

Saturday, 1st August, 1857

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

VOL. III.

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and fees at the existing rates, would expire on the 13th of the next month, and it was desirable that this Act should reach Madras and Bombay before that date.

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

MR. CURRIE moved that Mr. Grant be requested to take the Bill to the Governor-General for his assent.

Agreed to.

PORT-DUES (KYOUK-PHYOO.)

MR. CURRIE moved that a communication received by him from the Principal Assistant to the Commissioner of Arracan, relative to the receipts and charges of the Port of Kyouk-Phyoo, be laid upon the table and referred to the Select Committee on the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Dalhousie, Akyab, and Chittagong."

Agreed to.

FORFEITURE OF PROPERTY FOR MUTINY.

MR. PEACOCK moved that the Bill "to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and to provide for the adjudication of forfeitures of property in cases in which offenders cannot be brought to trial," as amended by the Select Committee, be published in the *Gazette* for general information.

Agreed to.

MR. PEACOCK gave notice that he would, on Saturday the 1st of August, move for a Committee of the whole Council on the above Bill.

The Council adjourned.

Saturday, August 1, 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. J. P. Grant,	Hon. Sir A. W.
Hon. B. Peacock,	Buller.

Mr. Currie.

PORT-DUES AND FEES.

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

MESSAGE No. 112.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 25th July 1857, entitled "A Bill to authorize the levy of Port-dues and Fees at the present rates for a further period of six months."

By order of the Right Honorable the Governor-General.

CECIL BEADON,

Secy. to the Govt. of India.

FORT WILLIAM, }
The 31st July 1857. }

FORFEITURE OF PROPERTY FOR MUTINY.

MR. PEACOCK moved that the Council do resolve itself into a Committee on the Bill "to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and to provide for the adjudication of forfeitures of property in cases in which offenders cannot be brought to trial;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Section I was passed as it stood.

Section II provided for adjudication of forfeiture in the case of any offender "who shall have been killed, or shall have died, or shall have escaped out of the territories of the East India Company before he shall have been convicted of the offence, or shall keep out of the way for the purpose of avoiding trial."

SIR ARTHUR BULLER said, it might be difficult for the prosecution to prove that an offender was keeping out of the way for the purpose of avoiding trial. It would be sufficient to prove that he could not be found after diligent search; and he therefore moved that the words "cannot after diligent search be found" be substituted for the words "shall keep out of the way for the purpose of avoiding trial." Words to the same effect occurred in Section VIII, which related to the restoration of forfeited property.

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

Section III provided that forfeiture of property should relate back to the time of the commission of the offence.

It was passed after a verbal amendment.

Sections IV to VII were passed as they stood.

Section VIII provided that, if any person whose property had been adjudged to be forfeited should "afterwards surrender himself" and be acquitted, his property should be restored to him upon proof that he had not escaped or kept out of the way for the purpose of evading justice.

MR. PEACOCK said, it was desirable that the time within which the owner of property adjudged to be forfeited under Section II should come forward to set aside the adjudication of forfeiture, should be limited. Section IX provided that "no suit or other proceeding shall be had or taken on account of the seizure of any property seized in pursuance of this Act, or for the restoration or recovery of such property, unless the same be instituted within one year from the time of the seizure;" but there was some doubt whether this limited the time within which a person whose property was declared to be forfeited by reason of his absence, and who wished to have it restored, should surrender himself and prove that he was innocent of the offence charged, and that he had not escaped or kept out of the way for the purpose of evading justice. He (Mr. Peacock) therefore moved that the word "afterwards" be left out of the Section, in order that the following words might be substituted for them:—"within one year after the seizure of any part of his property as a forfeiture."

Agreed to.

MR. PEACOCK next moved that the words "or the proceeds thereof" be inserted between the words "his property" and the words "shall be restored" in the 6th and 7th lines of the Section. If no sale should have taken place before the owner surrendered himself and proved his innocence, the property would be restored to him: if a sale should have taken place, he would receive the proceeds which it had realized.

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

Section IX was passed after a similar amendment as the last.

The remaining Sections, with the Preamble and Title, were passed as they stood.

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

MR. PEACOCK moved the third reading of the Bill.

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

ARMS AND AMMUNITION.

THE VICE-PRESIDENT moved that the Standing Orders be suspended, in order that he might bring in and carry through the first and second stages a Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep and use the same."

In doing so, he said the Government of India had had under its consideration, for some time past, the state of the Law relating to the manufacture and possession of arms and ammunition throughout India. The Law, as it stood at present, was so far defective that, though it would admit of the seizure of arms, it gave no power to ascertain by which portions of the Community arms were possessed, or to regulate the possession of arms, or to prevent their sale and manufacture. The object of this Bill was to provide, as far as was possible, for all these purposes, by putting it in the power of the Government to regulate the importation, manufacture, and sale of arms and ammunition, and to know where they were kept, and the reasons and objects of their possession.

He would state to the Council the purport of the several Sections of the Bill, premising that he did not intend that a vote for the second reading should tie any Member down to the principle of the measure. It was scarcely to be expected that the principle should be determined by the Council on the very first introduction of the Bill. The Council would have an opportunity of considering it, together with the several Sections, at greater leisure before the Motion for the third reading, and of making in the Bill, when in Committee, any alteration which it might think was expedient.

Section I provided that no person should carry or use arms without a license. It related, for the most part, to small arms.

Section II provided the form of license.

Section III declared that all arms carried, kept, or used in any public place without license, should be liable to be seized and detained, and that the persons carrying or using them might be apprehended without a warrant, if they refused to give up their names and address.

Section IV provided for the renewal of a lost license.

He had originally inserted a Section requiring persons holding licenses to give notice of change of residence; but, upon consideration, it had appeared to him that that would be a cumbersome provision, and he had accordingly omitted it. If the Council should think that it was necessary, it might be re-inserted when the Bill came before it in Committee.

Section V exempted European Military and Naval Officers, Police Officers, and certain other persons, from the obligation of taking out a license. It was a question for consideration whether several further exemptions might not be made—whether any particular class or classes of persons should not be exempted. But to him it appeared that it would be inexpedient to make any special exemption of this nature. He was perfectly satisfied that there were many sections of the Community who could be trusted by the Government with the possession of arms without being subjected to the necessity of taking out licenses. All Europeans, our East Indian brethren, many educated Native gentlemen, and (he believed he would be supported by the Honorable Member for Bombay in adding) the Parsee gentry and Community, might, he was quite sure, be allowed unrestricted possession of arms without any danger to the State. Other sections of the general Community might be added. But it appeared to him that, in a measure of legislation like this, it would be difficult to exempt particular classes without appearing invidious and exciting ill-will; and, accordingly, he had made the Bill applicable to all, merely reserving to the Governor-General in Council (by Section VI) the power of exempting from its operation

any persons or classes of persons whom he should think fit.

Section VII provided that any person holding a license should produce it if required; and that, in case of refusal, he might be apprehended and fined to the extent of one hundred Rupees, and his arms might be forfeited.

Section VIII imposed a penalty of five hundred Rupees for manufacturing, selling, or keeping or exposing for sale, arms or ammunition without license, which license might be obtained under certain conditions.

Section IX required dealers to enter in their books, sales of arms, and the names and address of the purchasers.

Section X authorized Police Officers to inspect the premises of manufacturers and dealers for the purpose of examining their stock; and provided a penalty for resistance of such search, or concealment of arms.

Section XI provided a penalty for the possession of percussion caps, gun-powder, or other ammunition, without a license, except as to persons licensed to keep fire-arms, or not prohibited by Law from keeping them, for private use.

Section XII provided for the revocation or suspension of licenses granted under the Act by the Authorities who had granted them.

Section XIII provided that no arms or ammunition should be imported without the license of the Governor-General in Council, or the Executive Government, except arms or ammunition for the private use of persons authorized or licensed to keep them, or not prohibited by Law from keeping them. The want of a power to regulate the importation of arms was one of the greatest difficulties which the Government had felt in this matter.

Section XIV provided a right of search by Magistrates, or under their warrants, for arms suspected to be concealed.

Section XV empowered the Governor-General in Council, or the Executive Government, to direct a general search of arms whenever they should think fit. That was in accordance with the existing Law.

Section XVI required manufacturers and dealers, and all persons prohibited from keeping arms without license, to give notice where they kept their arms, under a penalty of five hundred Rupees.

Section XVII determined the Authorities by whom the licenses should be granted in different parts of India.

Section XVIII gave the right of appeal for refusal to grant license.

Section XIX prohibited the use or possession of any cannon, howitzer, or mortar without a license, under a penalty of two thousand Rupees, as also imprisonment for a term not exceeding two years, and the forfeiture of such cannon, howitzer, or mortar.

Section XX allowed rewards to be given to informers, namely, the whole, or a portion, of the fine levied, and also a sum not exceeding one-half the value of the arms or ammunition confiscated.

Section XXI defined the meaning of the word "Magistrate" as used in the Bill.

Section XXII provided that the Act should take effect in any district, city, town, or place to which it should be extended by the Governor-General in Council, or the Executive Government.

Section XXIII empowered the Governor-General in Council, or the Executive Government, to withdraw any part of a district from the operation of the Act, and, if occasion should arise, to restore it thereto.

The last Section limited the duration of the Act to two years. It had not been thought necessary to provide a more extended period; but this was a point open to further consideration.

He proposed to ask that the Bill should be read at the table. But, as he had said before, he did not wish it should be considered that any Honorable Member would be tied down to its principle or its several provisions by a vote for the second reading. The Bill would come up another day for the further consideration of the Council, in Committee; and Honorable Members would then have leisure to go over the several Sections. He did not propose to go farther than the second reading to-day. The Bill would then be published for general information in due course, and might afterwards be proceeded with either leisurely or rapidly, as might be deemed advisable.

With these observations, he begged to move that the Standing Orders be suspended in respect of the Bill.

MR. GRANT seconded the Motion.

Agreed to.

THE VICE-PRESIDENT then moved the first reading of the Bill.

The Bill was read a first time, at the table.

THE VICE-PRESIDENT moved the second reading of the Bill.

MR. LEGEYNT enquired, whether it would be competent to the Council to discuss the principles of the Bill when the Bill should come to be considered in Committee. Under the ordinary rule, the Council, in allowing a Bill to be read a second time, signified its approval of all the principles of that Bill. But there were some Clauses in this Bill which involved questions of principle, and which seemed to him to require consideration. Whether, for instance, it should be made incumbent upon Europeans to take out licenses for possessing arms, or whether Justices of the Peace and Magistrates should be authorized to seize arms, appeared to him to be questions of principle which required greater consideration than could be given to them at that moment; and he thought it desirable that they, and other questions of the like nature raised by the Bill, should be left open to discussion when the Bill came before a Committee of the whole Council.

MR. GRANT said, he understood the principle of the Bill to be this—the regulation of the possession of arms. If the Council was prepared to pass a Bill for regulating the possession of arms, it would support the motion for the second reading. If it was not prepared to pass a Bill for regulating the possession of arms, it would oppose that motion. When the different Sections of the Bill came to be considered in Committee, it would of course be open to the Council to insert in them any amendments which it might think fit.

THE CHIEF JUSTICE said, he had understood the Honorable Mover of the Bill expressly to say that he did not mean that the second reading of this Bill should commit any Member of the Council to the principles of the Bill in the way in which a second reading was generally understood to do. The particular objections which the Honorable Member for Bombay felt against the Bill, clearly related to matters of detail.

THE VICE-PRESIDENT said, he would repeat that no Honorable Mem-

ber would be committed to the principle of the Bill even if he voted for the second reading. On the contrary, as he had stated before, the Bill having only been introduced to-day, he thought it but right that leisure should be given for the consideration of its principle and its several provisions, and that it should be open to the Council, when sitting in Committee, to insert in it any alterations which it might think desirable. It was upon that understanding that he moved the second reading.

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

THE VICE-PRESIDENT moved that the Bill be referred to a Select Committee consisting of the Chief Justice, General Low, Mr. Peacock, Mr. Currie, and the Mover, with instructions to the Committee to report upon it in three weeks.

MR. LEGEYNT asked if the Report could not be made within a shorter time. A good deal of anxiety seemed to prevail with regard to the possession of arms, which he believed was groundless to a great extent, but which, nevertheless, it was desirable to allay, and this Bill would have the effect of allaying it. He, therefore, thought that the Bill should be passed as soon as possible, and would suggest that the Select Committee be instructed to present their Report upon it in one week.

After some conversation, the Vice-President's Motion was altered by the substitution of the words "within one week" for the words "in three weeks," and then carried.

TRANSLATION OF ACTS AND BILLS.

MR. CURRIE moved that a communication received by him from the Government of Bengal relative to the translation of the Acts and Bills of the Legislative Council be laid upon the table and referred to the Standing Orders Committee.

Agreed to.

THE DRAINAGE OF CALCUTTA.

MR. PEACOCK said, when the Calcutta Municipal Assessment Bill was under discussion before a Committee of the whole Council last year, the Honorable Member for Bengal stated that a Report on a scheme for the drainage of

The Vice President

Calcutta was in course of preparation by the Drainage Committee. He would now ask the Honorable Member whether that Report had been sent in to the Government of Bengal? It appeared to him that the matter ought to be taken up without any further delay, so that the drainage of the town might be speedily proceeded with.

He had seen it stated in a Report published by the Municipal Commissioners, that the sum which the Council had determined should be set aside for drainage, was to be invested in Company's Paper, and the interest arising from such investment devoted to the general wants of the town. It appeared to him that when a certain sum was set apart for the drainage of the town, the interest arising from the investment of that sum ought to be applied to the same object as the principal, and to no other—it ought not, for instance, to be applied to lighting. He called attention to this fact, because it was quite clear that the interest could not be legally applied in the manner proposed by the Municipal Commissioners.

At present, he simply wished to ask the Honorable Member for Bengal whether the Report of the Drainage Committee had been sent in?

MR. CURRIE said, he had heard nothing officially on the subject; but he knew that the Drainage Committee had made their Report, because he had received a printed copy of it. Whether any order had been passed by the Bengal Government with reference to the Report, he was unable to say; but the late Secretary to the Municipal Commissioners had been appointed Engineer for the purpose of carrying out an efficient scheme of drainage, and the Commissioners had been authorized by the Bengal Government to make purchases of materials, and do all that could be done for progressing with the work.

With respect to the appropriation of the interest to be derived from the principal sum which the Council had determined should be set aside for drainage, he quite agreed with the Honorable and learned Member that it should be applied to that object wholly, and to no other.

He would make enquiries regarding the Report of the Drainage Committee,

and would be able to answer the Honorable and learned Member's question next Saturday.

SLAVERY.

MR. LEGEYT moved that a further communication received by him from the Government of Bombay, on the subject of Slavery, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

VOLUNTARY OATHS, AFFIDAVITS, AND DECLARATIONS.

MR. CURRIE moved that the communication from the Madras Government on the subject of administering voluntary oaths and attesting affidavits and declarations in India, which was reported to the Council on the 27th of June last, and ordered, on the Motion of the Chief Justice, to be printed, be referred to the Select Committee on the Bill "to amend the Law relating to affidavits, affirmations, and solemn declarations." The Government of Fort St. George observed that, in the opinion of their Law Officer, "neither Justices of the Peace nor Magistrates in this country have authority to administer a voluntary oath." A similar opinion, he believed, had been given by the Law Officers of the Government in Calcutta. The Madras Government observed:—

"The very great public inconvenience which will be occasioned, if, as thus supposed, there be no Authority either in the Town of Madras or in the Provinces by whom oaths can be administered unless in cases coming before them judicially, or Affidavits and Declarations attested, is so palpable that this Government have resolved at once to bring the matter under the consideration of the Government of India for such notice as it may seem to require."

It seemed to him very desirable that there should be early legislation on the subject; and, with that view, he made his present Motion.

Agreed to.

MUNICIPAL ASSESSMENT (BOMBAY.)

MR. LEGEYT gave notice that he would, on Saturday the 8th instant, move the second reading of the Bill "for appointing Municipal Commissioners, and for raising a Fund for muni-

cipal purposes in the Town of Bombay."

The Council adjourned.

Saturday, August 8, 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.

FORFEITURE OF PROPERTY FOR MUTINY.

THE VICE PRESIDENT announced that the Governor General had signified his assent to the Bill "to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and to provide for the adjudication and recovery of forfeitures of property in certain cases."

ABUSE OF AUTHORITY BY PUBLIC SERVANTS.

THE CLERK reported to the Council that he had received a communication from the Acting Chief Secretary to the Government of Fort St. George forwarding a copy of a Despatch from the Honorable the Court of Directors on the subject of passing an Act regarding abuse of authority by public servants.

MR. CURRIE moved that the above communication, together with the former papers on the subject, be printed.

Agreed to.

IMPORTATION OF MILITARY STORES.

THE CLERK also reported that he had received a communication from the Officiating Under-Secretary to the Government of India in the Home Department, forwarding a copy of a letter addressed to the Madras and Bombay Governments on the subject of prohibiting the importation of Military Stores.

MR. LEGEYT moved that the above communication be printed.

Agreed to.