reply to a reference made to them by the Government of Madras on this point, have stated that 'they consider it clear that the repeal of the Law should be prospective only, and that great injustice would be done if the family of the Nawaub were now made liable for debts contracted under the Law. The fact that the Nawaub greatly abused the privileges which

the Law conferred upon him, would be no excuse for this injustice.' ”

Accordingly, the Bill to repeal the Act contained an exception to that effect. That Bill was read a first and a second time, and referred to a Select Committee. Subsequently to this, an action was brought on the Civil side of the Supreme Court at Madras against one of the persons included in the last list published by the Government of Madras in pursuance of Act I of 1844, and a writ sued forth. Application was made to set aside the writ, on the ground that the person against whom it was directed was protected under the provisions of the Act of 1844. The application was argued before both Judges of the Supreme Court, who decided that the Act was merely personal to the Nabob; that the privileges given by it were personal to him; and that, after his death, the persons named in the list in force at the time of the death, could not claim the exemption which the Act was thought to confer upon them. In consequence of this decision, the Select Committee on the Bill to repeal the Act reported to the Legislative Council as follows :—

“ We find that, since the publication of this Bill, the Supreme Court of Judicature at Madras has decided that Act I of 1844 was a personal Statute, which, upon the death of the late Nawaub of the Carnatic, ceased to have any operation. It having thus been pronounced judicially that the said Act is already extinct, it appears unnecessary to repeal it formally.

“ On the supposition that a Law was necessary to repeal the Act, it was intended by the Bill for that purpose to make an exception as to all contracts made, liabilities incurred, and acts done, prior to the repeal, by persons privileged under the provisions of the Act, in accordance with the opinion of the Government of India that great injustice would be done if the Family of the Nawaub were now made liable for debts contracted under the Law. But as, by the decision of the Supreme Court, it appears that the protection of the persons referred to was confined by the Law to the life-time of the Nawaub, it would be virtually to give them a new privilege *ex-post-facto* to repeal the Act with an express provision to the same effect as the intended reservation.”

A Motion was afterwards made that this Report be adopted by the Council, and the Council voted in favor of it. The case, therefore, now stood thus. Act I of 1844 had not been repealed; the Supreme Court at Madras had

decided that persons whose names appeared in the last list published under the Act were not entitled to the protection which it was supposed to afford them, even in respect of liabilities contracted during the period that the Act was in existence, and during the life-time of the Nabob; and the Legislative Council had come to the conclusion that, the Act having received that construction, it was not necessary to repeal it, or to grant any immunity beyond that which the Act itself conferred.

With respect to the construction put upon the Act by the Supreme Court at Madras, it was clear that the Madras Government, when they sent up their draft Bill, considered that the Act and the last list published by them under its provisions, continued in force even after the death of the Nabob; and that was likewise the view which the Governor-General in Council took of the question when the case was submitted to the Government of India. He (Mr. Peacock) did not mean to say that the Governor-General in Council deliberately scanned the Act on the occasion; but certainly, the general feeling both of the Governor-General in Council and of the Madras Government was that the Act continued to have effect after the death of the late Nabob; that it ought to be repealed; but that it would be only reasonable and just that the persons named in the last list should be protected as against debts contracted while the Act had been in force. The Legislative Council, also, appeared to think that the Act did protect these persons even after the death of the Nabob, so far at least as such an opinion on their part could be inferred from their having allowed the repealing Bill to be read a first and second time without objection, or even a suggestion from any Member that the Act had already ceased to have effect. For his own part, he must say that he certainly was of opinion, at the time when the repealing Bill was introduced, that the Act would continue in force, and would protect such of the members of the family as were included in the last list, until it should be repealed. He had since read the Act very carefully, and he retained that opinion. He might be wrong; and it was not for him to set

up his judgment against that of the learned Judges of the Supreme Court of Madras on a matter of this kind. But, as a Member of the Legislative Council, he thought that he was bound to exercise his own judgment upon the question whether, in consequence of the construction which the learned Judges had put upon the Act, it was reasonable to legislate on the subject. The Act declared that no writ should at any time be sued forth against any person named in the last list, and not that no writ should be so sued forth at any time during the lifetime of the Nabob. The recital of the Act and the last Section of it both, in his opinion, tended to show that the privilege granted to the relatives of the Nabob was not merely personal to the Nabob himself. To him, it appeared to be reasonable, under all the circumstances of the case, to enact that a period of one year should be allowed to the persons whose supposed privilege the decision of the Court would affect, for the purpose of enabling the parties against whom the decisions had been given to petition Her Majesty in Council for leave to appeal against such decisions, and so to obtain the judgment of the highest Court of Appeal as to what was the proper construction of the Act. If the decision should be reversed, no harm would be done, as the Act would merely prevent creditors from obtaining judgments to which they were not entitled. If, on the contrary, the decisions should be held to be correct, there would be no very great hardship in preventing numerous creditors from instituting, while an appeal was pending for the purpose of ascertaining the true construction of the Act, actions for debts contracted by the persons in question while Act I of 1844 was in operation. He had, therefore, provided by Section I of his Bill that no writ or process should, at any time within the period of one year from the time of the passing of the Act, be sued forth or prosecuted against the person, goods, or property of any person whose name was included in any list published under the provisions of Act I of 1844, and which was in force and effect at the time of the death of the Nabob, unless such writ or process should be sued forth or prosecuted with the consent of the Governor in Council

of Fort St. George—such consent to be testified by the signature of the Secretary, or one of the Secretaries of Government. He must not omit to mention a fact which he should have stated before—namely, that, since the resolution of this Council not to pass the Bill to repeal Act I of 1844, a fresh action had been commenced against Prince Azim Jah, one of the persons named in the list in force at the time of the death of the Nabob, for a debt contracted during the life-time of His Highness; that a writ had been sued forth; and that the Supreme Court had refused to set it aside, on the ground of their decision in the former case.

He repeated that, in his opinion—after the feeling which had existed in the minds of the Government of Madras, of the Government of India, and of the Legislative Council, that these persons had the protection which they claimed under the Act—it was not unreasonable to allow them one year for the purpose of enabling them to obtain the judgment of the Court of Appeal in England as to whether the construction of the Supreme Court of Madras, which took away from them that protection altogether even as to liabilities incurred before the Nabob's death, was a sound one or not.

Section II of his Bill provided that if an appeal against the decision of the Supreme Court of Madras should be admitted by Her Majesty in Council, no such writ or process as that mentioned in Section I should be sued forth or prosecuted until after the determination of the appeal; unless such writ or process should be sued forth or prosecuted with the consent of the Governor in Council, to be testified as described in Section I; or unless the Court before whom the writ or process was sued forth should be satisfied that the appellant had been guilty of unreasonable delay in prosecuting the appeal; in which case, the Court must make a special order for the suing forth of the writ.

With these observations, he begged to move the first reading of the Bill.

The Bill was read a first time.

MR. PEACOCK moved the second reading of the Bill.

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

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

Agreed to.

Section I was passed as it stood.

Section II being read—

MR. CURRIE said, he did not see how the second Proviso might operate. The person sued might not be the same person with the appellant.

MR. PEACOCK said, the intention was that all persons whose claim to protection under Act I of 1844 was affected by the decision given by the Supreme Court of Madras, should be protected until an opportunity had been given of appealing against the decision by which the Supreme Court considered itself bound; but that if, an appeal having been admitted by Her Majesty in Council, the appellant should fail to prosecute it with due diligence, the protection would cease.

THE CHIEF JUSTICE said, as he understood the Bill, the first Section would have the effect of preventing for the future, during the period of one year only, any process issuing against the person or property of any of the individuals named in the last list published by the Government of Madras under the provisions of Act I of 1844. But it appeared that some process of that kind had already issued. Those against whom the process was directed would be the only persons who *could* appeal. Whether they *would* do so, might be doubtful. If, however, any of them should appeal, but should be content simply to do that, and should not afterwards prosecute the appeal, it would be open to the creditors to come in and say that the preferring of the appeal was a mere pretext for delay and evasion, and to insist on their right to prosecute their writs notwithstanding the pendency of the appeal. It appeared to him that the actual working of the Act would depend entirely upon this—whether any of the persons against whom process had already issued would petition Her Majesty for leave to appeal if the demand were under the appealable amount; or would appeal as of right if the demand were above that amount. If there were no appeal, the Act would expire after one year; and then the creditors and the individuals in question would be in precisely the same position in

which they were now. But he thought it more reasonable to suppose that the parties would avail themselves of the opportunity which this Bill would afford them of testing the construction that had been put upon Act I of 1844 by the Supreme Court at Madras. No doubt, the Bill was brought in hastily, and was, perhaps, in some degree, of an exceptional character; and one was always sorry to have to legislate in that way. But, upon the whole—and this was his reason for not having objected to the second reading—he was disposed to support the measure because it really did seem to him, to say the very least, doubtful whether the privilege given by Act I of 1844 was not a privilege personal to those mentioned in the list, and one which did not expire with the life of the Nabob. If the amounts involved in the suits which had been brought respectively, exceeded the sum in respect of which there was an appeal as of right, and a petition of appeal had been presented, the Court would probably have stayed its hand—certainly, it would not have allowed execution to issue, until that appeal against its jurisdiction had been determined.

But it was obvious that the parties claiming the privilege might be harassed by a number of suits for small sums aggregating a very large amount of liability, but in no one of which there could be an appeal as of right. And unless these actions were suspended until the question of jurisdiction was finally determined, there might be final judgment and execution in many of them—although it might ultimately be determined by the Court of Appeal that the privilege in question subsisted.

On the whole, then, as this was merely a temporary measure, for the purpose of giving to persons who conceived themselves to be protected by Act I of 1844 an opportunity of testing the correctness of a decision of the gravest importance to them—a decision which, without presuming to set his judgment against that of the Supreme Court of Madras, he felt to be so open to doubt as to deserve to be submitted to the consideration of the appellate Court—he should vote in support of the Bill.

The Section was then put, and passed as it stood.

Section III, the Preamble, and the Title, were passed as they stood.

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

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

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

THE PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Government of Bombay relative to the inadequacy of the punishment provided in Chapter XIV of "The Indian Penal Code" for the offence of attempting to create a disturbance of the public peace be referred to the Select Committee on the Code.

Agreed to.

VOLUNTEER CORPS.

MR. PEACOCK moved that the Bill "to provide for the good order and discipline of certain Volunteer Corps, and to invest them with certain powers," as amended by the Select Committee, be published in the *Gazette* for general information.

Agreed to.

SMALL CAUSE COURTS.

MR. LEGEYT moved that Mr. Grant be requested to take the Bill "to amend Act IX of 1850" to the Governor-General for his assent.

Agreed to.

JOINT-STOCK COMPANIES.

MR. PEACOCK moved that Mr. Grant be requested to take the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof" to the Governor-General for his assent.

Agreed to.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA, AND HOWRAH.)

MR. CURRIE moved that Mr. Grant be requested to take the Bill "to make better provision for the order and good

government of the Suburbs of Calcutta and of the Station of Howrah" to the Governor-General for his assent.

Agreed to.

THE NABOB OF THE CARNATIC.

MR. PEACOCK moved that Mr. Peacock be requested to take the Bill "relating to the issuing of writs or process against certain Members of the Family, Household, and Retinue of His late Highness the Nabob of the Carnatic" to the Governor-General for his assent.

Agreed to.

MR. PEACOCK returned to the Council Chamber with the above Bill, and the Vice-President announced that the Governor-General had signified his assent thereto.

NOTICES OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 11th instant, move the third reading of the Bill "to establish and incorporate an University at Bombay."

MR. PEACOCK gave notice that he would on the same day move for a Committee of the whole Council on the Bill "to provide for the good order and discipline of certain Volunteer Corps, and to invest them with certain powers."

The Council adjourned.

Saturday, July 11, 1857.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*,
in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq.,
	and
Hon. J. P. Grant.	Hon. Sir A. W.
Hon. B. Peacock,	Buller.

MESSAGES FROM THE GOVERNOR-GENERAL.

The following Messages from the Governor-General were brought by Mr. Grant, and read:—