

Saturday, 27 June, 1857

PROCEEDINGS  
OF THE  
LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

VOL. III.

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1857.

Saturday, June 27, 1857.

PRESENT :

The Honorable J. A. Dorin, *Vice-President*.

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

VOLUNTARY OATHS, AFFIDAVITS,  
AND DECLARATIONS.

THE CLERK reported that he had received from the Home Department a communication from the Government of Fort St. George on the subject of administering voluntary oaths and attesting affidavits and declarations in India.

THE CHIEF JUSTICE moved that the communication be printed.

Agreed to.

MADRAS UNIVERSITY.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to establish and incorporate an University at Madras."

GANJA (BOMBAY.)

MR. LEGEYT moved the first reading of a Bill "relating to the sale of Ganja in the Presidency Town of Bombay." Under Act IV of 1857, which the Council would recollect as the Bombay Tobacco Act, the Laws under which a special duty was levied on the importation of Ganja into the Presidency Town of Bombay, and also the rules regulating the grant of licenses and the retail sale of the article there, had been repealed. Since then, there had been no Law on the subject. When the Tobacco Bill was first proposed last year, the Government of Bombay purposely omitted, in the Draft which they sent round, all mention of Ganja, because they intended to provide for its sale, with that of other intoxicating drugs, under the provisions of Act III of 1852 and Act II of 1841. It had been since discovered, however, that neither of those Acts applied to the Presidency Town of Bombay; and it was therefore, necessary to have further legislation on the subject, if any legislation were deemed requisite on it at all.

Formerly, the special duty on the importation of Ganja into Bombay was levied, and licenses to sell Ganja were granted, under Chapters V and VI of Regulation XXI of 1827 of the Bombay Code. But besides those provisions, Act III of 1852 prescribed rules for granting licenses for the sale in the Presidency of Bombay, but outside the Presidency Town, of Bhang, Ganja, and other intoxicating preparations. Section X of the Act provided that—

"It shall not be lawful, in any part of the Territories subject to the Government of Bombay, to manufacture or prepare for sale, or sell directly or indirectly, any intoxicating drugs or materials, or any intoxicating drink or preparation manufactured from Bhang, Ganja, Grain, Opium, or other materials, of what nature or description soever, except under a license from the Collector of the Zillah; and it shall be competent to the Collector to refuse or to recall such license whenever he shall deem it expedient; and every such license, when granted, shall specify the name of the drug, material, drink, or preparation so authorized to be manufactured or sold, the place or district of manufacture or sale, and the length of time for which such license is to run, and any other terms or conditions which the Governor of Bombay in Council may from time to time deem it expedient to require; and such fees shall be demanded, from time to time, on the grant of such licenses, as the said Governor in Council may sanction."

Section XII of the Act provided the penalty which might be imposed on persons offending against the Act, or against the terms of the license. It said—

"All persons offending against, or aiding others in offending, directly or indirectly, against the provisions of this Act, or committing a breach of any of the conditions of a license to be granted under this Act, or obstructing Officers or others in the execution of their duties connected with any of its provisions, shall be punished by fine not exceeding Rupees five hundred, to be commuted, in default of payment, to imprisonment not exceeding six months; and any person having in his possession intoxicating drinks or preparations manufactured contrary to the provisions of this Act, or for which he is unable satisfactorily to account, shall be deemed to be possessed of them illegally, and shall be subject to the penalties above specified."

Section XIV gave power to the Collector of the Zillah "to seize and destroy all unlicensed liquor, preparations, drugs, or materials, and all unlicensed stills; and to sell the same, if deemed expedient, on behalf of Government."

The Bill which he now proposed provided for the extension of the pro-

visions of Act III of 1852 to the Presidency Town of Bombay, and gave to the Collector of the Land Revenue of Bombay the same powers, in respect to Ganja, that that Act conferred on the Zillah Collectors.

The Papers which he had received from the Bombay Government in relation to the subject, would be printed as annexures to the Bill.

The Bill was read a first time.

#### PORT-DUES AND FEES IN MADRAS.

MR. CURRIE moved the second reading of the Bill, "for the levy of Port-dues and fees at Ports within the Presidency of Fort St. George, and to provide against the discharge of ballast in certain Ports within the said Presidency."

MR. GRANT said, he was very much obliged to the Honorable Mover of the Bill for having postponed the second reading, in order to enable him to examine the Bill more fully than he had been able to do before the last Meeting of the Council. But he was sorry to say that the result of his examination was a conviction in his mind that he ought to oppose the second reading altogether.

The Bill was designed for two distinct objects—one, to fix permanent rates of duty for Ports which were to be placed under the general Harbor Act; the other, to levy Port-dues in harbors which it was not intended to place under that Act at all. With respect to both these distinct objects, the Bill went directly against the principles which had been determined by the Council when it passed the Harbor Act.

The first part of the Bill, which applied to Ports coming under Schedule A., authorized generally the local Government to fix a permanent maximum rate of four annas per ton without reference to the charges incurred at each Port. But that was exactly what the Council had refused to permit. The local Governments had all been asked to send up statements of the expenses of each Port, and the tonnage dues levied therein, in order that the Council might regulate the duties in each case with reference to the services performed. The Government of Madras had

not been able to furnish this statement as yet. They said, they regretted "that they have hitherto been unable to furnish the particulars asked for by the Government of India, 5th December 1855, at the instance of the Legislative Council, as data for determining the maximum rates of Port-dues to be levied at the Madras Ports." They promised, however, to send up these data as soon as they themselves should obtain them. But they had not done so yet; and the Council could not fix the Port-dues in the absence of what were acknowledged to be the necessary data.

He had something like the same sort of objection—indeed, he had quite the same sort of objection to the second part of the Bill which applied to those minor Ports, named in Schedule B, to which it was not proposed to apply the provisions of the general Harbor Act. With respect to these, the Bill provided that the present rates should be permanent. He believed that, in the annexures to the Bill, it was not stated what the present rates were; so that, if the Council determined to continue them, whatever they might be, without any information on the point, they would be legislating in the dark. He supposed, however, that the rate was four annas per ton—the *maximum* rate proposed for the Ports classed under Schedule A. Amongst the Papers sent up by the Government of Madras, was a statement of what the actual receipts at each Port are; and he observed that the collections at some of the Ports mentioned in Schedule B were a mere trifle. At one Port, they were only five Rupees, and fifteen annas a year; and at several other Ports, they were not much larger. Where the receipts were so small as that, it appeared to him that no duty ought to be charged at all. These Port-dues were levied, not as items of general revenue, but as remuneration for services actually performed. In the minor Ports to which he referred, probably no services were performed. What, for instance, could the services be which could be adequately paid for at the rate of five Rupees and fifteen annas a year? The Madras Government stated that the business at these Ports was inconsiderable, and such as would not warrant the appointment of a Conservator. The business being

so inconsiderable, and the services performed being none or very little, he thought it better that no duties should be charged at all in such Ports, and that any small expenses therein incurred should be a charge upon the general revenues, than that the apparatus provided by the Act should be resorted to for the purpose of raising such a revenue five Rupees and fifteen annas a year.

These were his reasons for opposing the second reading of the Bill—for they were reasons which went against the principle of the measure.

He should recommend the Honorable Member in charge of the Bill to apply to the Madras Government for that information which was admitted to be necessary as data, in order that the Council might fix the rates at which dues should be leviable at each of those Ports which it was intended to bring under the general Act.

With regard to the minor Ports and Roadsteads for which all or nearly all that had to be done was to prevent them from being injured by the heaving of ballast overboard, he would recommend the Honorable Member to bring in a separate Bill authorizing the Madras Government to extend to any of these places any one or more of certain specified provisions of the general Act. He would not recommend that the Government should be authorized to apply to such Ports any of the general provisions without exception, as most of them would be inapplicable to such small places. For example, those provisions which authorized the levy of Port-dues would be inapplicable; but those which were intended to prevent the injury of Ports, might very well be extended to these places in this simple manner.

MR. CURRIE said, after the observations made by the Honorable Member, he would not press the Motion for the second reading. He fully admitted the objections to which the Honorable Member had called attention; and, in fact, in introducing the Bill, he had himself intimated that he considered it objectionable on the very grounds stated by the Honorable Member. But in the absence of the Honorable Member for Madras, he did not see very clearly what course he could have taken other than that of introducing it into the Council, as he

*Mr. Grant*

done, in order that the Council might have an opportunity of expressing their opinion upon it. That opinion having now been expressed, he should communicate with the Madras Government, and recommend the adoption of the suggestions thrown out.

The Motion for the second reading was, by leave, withdrawn.

#### JOINT-STOCK COMPANIES.

On the motion of Mr. Peacock, the Council resolved itself into a Committee on the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the Members thereof, as amended by the Select Committee."

Section I was passed as it stood.

Section II was passed after the insertion of the words "1st day of January 1858" in the blank left in it for the date after which any partnership consisting of more than twenty persons would be liable to a penalty, if not registered under the Act as a Company, or authorized by an Act of Parliament, or by Royal Charter, or by Letters Patent, or by an Act of the Governor-General of India in Council.

MR. PEACOCK remarked that the Act would come into force as soon as it was passed; but the date now inserted in this Section would give persons time to come in and enrol themselves under it.

Sections III to XXXIV were passed as they stood.

Section XXXV provided for the audit of the accounts of a Company incorporated under the Act.

MR. CURRIE asked if the Honorable and learned Mover of the Bill had given his attention to the Petition of the Bombay Chamber of Commerce with reference to this Section.

MR. PEACOCK replied that he had, and that it did not appear to him necessary to make any alteration in the Section.

MR. CURRIE said, the Bombay Chamber of Commerce observed, in their Petition—

"The shareholders of a Company may have an interest distinct from, and possibly opposed to, that of the Public; and whereas it is for the interest of the Public that the true state of the Company and its affairs should be

known, the shareholders may think it for their interest that the actual position of the concern should be concealed or misrepresented. Hence, they may be induced to appoint Auditors likely to give their sanction to false or deceptive accounts. Apart from these possibilities, however, your Petitioners may refer to many notorious instances in which the accounts of Joint Stock Companies have been passed by the Auditors as correct and satisfactory when the Company was on the verge of bankruptcy, or existing only at the expense of the Public."

On these grounds, the Bombay Chamber of Commerce was of opinion that, instead of allowing the Auditors to be appointed by the Company, it was expedient that the Government should appoint them. It appeared to him that the suggestion was worthy of attention. He had not himself given that attention to the subject which would warrant him in moving an amendment in the Section; but certainly his impression was that the appointment of Auditors should not be left to the shareholders, but that it would be better if it were left to the Executive Government. He presumed that the Section had been fully considered; but if it had not been, he should be disposed to suggest that after the word "Auditors" in the 5th line of the Section, the words "appointed by the Executive Government" be inserted.

MR. PEACOCK said, it appeared to him that the alteration suggested would altogether interfere with the principle of the Bill. The principle of the Bill was that persons should be allowed to associate in partnership with limited liability on any terms which they might think fit; and that those who dealt with them should be left to look after their own interests, and to judge for themselves whether the partnership was formed in such a manner as to entitle it to credit. If the terms upon which a Company should be formed should be such as the Public thought insufficient for their protection, the Public would not give credit to the Company. He thought it would be very unadvisable that the Government should be connected with any mercantile establishment. If they were to appoint the Auditors, they might be considered, to some extent, responsible for the due performance of their duties. There was no greater reason for the Government's

appointing Auditors than there was for their appointing Directors. For his own part, he believed that Merchants and others in business could judge for themselves whether the Directors who managed a Company, or the Auditors who examined and reported upon its accounts, were worthy of confidence much better than the Government could judge for them. He therefore saw no sufficient reason for compelling partnerships formed under the Act to have their accounts audited by Government Auditors—and it appeared to him advisable to leave the Section in its present shape.

THE CHIEF JUSTICE said, he was certainly of the same opinion as the Honorable and learned Member who had spoken last. No doubt, it was perfectly true that there had been many lamentable instances of inefficient audits and of false reports of the affairs of Joint-Stock Companies; and that these had caused a great deal of misery. But there was no lack of dishonest trading by individuals and private Firms; and he did not see why the Executive Government should interfere for the suppression of one species of fraud more than another, or exercise a supervision over the affairs of one class of traders. He thought that the evils pointed out by the Honorable and learned Member would outweigh the advantages of such a system. The intervention of Government would be considered a very arbitrary interference with the course of Commerce; and he had considerable doubts whether the working of that kind of audit would be very much better than the working of the existing plan. He would be willing to support a measure of a penal character against Directors of Joint-Stock Companies who deceived the Public with false Reports, or were guilty of conduct which amounted to a criminal breach of trust. But he thought that the Public must be content with that kind of remedy, and ought not to insist on the interference of Officers appointed by Government for the management of Joint-Stock Companies.

Some conversation ensued; but, no substantive amendment being proposed, the Section was put as it stood, and passed.

Sections XXXVI to LVIII were passed as they stood.

new  
to

Section LIX was passed after amendments.

The remaining Sections were passed as they stood.

The Schedule being proposed, Form A. was passed after amendments.

Table B was passed as it stood.

Form C was passed after an amendment.

Table D, and Forms E and F, with the Preamble and Title were passed as they stood.

The Council then resumed its sitting.

#### SMALL CAUSE COURTS.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to amend Act IX of 1850" (an Act for the more easy recovery of small debts and demands in Calcutta, Madras, and 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.

The Council then resumed its sitting.

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

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah;" 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.

The Council having resumed its sitting, all the Bills settled in Committee were reported.

#### VOLUNTEER CORPS.

MR. PEACOCK moved that the Standing Orders be suspended, in order that he might bring in and read for a first and second time a Bill "to provide for the good order and discipline of certain Vo-

lunteer Corps, and to invest them with certain powers." It was well known to the Council that many gentlemen had come forward and offered their assistance to Government in the present disturbed state of the country, and had enrolled themselves as a Military Corps under Officers appointed by the Governor-General in Council. He was quite sure that every Honorable Member would agree with him that the thanks of the Public as well as of the Government were due to these gentlemen for the public spirit which they had evinced in thus volunteering their services in support of peace and good order, and for the energy with which they had hitherto discharged their duties. It was not thought right to allow a number of persons to be armed and drilled as a military Body without placing them under strict regulations for their government. The Bill, accordingly, provided that every Member of this Corps, or of any other Corps which might be enrolled under similar circumstances with the sanction of the Governor-General in Council, or of the Executive Government of Madras or Bombay, should, whilst on actual duty, be subject to the Articles of War for the European troops of the East India Company. This was only following the course which was adopted in England and Ireland when Yeomanry and Volunteer Corps were formed there. He wished it to be distinctly understood that he proposed to place these Volunteer Corps under the Articles of War for European troops only in so far as those Articles were applicable to Commissioned Officers, and only whilst they were on actual duty.

He had also provided that General Courts Martial, instead of being convened by the Commander-in-Chief, should be convened by the Commander of the Corps, with the sanction of the Governor-General in Council; that they should consist of not less than thirteen Members of the Corps, without regard to whether they might be Officers or not; that they should not have power of passing any sentence of death; and that no sentence of such Court Martial should be carried into execution until after a report of the proceedings should have been made to the Governor-General in Council or to some other person authorized to confirm such sentences, nor un-

til after the sentence should have been confirmed by the Governor-General in Council or such other person.

By the Mutiny Act, only Commissioned Officers could sit and act as Members of a Court Martial for the trial of Military Offences; but in these Volunteer Corps, though some of the Members might be selected as Officers, all of them ought to be placed on the same footing.

By the Articles of War, Commissioned Officers could not be tried by Regimental Courts Martial. But he had thought it right to provide by this Bill that Regimental Courts Martial might be convened by the Commander of the Corps, and that such Courts should consist of not less than three Members of the Corps.

The Bill provided that any person enrolled as a Member of the Volunteer Corps might, except while on actual service, quit the Corps upon giving to the Commanding Officer seven days' previous notice in writing. He did not think it right to allow Members, when on actual duty, the privilege of resigning the Service; but whenever they were not on actual duty, they might resign after seven days' notice in writing. In England, Members of Yeomanry and Volunteer Corps were bound to give fourteen days' previous notice; but he thought that seven days would be quite sufficient in this case.

He had also provided that every Member of the Corps, who should receive arms, ammunition, accoutrements, or uniform belonging to Government, or furnished from public stores or at the public expense, should deliver them up in good order and condition on quitting the Corps, or on dismissal therefrom, or whenever required by the Commanding Officer. He thought that there was nothing unreasonable in that provision. If arms, uniform, or accoutrements were furnished by Government, it was but right that Members who retired from the Corps should return them in proper order. Consideration would, of course, be made for reasonable use of the articles. He had further provided that, if the articles should not be returned, three Members of the Corps should be appointed by the Commanding Officer to adjudicate the value, and that their adjudication

should be deemed a judgment, and might be enforced by any Court of Civil jurisdiction under the Act. In England, the Law imposed a penalty to be enforced by a Justice of the Peace; but he thought it much better that all such questions should be settled by three Members of the Corps than by a Court of Law or a Justice of the Peace.

The Bill further provided that the Commanding Officer of the Corps might, from time to time, frame such general rules as he might think fit for regulating the times at which, and the manner in which, the duties should be performed; and that such rules, when sanctioned by the Governor-General in Council, should be binding on the Corps. If any Member of the Corps should be guilty of any neglect or breach of duty, or of any military offence which the Commanding Officer might think would be sufficiently punished by a small fine, a Regimental Court Martial might award against him a fine not exceeding fifty Rupees, and, in default of payment, he might be dismissed from the Corps as unworthy to belong to it. He did not think it necessary to provide any means for recovering the fine. He thought that it would be quite sufficient, if a Member refused to pay such a fine as three Members of the Corps should think reasonable, that he should be liable to be dismissed from the Corps as unworthy to belong to it.

He thought it reasonable that every Member belonging to a troop of Cavalry should be exempted from the Municipal tax in respect of one horse, inasmuch as he must necessarily keep one for the performance of his duty.

It was necessary to invest the Members of the Corps with certain powers; and he had, therefore, provided that it should be lawful for any Member of the Corps, whenever he might be in the discharge of his duty, to disarm any person not in the Military or Naval Service of the Queen or of the East India Company, or a Police Officer, who should be found between sun-set and sun-rise in any public place, armed without a pass from the Commissioner of Police, or other Officer authorized by Government.

He had further enacted that it should also be lawful for any Member of the

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

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.

*Mr. Peacock.*