

Saturday, 14 February, 1857

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

VOL. III.

Published by the Authority of the Council.

CALCUTTA :
PRINTED BY J. THOMAS, BAPTIST MISSION PRESS.
1857.

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE moved that the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah" be referred to a Select Committee consisting of Mr. Elliott, Mr. Allen, and the Mover.

Agreed to.

NOTICE OF MOTION.

MR. CURRIE gave notice that he would, on Saturday the 14th Inst., move that the Council do 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."

The Council adjourned.

Saturday, February 14, 1857.

PRESENT :

The Honorable J. A. Dorin, <i>Vice-President</i> , in the Chair.	
Hon. the Chief Justice,	D. Elliott, Esq.,
Hon. Major Genl. J. Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq., and
	Hon. Sir A. W. Buller.

MESSAGE FROM THE GOVERNOR GENERAL.

The following Message from the Governor-General was brought by Mr. Grant and read :—

MESSAGE No. 97.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 31st January 1857, entitled "A Bill to amend the Law relating to the duties payable on Tobacco and the retail sale and warehousing thereof in the Town of Bombay."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM, }
The 9th Feb., 1857. }

HINDOO POLYGAMY.

THE CLERK presented a Petition from Hindoo Inhabitants of Baraset praying for the abolition of Hindoo Polygamy.

MR. GRANT moved that the Petition be printed.

Agreed to.

DESPATCHES FROM THE COURT OF DIRECTORS.

THE CLERK reported to the Council that he had received from the Officiating Under-Secretary to the Government of India in the Home Department a copy of a Despatch from the Honorable the Court of Directors reviewing the Acts of the Legislative Council from No. XV of 1854 to No. XXXVIII of 1855; together with an extract of a Despatch from the Honorable Court regarding the arrears of business in the Sudder Court at Calcutta.

IMPRESSMENT OF CARTS FOR MILITARY PURPOSES.

THE CLERK also reported that he had received from the Officiating Secretary to the Government of the North-Western Provinces a communication regarding the impressment of Carts for Military purposes.

MR. GRANT moved that the above communication be printed.

Agreed to.

PORT-DUES AT PENANG.

THE CLERK also reported a communication from the Straits Government forwarding a copy of a letter from the Chamber of Commerce at Penang against the levy of Port-dues at that Port.

MR. GRANT moved that this communication be printed.

Agreed to.

SUBSISTENCE OF SMALL CAUSE COURT PRISONERS.

MR. LEGEYT moved the first reading of a "Bill to amend Act IX of 1850," which is the Act which constitutes the Small Cause Courts in the Presidency Towns. The object of the Bill, he said, was to give relief to debtors in prison under writs from the Small Cause Courts in the matter of subsistence-money. A Petition had lately been presented to the Government of Bombay from thirty-

seven persons confined in the Gaol of Bombay under writs of the Small Cause Court, complaining of the insufficiency of the diet-money allowed them, and praying that it should be increased. The rate of diet-money was fixed by Section LXII of Act IX of 1850 at $1\frac{1}{2}$ anna a day. The First Judge of the Court of Small Causes in Bombay, on the Petition being referred to him, stated it to be his opinion that the rate was an extremely low one. The Government then called on the Commissioner of Police for his opinion; and that functionary reported that no prisoner in the House of Correction, however short the term of his imprisonment might be, was placed on so low a rate of allowance as $1\frac{1}{2}$ anna a day, but that the rate allowed to prisoners confined therein for the shortest period was $2\frac{1}{2}$ annas a day. He also suggested that, as Civil prisoners were not subjected to hard labor, 2 annas a day would be a sufficient rate of allowance for them. The Government of Bombay had accordingly requested him to "move the Legislative Council for an amendment of the present Law, and to propose that the subsistence-allowance of Civil prisoners confined in the Bombay Gaol under process of the Court of Small Causes, be fixed at 2 annas, instead of $1\frac{1}{2}$ anna a day." In the Bill which he proposed, he had not exactly followed the requisition of the Bombay Government. He had thought it better to leave Act IX of 1850 intact, and to frame a new enactment, which should be read with and taken as part of that Act, and which would give to the Judges of the Small Cause Courts the same power that was conferred on the Judges of the Supreme Court by Section X Clause IV of Act VII of 1855, the last Law passed by the Council on arrest for mesne process. That Clause said—

"It shall be lawful for the Court out of which any such writ shall issue, or for any Judge thereof, to reduce the rate at which deposits are above ordered to be made, so that the rate ordered be not less than one anna a day; or, in the case of illness or other special cause, to order the deposit to be increased to a rate not exceeding eight annas a day: and every such order may, from time to time, be revised and altered by the Court or any Judge thereof on sufficient grounds being shown."

He had adopted in his Bill as nearly as possible the language of this Clause,

Mr. Le Geyt

so that, if the Bill passed, it would be in the power of the Judges of the Small Cause Courts, in any case, on due cause being shewn, to vary the rate of subsistence-money allowed by the Act, and either reduce it as low as one anna, or raise it as high as 4 annas. In the Mofussil Gaols in Bombay, the usual rate for prisoners for debt was 2 annas, and it might be increased to 4 annas; and grain was much dearer in the Town of Bombay than in the Mofussil, and, perhaps, other parts of India.

The Bill was read a first time.

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 that it should be passed.

Agreed to.

Section I was passed as it stood.

Section II was passed, after an amendment in Clause 2.

Section III was passed after amendments.

Sections IV to XIII were passed as they stood.

Section XIV provided as follows:—

"Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill played at licensed Hotels, Taverns, or Eating-houses, or places of public resort."

THE CHIEF JUSTICE said, it appeared to him and to his Honorable friend on the right (Mr. Grant) that it was hardly desirable to retain this Section. If it was intended to be a definition of what were lawful games, or what games were to be excepted from the purview of the Act, it did not go far enough. It would appear, from the annexures to the Bill, that that very active and promising officer, the Magistrate of Howrah, did not clearly understand the Sections which preceded; and certainly the corresponding Sections in the Calcutta Act were not much understood in Calcutta. Sections XII and XIII of this Bill spoke of "com-

mon gaming-houses." Here, there had been several cases in which the provision in the local Act had been strained, and persons had been convicted whether they had been playing in a common gaming-house or in a private gaming-house. Those convictions the Supreme Court had quashed. If the Legislature wished to make it penal to game in a private gaming-house, it should say so; but a common gaming-house differed from a private gaming-house in this, that it was kept for the purpose of profit, and was open to any one who chose to come in and game. He therefore did not understand Section XIII as including private gaming-houses; but if Section XIV were retained, the impression raised would be that, by the preceding Section, the Legislature intended to punish all games, except games of mere skill, at whatever place played; for instance, that it would be punishable to play whist at the Bengal Club, whist certainly not being altogether a mere game of skill.

MR. CURRIE said, he entirely concurred in the observations of the Honorable and learned Chief Justice. In fact, it was because he entertained the same view that he had not inserted Section XIV in the original Bill; but the Select Committee, on considering the suggestion sent up by the Magistrate of Howrah, had thought that, as a similar Section stood in the Calcutta Police Act, they might as well insert it in this Bill. For himself, however, he thought that the objection pointed out by the Honorable and learned Chief Justice was a sound one, and that the Section ought to be omitted.

In reply to a remark from Mr. Peacock, Mr. Currie added that he thought Section X was intended to apply to common gaming-houses.

Section XIV was then put and negatived.

Sections XV to XXIII were passed as they stood.

Section XXIV prescribed a penalty of 20 Rupees for certain offences in public streets.

MR. CURRIE moved that the following Clause be inserted after Clause 3 of the Section:—

"Whoever fastens any animal so as to cause obstruction or danger to passengers."

The motion was agreed to, and the Section then passed.

Section XXV was passed after an amendment.

Sections XXVI to XXVIII were passed as they stood.

Section XXIX provided for names and numbers being affixed to streets and houses.

MR. CURRIE said that this Section was the same in effect as one in the Chowkeydaree Act. As that Act would extend to places to which this Bill was intended to apply, the Section should be omitted.

The Section was put and negatived.

Section XXX was passed as it stood.

MR. CURRIE said, Section XXX provided for the removal of future projections; but there was no provision in the Bill which enabled the Magistrate to deal with any obstructions now existing. In the Nuisance Act (XXI of 1841), which it would be necessary to repeal so far as it applied to the limits subject to this Bill, there was a provision which empowered Magistrates to remove existing obstructions. He should therefore move that the following new Section, which had been taken from Act XIV of 1856, be inserted after Section XXX:—

"The Magistrate may cause any such projection, encroachment, or obstruction erected or placed against or in front of any house or building, in any public street before the passing of this Act, to be removed or altered as he shall think fit, provided that he give notice of such intended removal or alteration to the occupier of the house or building against or in front of which such projection, encroachment, or obstruction shall be, thirty days before such alteration or removal is begun; and if such projection, encroachment, or obstruction shall have been lawfully made, he shall make reasonable compensation to every person who suffers damage by such removal or alteration."

Agreed to.

Section XXXI was passed after amendments.

Sections XXXII to XXXVI were passed as they stood.

Section XXXVII prohibited the keeping sheep-pens, &c. in or near any street, in a filthy state, under pain of a fine not exceeding 20 Rupees.

MR. CURRIE said, the Section, as it now stood, did not provide for the abatement of the nuisance if, notwithstanding the infliction of repeated fines,

the offender chose to keep the stall or pen in a filthy state. He understood from the Magistrate of the 24-Per-gunnahs that the expense of removing filth from stalls and pens was so great that the keepers of cattle thought it worth while to pay a fine now and then, as being cheaper in the long run. He therefore moved that the following words be added to the Section, in order that, after the second infliction of fine, the Magistrate might have the power to enforce the removal of the filth:—

“If, after a second conviction, the offence is again repeated with respect to the same stall, pen, or place, the Magistrate may order that the cattle, sheep, or pigs kept therein be removed to some other place approved by the Magistrate, or beyond the limits subject to this Act, and if they be not so removed within the period prescribed in such order, which shall not be less than seven days, the person offending shall be liable to a fine not exceeding ten Rupees for every day during which the cattle, sheep, or pigs remain after the expiration of such period.”

THE CHIEF JUSTICE said, he thought that the amendment would be going rather too far. The Section, as it stood, subjected to a penalty not exceeding 20 Rupees any person who kept a pen or stall, in or near any street, in a filthy or noxious state. It had been suggested, it seemed, that keepers of cattle might think it cheaper to pay an occasional fine than be at the expense of removing the filth. But, really, where a keeper of cattle persisted, after conviction, in keeping his stall or pen in a noxious state, there was nothing to prevent the Police from laying an information before the Magistrate against him, and having him fined every day that he kept it in that state. If, for instance, a keeper of cattle were convicted and punished under this Section on a Monday, and allowed the filth to remain in his stables notwithstanding, there was nothing in the Section to prevent his being convicted and fined anew on Tuesday, and on every subsequent day during which he continued his offence. That ought to be enough to cure the evil. But the addition now proposed to be made to the Section would reduce the calling of a cattle-keeper to a licensed trade; for it would say, in effect, “You have offended, and must cease to be a cattle-keeper.”

MR. CURRIE said, his object was

Mr. Currie

merely to provide what had been provided by Act XIV of 1856 for the Town of Calcutta. There were many parts of the suburbs in which the provision made on this subject by that Act was quite as necessary in the suburbs as in the Town itself. Act XIV of 1856 said that no one should keep “more than 20 sheep or goats, or 10 horned cattle, in or near any street.” His object in the addition which he proposed to make to the Section in this Bill, was merely to enable Magistrates in the suburbs and at Howrah, if stalls and pens in crowded parts were not kept in a cleanly state, to enforce the removal of the cattle from those parts where, in point of fact, it would be much better if they were not kept at all. That was the ground on which he had proposed his amendment; and he did not think that the power which it would confer would be abused. He was, therefore, disposed to press his motion.

The amendment was put, and negatived.

The Section was then passed as it stood.

Sections XXXVIII to XL were passed as they stood.

Section XLI provided that,

“when any private tank or low marshy ground, or any waste or stagnant water, being within any private enclosure, appears to the Magistrate to be injurious to health, or to be offensive to the neighborhood,”

the Magistrate may require the owner of the premises to cleanse or fill up such tank or ground, or to drain off the stagnant water; and, in case of non-compliance with his requisition during eight days from the service thereof, may himself do all necessary acts for either of those purposes, holding the owner responsible for the expense.

MR. CURRIE moved an amendment by which the Magistrate would be empowered to do the work if the owner did not begin upon it within one week after notice, and complete it with due diligence.

MR. GRANT said, on this amendment, and on the Section altogether, he should like to ask if the provision had been thoroughly well considered. If a man digs an unwholesome tank on his ground, it is very proper that he should be made to fill it up. But if a

piece of ground is in its natural state, and happens to be marshy, was it intended that the proprietor should be bound to procure earth from any distance, and improve it at his own cost? If it was necessary for the public good to improve it, he (Mr. Grant) thought that the expense, which would be great, ought to be shared equally by the whole neighbourhood, and not be made to fall on the person who happens to be the proprietor. He saw no objection to a man who has allowed his ground to deteriorate, and so become unwholesome, being compelled to restore it; but he saw very great objection to compelling a proprietor to improve his ground, at a heavy expense, beyond its natural and original state.

It, therefore, appeared to him that the Section should be amended in this respect. If it was not convenient to make the amendment now, the further consideration of the Section might be reserved until next Saturday.

MR. CURRIE said, the words of the Section had been adopted from the Calcutta Conservancy Act, and, therefore, in inserting them in this Bill, he had not given any great consideration to them, nor had the Select Committee, who presumed that they had been fully considered when they were introduced into that Act. But he had no objection to reserve the Section until next Saturday. The amendment he had proposed, however, might be agreed to in the mean time, and the Section allowed to pass, on the understanding that it should be reconsidered by the Members who had formed the Select Committee before the motion for the third reading.

The amendment was then agreed to, and the Section passed.

Sections XLII to XLVI were passed as they stood.

Section XLVII was passed after an amendment.

MR. CURRIE said, he should move that a new Section be introduced after Section XLVII. That Section provided a penalty for newly establishing offensive and dangerous trades within certain limits without a license from the Magistrate; but it contained no provision respecting offensive and dangerous trades already existing. The present Nuisance Act did provide expressly for the sup-

pression or removal of trades injurious to the health or comfort of the Community; and he proposed to insert in this Bill a Section which would give power to the Magistrate to prevent, with the sanction of the Lieutenant-Governor previously obtained, the continuance of trades in places where they were now carried on, if, upon due enquiry, it should be ascertained that they were dangerous to the health or safety of the neighbourhood. The seat of Government being on the spot, there would be no difficulty in obtaining the sanction of the local Government.

The following was the Section which he proposed to insert:—

“ If, on the evidence of competent persons, it shall appear to the Magistrate that any place within the prescribed limits used for any of the purposes mentioned in the last preceding Section before the passing of this Act, is dangerous to the health or safety of persons living in the neighbourhood thereof, the Magistrate, with the sanction of the Lieutenant-Governor previously obtained, may make an order that the use of such place for any such purpose shall be discontinued within a certain period, which shall not be less than thirty days, to be specified in the said order; and whoever shall continue so to use such place in contravention of such order, shall be liable to a fine not exceeding fifty Rupees for every day during which such use is continued after the expiration of the said period.”

This Section was not to extend over the whole of the suburbs, but only to the more populous parts, in which the continuance of such trades would be improper.

By the present Nuisance Act, a Magistrate must proceed by issuing an Injunction; and if the person affected should object to it, a Jury was to be appointed to try and decide the question, of whom three should be nominated by the Magistrate, and the remaining two by the person objecting to the Injunction. That Act would clash very much with this; and, therefore, he (Mr. Currie) thought it would be better to insert in the Bill a separate provision such as the one he proposed, and to declare, as he intended to do, by a Section at the end, that, with respect to all matters expressly provided for by this Act, the provisions of Act XXI of 1841 should be held to be superseded.

MR. GRANT said, he was doubtful as to the propriety of bringing in the Executive Government at all. The

question to be decided under the Section, would be a question of fact—namely, whether a trade carried on in any particular place is dangerous to the health or safety of the neighbourhood; and that ought to be decided by some judicial authority, upon evidence. He observed from the Schedule that Ghosery was one of the places to which the Bill was to apply. If the Sugar Works there, which form an enormous concern, would come under the Section proposed, he certainly thought that they ought not to be removed without a full judicial investigation.

It appeared to him, however, that the matter might be left to the general Law. There was a Regulation on the subject applicable to the whole country.

MR. PEACOCK said, he agreed with the Honorable Member who had just spoken. He knew of large sums having been invested in machinery for grinding clay for brick-kilns. If a Magistrate might remove the machinery and brick-kilns summarily, the proprietors would be subjected to great loss.

MR. CURRIE said, several of the provisions of this Bill would rather conflict with the general Law to which the Honorable Member opposite (Mr. Grant) had referred, and he had therefore thought it necessary to provide the power of suppression or removal separately in this Bill. But he would not press his Motion.

The Motion was, by leave, withdrawn.

Sections XLVIII and XLIX were passed after amendments.

Sections L to LII were passed as they stood.

Section LIII was passed after an amendment.

Section LIV prescribed the procedure to be followed on information or complaint laid before the Magistrate, of an offence against the Act; and provided that the general Law as to appeals should be applicable to orders passed by Magistrates.

MR. CURRIE said, under the general Law, an order passed by a Magistrate would be appealable to the Sessions Judge; but he thought that an order passed by a Magistrate with the sanction of the Lieutenant-Governor, ought not to be appealable. He should

Mr. Grant

therefore move to add a Proviso to the Section declaring that no appeal should lie from any such order.

THE CHIEF JUSTICE said, before the amendment was put, he wished to say that he had some doubts as to the last proviso in the Section as it stood. It limited the time within which the prosecution of "any offence, not of a criminal nature" should be commenced, to three months from the commission of the offence. It was difficult to conceive any offence which was not of a criminal nature. It occurred to him that the object in view might be gained by saying "any offence created by this Act," or words to that effect.

MR. CURRIE said, the words had been adopted from the Calcutta Police Act, and, he thought, might as well be retained.

MR. GRANT moved that the words "not of a criminal nature," after the word "offences" in the 20th line of the Section, be left out, and the words "punishable under this Act" be substituted for them.

MR. CURRIE said, he thought it would be better to let the words in the Section stand. They could hardly be omitted without the substitution of some other explanatory words. For instance, the Council would not allow a period of three months for prosecuting the offence of not filling up an unwholesome tank, or not removing an obstruction.

MR. GRANT'S Motion being put, the Council divided:—

AYES—8.		NOES—2.	
Sir Arthur Buller, Mr. LeGeyt, Mr. Allen, Mr. Peacock, Mr. Grant. General Low. The Chief Justice. The Chairman.		Mr. Currie. Mr. Elliott.	

THE CHIEF JUSTICE then said, if the Honorable Member for Bengal thought that the words of the Proviso as it now stood went too far, and that it was inexpedient to extend the limit of three months to all offences punishable under the Act, it would be better to reserve the further consideration of the Section, until the Select Committee could go through the Bill and see which offences created by it ought to be made subject to that limitation, and which

ought not, and then say that the prosecution of the offences specified in such and such particular Sections should be commenced within three months, and not otherwise.

MR. CURRIE said, he thought it would be better to pass the Section now, and leave to the Select Committee the consideration of the further amendment suggested.

MR. GRANT moved that the words "not of a criminal nature" after the word "offence" in the 26th line of the Section, be left out, in order that the words "punishable under this Act" be substituted for them.

Agreed to.

MR. CURRIE moved that the following Proviso be added to the Section:—

"Provided further that no appeal shall lie from any order of a Magistrate passed with the sanction of the Lieutenant-Governor of Bengal."

The Motion was agreed to, and the Section then passed

Sections LV to LVIII were passed as they stood.

The Schedule was passed after an amendment.

The Preamble and Title were passed as they stood.

The Bill was reported.

EXPOSURE OF INFANT CHILDREN.

MR. CURRIE moved that a communication received by him from the Government of Bengal on the subject of the exposure of infant-children for the cure of certain diseases, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

BOMBAY CENSUS.

MR. LEGEYT moved for leave to withdraw the Bill "for taking account of the population of the Town of Bombay."

Agreed to.

The Council adjourned.

Saturday, February 21, 1857.

PRESENT:

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

Hon. the Chief Justice,	D. Elliott, Esq.,
Hon. Major Genl. J. Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq., and
	Hon. Sir A. W. Buller.

MESSAGE FROM THE GOVERNOR GENERAL.

The following Message from the Governor-General was brought by Mr. Grant and read:—

MESSAGE No. 98.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 7th February 1857, entitled "A Bill to confer certain powers on the Oriental Gas Company, Limited."

By order of the Right Honorable the Governor-General.

CECIL BEADON,

Secy. to the Govt. of India.

FORT WILLIAM,
The 13th Feb. 1857.

HINDOO POLYGAMY.

THE CLERK presented a Petition from Rajah Ojoodheram Khan and other Hindoo Inhabitants of Bengal, praying for the abolition of Hindoo Polygamy.

MR. GRANT moved that the Petition be printed.

Agreed to.

SONTAL DISTRICTS.

THE CLERK presented a Petition from Native Inhabitants of Furruckabad and Sumsergunge, praying for the passing of an Act to place them under the jurisdiction of the Moonsiff's Court at Junghypore, and the Foudzary Court at Aurungabad, and to bring their districts under the operation of the general Laws and Regulations from which they were removed by Act XXXVII of 1855.

MR. CURRIE moved that the Petition be referred to the Select Committee on the Bill "to amend Act XXXVII of 1855."

Agreed to.