

Saturday, 15th March, 1856

PROCEEDINGS



OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1856.

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It had been contended by the Honorable and learned Chief Justice that, as the proposition for making compensation under the Act payable by the Municipal Fund had come from the Government of Bombay, the Council ought not to interfere. But it did seem to him that, if it appeared to the Council generally, as it did to the Honorable Member for Madras and to himself, that it would be clearly inequitable to apply the Municipal Funds to this purpose, it would hardly be a sufficient justification for the Council to vote for the Bill as it stood, that the proposition for that course had come from the Bombay Government. He thought that it would be inequitable to impose this burthen on the Municipal Fund, not only because the monies of the Fund were especially appropriated by Law to other purposes, but also because the people who contributed to the municipal rates were not, for the most part, the people who would benefit by the measure. The rates were paid by house-owners and persons who used carriages and horses, and they were the persons to whom the wells and tanks to be taken possession of belonged; but the persons to whom the water was to be distributed would be principally the poor labouring classes, who did not contribute to the rates.

With respect to the argument that there was now a proposition before the Bombay Board of Conservancy to supply the Island with water, which would be carried out by means of a rate to be raised on the municipality, it did not appear to him that, because a special rate was hereafter to be raised for this purpose by the Conservancy Board, with the consent of the Government, therefore funds which had already been contributed for other purposes, should be applied to the supply of water to the inhabitants on this emergency.

THE CHAIRMAN said, the question really before the Council was, whether Section IV should stand part of the Bill. The question whether sums claimable as compensation under the Act should be paid out of the general revenue of the country, had not yet arisen. If it had, he confessed he should have felt some difficulty in putting it to the Council. Standing Order LXI directed as follows:—

“If the Bill relate to any of the matters mentioned in the last preceding Order, notice of such intended motion must be given at an ordinary Meeting of the Council, at least one week before the motion shall be made; and the question shall not be proposed by the President, unless the motion be seconded.”

The public finances were one of the matters mentioned in the last preceding Order; and no notice had been given of the proposal to make compensations under this Act payable out of that source. The proposal was only now brought forward for the first time. He was quite aware that the Standing Orders had been suspended in regard to this Bill; but he did not think it was intended by that, that the fundamental rules of the Council should be set aside; and he apprehended that the Order respecting motions which related to the general revenue of the country, was a fundamental rule.

As he had said before, however, the question whether the charge referred to should be borne by the general revenue, had not yet arisen. The real question now was, whether Section IV should or should not stand part of the Bill.

The question was put, and carried in the affirmative by a majority.

The Preamble was passed after amendments corresponding with those in Section I.

The Title was passed as it stood.

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

MR. LEGEYT moved that the Bill be now read a third time and passed.

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

MR. LEGEYT moved that Mr. Grant be requested to carry the Bill to the Right Honorable the Governor General for his assent.

Agreed to.

MR. LEGEYT moved that the Council adjourn for a quarter of an hour, in order that Mr. Grant might take the Bill for the Governor General's assent.

Agreed to.

The Council afterwards resumed its sitting pursuant to adjournment.

MR. GRANT having returned to the Council Chamber, the Vice-President intimated that the Governor General had signified his assent to the Bill.

The Council then adjourned until Saturday next, on the motion of Sir James Colville.

—
Saturday, March 15, 1856.

PRESENT :

The Right Hon'ble the Governor General, *President*
in the Chair.

Hon. Sir James Colville,	Hon. B. Peacock,
His Excellency the Com- mander-in-Chief,	D. Elliott, Esq.,
Hon. J. A. Dorin,	C. Allen, Esq.,
Hon. Major Genl. J. Low,	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq. and
	Hon. Sir Arthur Buller.

SALE OF SPIRITUOUS LIQUORS (CALCUTTA).

THE CLERK presented a Petition from certain licensed retail vendors of spirituous liquors in the Town of Calcutta, praying for the removal of certain restrictions on their trade.

MR. ELIOTT moved that the Petition be printed, and referred to the Select Committee on the Bill "for the conservancy and improvement of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

ARTICLES OF WAR FOR THE NATIVE ARMY.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to amend the 122nd Article of War for the Native Army."

DESERTION OF EUROPEAN SOLDIERS.

Also the Report of the Select Committee on the Bill "for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company in India."

BILLS OF LADING.

SIR JAMES COLVILE presented the Report of the Select Committee on the Bill "to amend the Law relating to Bills of Lading."

PUNISHMENT OF CHOWKEYDARS.

MR. ALLEN moved the first reading of a Bill "for the punishment of chowkeydars for neglect of duty."

He said, he had prepared the Bill in a general form, so that it should apply to all India. The necessity for such an enactment was stated to exist only in this Presidency; but as there might be a doubt on that point he thought it better to make the Bill applicable to all India, because, in the event of its appearing inexpedient, after publication of the Bill, to include every Presidency in it, it would be easy to amend it so as to confine its operation to particular portions of our Indian territories, while it was not easy to extend to other Presidencies provisions which, on their publication, applied to one Presidency only.

Not only in Bengal, but also in the other Presidencies, from the very beginning of our administration, it had been usual to punish chowkeydars for neglect of duty with fine or imprisonment; and, if the practice was ever

legal, it was legal now, because no Law had been passed to take away the power of Magistrates to inflict either of those punishments upon offending chowkeydars; and he believed that the Legislature did presume the legality of the practice, for the Regulation passed in 1812, for giving Magistrates power to flog watchmen for neglect of duty, used these words:—

"Any Pike, Chowkeydar, Pausbaun, Nega-baun, or other description of watchmen, subject to the orders of any Cutwal or Darogah of Police, who may hereafter be proved guilty of any gross neglect or misconduct in the discharge of his duty as a Police Officer (such neglect or misconduct not being of a nature which may render it proper that he should be committed or held to bail for trial by the Court of Circuit,) shall, for such offence, be liable to suffer corporal punishment by sentence passed by the Magistrate, not exceeding thirty stripes of a rattan, *instead of the penalties of fine or imprisonment*—provided the offender shall appear a fit object of corporal punishment, and the Magistrate shall be of opinion that the infliction thereof will operate as a better example than *the penalties of fine or imprisonment*."

It appeared to him very clear that this Section presumed the existence of the power of fine and imprisonment; and he thought he was right in saying that, up to a late period, these punishments were very generally inflicted.

In 1834, the power of inflicting corporal punishment was taken away as to all offences. A few years afterwards the Sudder Court of Agra propounded the opinion that, as the power to flog had been abrogated, there remained no punishment for chowkeydars neglecting duty other than dismissal. At first, this opinion was not generally promulgated; but when it was so—namely, in 1849—the Sudder Court of Agra sent up, through the Lieutenant Governor, a Draft Bill to the Supreme Government, which differed in no material degree from the one which he now had the honor to submit. No objection was raised in the Supreme Council to the passing of that Act. One or two Members of the Council thought that the Magistrates might go back to corporal punishment. In consequence of the expression of that opinion, the question as to re-imposing the penalty of corporal punishment was referred to the Governments of the North-Western Provinces and of Bengal. There was a difference of opinion upon that point, but the general feeling was that it would not be right to re-impose that mode of punishment. The Fourth Ordinary Member of Council, Sir Charles Jackson, had written a Minute on the subject, in which he said that he thought it most advisable to

give the power of punishing chowkeydars with fine and imprisonment, and referred particularly to the following paragraph of a letter which had been received from the Superintendent of Police in the Lower Provinces :—

“ Shortly after my assuming charge of the office of Superintendent of Police, my attention was drawn to the illegal practice of punishing subordinate Police Officers for neglect of duty by fine and imprisonment, and I issued a Circular on the subject. Since then, however, experience has so convinced me of the total inefficacy of dismissal as a punishment, or as an example or warning to others, that I have ceased to interfere in such cases, or to enforce strictly the provisions of the Circular; and I may say that it is, if not a general, a frequent practice to pass sentences of fine and imprisonment in very gross cases of neglect of duty; and these have been upheld or reversed by the Sessions Judges according to the circumstances of each case.”

When these opinions came up to the Supreme Government in 1851, the Supreme Government resolved as follows :—

“ That the question be brought under consideration with the Draft Act now before the Legislature for the further repression of Dacoitee and other crimes in the Lower Provinces of Bengal.”

The Bill proposed by the Government of the North-Western Provinces was thus made a part of another proposed Act, which eventually was not passed; and it had thus dropped out of notice and out of remembrance. The Government of the North-Western Provinces had drawn his attention to the subject; and he, in consultation with the Lieutenant Governor, had prepared this Bill. It was a very short one, merely declaring that chowkeydars or village watchmen guilty of neglect of duty, should be subject to a fine not exceeding Rupees 20, or to imprisonment for a period not exceeding one month.

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

The Bill was read a first time.

TRIALS FOR RAPE (BENGAL AND MADRAS).

MR. CURRIE moved the second reading of the Bill “to enable Session Judges to pass sentence in trials for Rape.”

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

BILLS OF LADING.

SIR JAMES COLVILE gave notice that, at the next Meeting of the Council, he would move that the Council resolve

itself into a Committee on the Bill “to amend the Law relating to Bills of Lading.”

SALE OF UNDER-TENURES.

MR. CURRIE moved that a communication which he had received from the Government of Bengal on the subject of the Bill to “amend the Law relating to the sale of under-tenures,” be laid upon the table and referred to the Select Committee on the Bill.

Agreed to.

BURLAL GROUNDS (BOMBAY).

MR. LEGEYT moved that a communication which he had received from the Secretary to the Government of Bombay on the subject of the depth of graves, be laid on the table, and referred to the Select Committee on the Bill “for the Conservancy and Improvement of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales’ Island, Singapore, and Malacca.”

Agreed to.

PENAL CODE FOR PILOTS (BENGAL).

MR. CURRIE moved that a further communication which he had received from the Government of Bengal on the proposed revision of the Penal Code for Bengal Pilots, be laid on the table and referred to the Select Committee on the projects of Law connected with the Marine Department.

Agreed to.

LAND CUSTOMS (BOMBAY).

MR. LEGEYT moved, with the leave of the Council, to withdraw the Bill to amend Act No. II of 1852. His reason for making this motion, he said, was that, since the first reading of the Bill, he had been in communication with the Government of Bombay, and he found that it would be necessary to frame an entirely new Bill.

If the Council should now give its permission to the withdrawal of the present Bill, he begged to give notice that he should move the first reading of an amended Bill at the next Meeting.

The motion was agreed to.

NOTICES OF MOTION.

MR. LEGEYT gave notice that, at the next Meeting of the Council, he should move the first reading of a Bill to consolidate and amend the Law relating to Salt Duties.

Also, that he would move that the Council resolve itself into a Committee on the

Bill "to amend the 122nd Article of War for the Native Army," and on the Bill "for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company in India."

MR. CURRIE moved that the Bill "to enable Session Judges to pass sentence in trials for Rape" be referred to a Select Committee, consisting of Mr. Elliott, Mr. Allen, and the Mover.

Agreed to.

ADJOURNMENT.

SIR JAMES COLVILE said, as it was the wish of Honorable Members to adjourn over the Easter holidays, he should move that the Council adjourn until this day fortnight.

Agreed to.

The Council then adjourned.

Saturday, March 29, 1856.

PRESENT :

The Right Honorable the Governor General, *President*, in the Chair.

Hon. Sir J. W. Colville,	D. Elliott, Esq.,
H. E. the Commander-in-Chief,	C. Allen, Esq.,
Hon. J. A. Dorin,	P. W. LeGoyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq.
Hon. B. Peacock,	and
	Hon. Sir Arthur Buller.

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

MESSAGE No. 72.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 8th March 1856, entitled "a Bill for the better control of the Gaols within the Presidencies of Fort St George and Bombay."

By Order of the Right Honorable the Governor General.

CECIL BEADON,

Secretary to the Govt. of India.

FORT WILLIAM,
The 14th March 1856. }

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition from certain Inhabitants of the Lower Provinces of Bengal against the Bill "to remove all

obstacles to the Marriage of Hindoo Widows." The Petition purported to be signed by upwards of 33,000 persons.

MR. GRANT moved that the Petition be printed, and referred to the Select Committee on the Bill.

Agreed to.

THE CLERK presented a Petition against the same Bill from certain Inhabitants of Rungpore.

MR. GRANT moved that this Petition be printed, and referred to the Select Committee on the Bill.

Agreed to.

POLICE AND CONSERVANCY (PRESIDENCY TOWNS, &c.)

THE CLERK presented a Petition from the Mahomedan Association; concerning some proposed alterations in the Bill "for the conservancy and improvement of the Towns of Calcutta, Madras and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore and Malacca."

Also a Petition from the same body, praying for certain amendments in the Bill "for regulating the Police of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MR. ELIOTT moved that these Petitions be printed, and referred to the Select Committee on the Bills to which they relate.

Agreed to.

CATTLE TRESPASS.

MR. CURRIE presented the Report of the Select Committee on the Projects of Law relating to Cattle Trespass.

AMEENS (BENGAL).

Also the Report of the Select Committee on the Bill "to amend the Law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William."

LAND REVENUE OF THE TOWN OF MADRAS.

MR. ELIOTT presented the Report of the Select Committee on the "Bill to amend Act XII of 1851 (for securing the Land Revenue of Madras".)

STRAITS' EXCISE ACT.

MR. ALLEN presented the Report of the Select Committee on the Project of Law