

PROCEEDINGS



OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1856.

VOL. II.

Published by the Authority of the Council.

175.

CALCUTTA:

PRINTED BY P. M. CRANENBURGH, MILITARY ORPHAN PRESS.

1857.

CONTENTS.

Proceedings of the Legislative Council from January 19, to December 27, 1856,	1
Standing Order for the admission of Reporters for the Public Press,	732a
Index,	733

the public with as little delay as possible ; and secondly, because the Bill which had been introduced did not rest exclusively on his own authority. It had, in some degree at least, the sanction of the Select Committee on the projects of Municipal Law ; and some of its chief provisions were in accordance with the recommendations of another Select Committee, that, namely, on the Gas Bill.

Of course, any suggestions that might be offered by Honorable Members on this occasion, would be duly considered by the Select Committee to whom the Bill might be referred, and might afterwards be discussed by the whole Council in Committee.

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

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

MR. CURRIE moved that the Bill be referred to a Select Committee consisting of Mr. Peacock, Mr. Elliott, Mr. Allen, Mr. LeGeyt, and the Mover.

Agreed to.

The Council adjourned.

Saturday, July 5, 1856.

PRESENT :

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

Hon. Sir J. W. Colvile, D. Elliott, Esq.,
His Excellency the Com- C. Allen, Esq.,
mandant-in-Chief, E. Currie, Esq.,
Hon. J. P. Grant, and
Hon. B. Peacock, Hon. Sir A. W. Buller.

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition of certain Hindoo Inhabitants of Bengal, against the Bill "to remove all legal obstacles to the Marriage of Hindoo Widows."

Also a Petition of Hindoo Inhabitants of Calcutta and the Lower Provinces of Bengal against the same Bill as amended by the Select Committee.

Also a Petition of Inhabitants of Baraset and its vicinity praying for the alteration of the Section of the same Bill relating to the guardianship of the children of the deceased husband upon the marriage of his widow.

MR. GRANT moved that these Petitions be printed.

Agreed to.

BENGAL MARINERS' FUND.

MR. PEACOCK presented the Report of the Select Committee on the Petition of the

Directors and Members of the Bengal Mariners' and General Widows' Fund Society.

MR. PEACOCK moved the first reading of a Bill "to provide for the dissolution of the Bengal Mariners' and General Widows' Fund Society, and the distribution of the Funds belonging thereto."

He said that, in the year 1820, a Society was formed for the purpose of raising a Fund to be called "The Bengal Mariners' and General Widows' Fund," and that certain of the Directors and Members, and also of the pensioners on the Institution, had recently applied by Petition for a Bill for winding up the Society. It would be in the recollection of the Council that the Petition was referred to a Select Committee. The Select Committee had presented a Report, in which they recommended that the Bill should be read a first and second time, but that no further proceeding should be taken upon it by the Council until after a General Meeting of the Society should have considered and expressed its opinions upon it.

He would briefly state the grounds upon which the Petitioners had applied that the Society should be dissolved.

The Society had been formed for the purpose of providing pensions for the widows, children, and orphans of the subscribers, and also for their nominees. It was to consist of three classes of subscribers—Nos. 1, 2, and 3—and the funds were to be formed by the subscriptions, and also by such donations as might be received from charitable persons. The East India Company had contributed in aid of the funds from, he believed, the year 1843 to the year 1851 ; the total amount of their contributions was Rupees 1,77,000. Of the three classes of subscribers which were to constitute the Society, the first was to be called "the permanent class," and to consist of such persons as, on being admitted Members of the Institution, should pay a donation or entrance fee of 20 Gold Mohurs, or Sicca Rupees 320, and also—

If under the age of 25 years, the sum of	Sa. Rs. 1,200
From 25 to 30 years,	„ 1,320
„ 30 to 35 „	„ 1,450
„ 35 to 40 „	„ 1,670
„ 40 to 45 „	„ 1,920
„ 45 to 50 „	„ 2,210
„ 50 to 55 „	„ 2,650
„ 55 to 60 „	„ 3,175

for each share ; and these two several sums were to be in lieu of all annual or other payments on account of the Institution.

The second class was to consist of such persons as should, on being admitted Members of the Institution, pay a donation or entrance fee of 10 Gold Mohurs, or Sa. Rs. 160, and a further sum according to the following scale :—

If under the age of 25 years, the sum of	Sa. Rs.	
From 25 to 30 years,	120	
„ 30 to 35 „	150	
„ 35 to 40 „	175	
„ 40 to 45 „	210	
„ 45 to 50 „	250	
„ 50 to 55 „	300	
„ 55 to 60 „	360	
	420	

for the first year's subscription in advance, and a like sum, annually in advance, on or before the 1st of July in each successive year, for each share, during the life upon which the share might be held.

The third class was to consist of such persons as should, on being admitted Members of the Institution, pay a donation or entrance fee of 5 Gold Mohurs, or Sa. Rs. 80, and also annually

If under the age of 25 years, the sum of	Sa. Rs.	
From 25 to 30 years,	60	0
„ 30 to 35 „	75	0
„ 35 to 40 „	87	8
„ 40 to 45 „	105	0
„ 45 to 50 „	125	0
„ 50 to 55 „	150	0
„ 55 to 60 „	180	0
	210	0

It would be observed from this, that the Deed made the amount of the subscriptions depend on the age of the persons subscribing, but contained no provision—and that, probably, was one of the false calculations on which the Society had been founded—with respect to the age of the persons who were to receive the pensions.

The Deed also contained the following provision—

“ All Annual Subscriptions—except the first, which is to be paid on admission—shall be paid in advance on or before the 1st day of July in each and every year; and that, if the same shall not be paid, with interest at the rate of 10 per cent., within two months of the date on which such payment shall respectively become due; if the party or parties entitled to the said share or shares shall reside on shore, or within six months of such day of payment, with such interest as aforesaid, if the party subscribing shall be absent at Sea, or at any considerable distance from Calcutta: then, and in either of the said cases, such Subscriber or Subscribers, and the persons intended to be benefited by such Subscription, shall forfeit all claims whatever on the Funds of the said Society, and be no longer considered as Subscriber or Subscribers to, or Member or Members of, the said Institution.”

Mr. Peacock

When the Society was originally established, it consisted of the three classes of subscribers which he had mentioned; but, for a considerable time past, there had been no subscriber of the second or third class. Every Member of those classes had either ceased to pay his subscription, or had died; and consequently, there was no subscriber of the second or third class who was entitled to any benefit from the Fund. The only remaining persons who were interested in the Funds of the Society, were subscribers of the first class, the Pensioners who had already been admitted, and possibly the widows, children, and nominees of subscribers of the first class.

Under the Deed, no portion of the principal of the Fund of the Society was to be applicable to the payment of pensions. The entire capital was to remain untouched, and the pensions were to be paid solely out of the interest of the capital, after payment of all expenses, and if the interest and proceeds of the Fund should be insufficient, the pensions were to be reduced. It was originally intended, and the Deed provided, that to the widows of the first and second classes of subscribers Rupees 80 per mensem should be allowed during widowhood; to the children of these classes, Rupees 16 each; and to the widows and children of the third class, half the above sums respectively, namely, Rupees 40 and Rupees 8; and in case of no widow, to children of the first and second classes Rupees 25, and of the third class, Rupees 12-8.

There having been no accession of subscribers for some years past, and the resources of the Fund having diminished, there was now not sufficient to pay anything like the pensions which had been originally intended. The amount of capital now remaining on hand was Rupees 3,02,833. The annual interest upon that sum amounted to Rupees 12,113; but the annual expenditure in payment of pensions, and office and contingent charges was Rupees 16,885. To keep the pensions within the income, they had been very considerably reduced on the 1st July 1832, in pursuance of a Resolution adopted by a General Meeting of subscribers. Under that Resolution, the pension to widows of the first and second classes, had been reduced from Rupees 80 per mensem, to Rupees 10 per mensem; the pension to children of those classes, from Rupees 16 per mensem to Rupees 3 per mensem; the pension to orphans of the same classes, from per mensem Rupees 25

to Rupees 6; the pension to widows of the third class, from Rupees 40 per mensem to Rupees 5; the pension to children of that class, from Rupees 8 per mensem to Rupees 2; and the pension to orphans of the same class from Rupees 12-8 per mensem to Rupees 4, at which scale the pensions continued to be paid up to the present time. But even on that rate they exceeded the income of the Society, and it had been consequently resolved to reduce them from the 1st October next to the following amount, namely, widows 7 Rupees per month, children 1-8 and orphans 2-8.

The numbers of pensioners now on the Fund was 102 widows and 51 children, of whom 29 were orphans. Of the 102 widows, 73 had assented to the application for the dissolution of the Fund, and only 6 had dissented from it: from the remaining 23, no answer had been received by the Society. The children, of course, were not competent either to assent or dissent. But of the orphans who were grown up, 18 had assented, and 1 dissented: from the remaining 10, no answer had been received.

The object of the proposed dissolution of the Society was, instead of paying the very small sums to which the pensions had now been reduced, and which could scarcely be of much benefit in supporting the persons who received them, to divide the whole Fund now, rather than wait until every incumbent upon it should have died. It was not stated in the deed that any portion of the capital was ever to be repaid to the subscribers; and it was possible that they, or the representatives of such of them as were deceased, were not legally entitled to any refund whatever. But of the 42 subscribers who were now living, 33 were anxious that the Fund should be divided. They were anxious, instead of leaving these very small pensions to their widows and children—or, indeed, still smaller pensions, because a further reduction in the scale would be necessary if the Fund were continued—to receive back so much of the capital as they might fairly be entitled to. It appeared to him that the project was a very fair and reasonable one. The Society had been based apparently, upon erroneous calculations, and the benefits which were to be derived from it, no longer existed. There was no further accession of subscribers to it; there were no donations; the East India Company had ceased to contribute towards its funds; and consequently, the objects for which it had been established, could not be carried out. If its capital were

to remain undistributed until all the present and future pensioners should have died, no living person could derive any benefit from the division. But if it should be distributed now, instead of being left for distribution hereafter amongst some unknown persons, possibly the representatives of persons who had been dead for many years, for the deed did not contemplate the dissolution of the Society or provide for the division of the capital after the whole of the pensioners should cease to exist—the present incumbents might derive some small benefit, by having that portion of the capital which had been forfeited, and did not now belong to any one, applied to increase their pensions, or the amount which might be awarded to them in commutation of their pensions, if they should be willing to commute them.

The Select Committee had avoided offering any opinion on the manner in which the capital should be distributed. They had thought it right to leave it to the Supreme Court to divide it in such a way as it might consider just and equitable according to the rights of the parties interested in it. Every person whom the Court might consider entitled to any interest in the fund would be allowed to share in it. If the Court should hold that the representatives of deceased subscribers were entitled to any interest in the capital, their rights would be protected; Section VI of the Bill provided that

“In dividing and distributing the funds of the Society, every part thereof which shall not be awarded by the Court to Members or representatives of deceased Members, may, if the Court shall think fit, be applied for the benefit of pensioners or persons entitled to become pensioners whether they shall consent to commute their interests or not.”

In the case of those pensioners who should refuse to commute their pensions, the following power was given by Section IV of the Bill:—

In the cases of pensioners or persons entitled to become pensioners who shall refuse to commute their pensions, it shall be lawful for the Court to order a sufficient sum to be set apart out of the said fund to provide for the due payment of such pensions, and also to sanction and give effect to any arrangement which it may deem just and sufficient for the future payment of any uncommuted pensions, by any Life Insurance Company willing to undertake the payment of such pensions.”

By this Section, those pensioners, or persons who were entitled to become pensioners, who might refuse to commute their pensions, would continue to receive them in the same manner as if the Bill were not passed, and even they would be entitled to participate in

any benefit that might result to pensioners on the division of the capital.

Whatever might be the ultimate result of the Bill, he thought that, since so many Members and incumbents of the Society were of opinion that their interests would be promoted by winding up the Society and allowing the funds to be fairly and equitably distributed amongst them according to their respective interests therein, and had petitioned for a Bill for that purpose, he thought that the Council should give effect to their wishes by allowing the Bill to be read a first and second time, and published. Then, every Member of the Society would have an opportunity of seeing its provisions, a General Meeting of all the Members would doubtless be called to consider them, and the sense of the general body regarding the subject would be known.

With these observations, and without pledging himself to the future result of the Bill, he begged to move the first reading. The Bill was read a first time.

INDIAN NAVY.

Mr. PEACOCK moved the first reading of a Bill "to amend Act XII of 1844." He said that that was an Act containing Articles of War for the Indian Navy. After providing several Articles, it was enacted by the third Section—

"Provided also, that nothing in this Act contained shall extend, or be construed to extend, to empower any Court Martial to be constituted by virtue of this Act to proceed to the punishment or trial of any of the offences specified in the several articles contained in this Act, or of any offence whatsoever (other than the offences specified in the 5th, 34th, and 35th of the foregoing Articles and Orders) which shall not be committed upon the main sea, or in great rivers only beneath the bridges of the said rivers nigh to the sea, or any haven, river, or creek within the jurisdiction of the Admiralty, and which shall not be committed by such persons as, at the time of the offence committed, shall be in actual service and full pay in the Indian Navy, such persons only excepted and for such offences only as are described in the 5th of the foregoing Articles and Orders."

The effect of this Section was that, with the exception of the offences described in the three particular Articles mentioned in it, no offence committed by a person belonging to the Indian Navy could be tried by a Court Martial, unless the offence should have been committed on the high seas, and the offender, at the time he committed it, should have been in actual service and in full pay.

Article 5 related to spies.

Article 34 related to mutiny, desertion,

Mr. Peacock

or disobedience. For an offence of that nature, the offender would be amenable to a Court Martial, whether he had offended on the high seas or on shore.

Article 35 provided as follows :—

"If any person belonging to the Indian Navy, who shall be in actual service and full pay, shall commit upon the shore in any place or places out of the territories under the Government of the East India Company, any of the crimes punishable by these Articles and Orders, the person so offending shall be liable to be tried and punished for the same in like manner to all intents and purposes as if the said crimes had been committed at sea on board any of the Ships or Vessels of the Indian Navy."

The offences mentioned in these three Clauses were the only ones which were excepted from the operation of Section III. But Article 33 provided that—

"If any Superior Officer, Captain or Commander, or Lieutenant belonging to the Indian Navy, shall be convicted before a Court Martial of behaving in a scandalous, infamous, cruel, oppressive, or fraudulent manner unbecoming the character of an Officer, he shall be dismissed from the Indian Navy, or suffer such other punishment as a Court Martial shall deem him to deserve."

The exception in Section III did not apply to this Article; and, therefore, an officer in the Indian Navy, who had been guilty of any scandalous, infamous, cruel, oppressive, or fraudulent conduct on shore, would not be amenable to a Naval Court Martial. This was different from the rule which prevailed with respect to offences of the same class in the Military Service, and the Government of Bombay had recently communicated with the Government of India on the subject, and requested that the Act might be amended so as to render disgraceful conduct on the part of officers in the Indian Navy on shore amenable to Naval Courts Martial. The Government of India considered it very reasonable and proper that this amendment should be made, and suggested to the Government of Bombay that the object would be obtained by inserting the words "33rd" after the word "5th" and before the word "34th" in the exception in Section III. If that were done, every Officer in the Indian Navy would be liable to be tried by a Court Martial for any offence under Article 33, whether committed on the high seas or on shore, and whether he might be in actual service and on full pay or not.

The Government of Bombay, in answer to the suggestion of the Government of India, requested that the Act might be amend-

ed in the manner proposed ; he had therefore prepared a Bill which recited that it was expedient that every superior Officer, Captain or Commander, or Lieutenant belonging to the Indian Navy should be amenable to Naval Courts Martial for the offences specified in Article 33 of Act XII of 1844, whether the same should have been committed on the high seas or on shore ; and then enacted that nothing contained in Section III of that Act should extend to any of those offences committed by any such Officer. He could not think that there would be any objection to this amendment of the Act. The Indian Navy would be disgraced by the commission of offences of this nature whether at sea or on shore. In either case an Officer committing such an offence ought to be amenable to a Court Martial.

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

The Bill was read a first time.

PREVENTION OF FIRES (CALCUTTA).

MR. PEACOCK said the Council would recollect that, sometime last year, his late colleague Mr. Mills had brought in a Bill "for the better regulation of buildings, and for the more effectually preventing accidents by fire, within the Town of Calcutta," and that the Bill had been referred to a Select Committee. Since that time, the Conservancy Bill had been passed, and there was a Section in that which obviated the necessity for Mr. Mills' Bill. The Select Committee had accordingly reported in favor of not proceeding with the Bill ; and he begged to move that the Council do adopt their Report.

Agreed to.

NOTICE OF MOTION.

MR. GRANT gave notice that, on Saturday next, he would move that the Council resolve itself into a committee on the Bill "to remove all legal obstacles to the marriage of Hindoo Widows."

The Council adjourned.

Saturday, July 12, 1856.

PRESENT :

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

Hon. Sir J. W. Colvile, C. Allen, Esq.,
 Hon. J. P. Grant, E. Currie, Esq.,
 Hon. B. Peacock, and
 D. Elliott, Esq., Hon. Sir A. W. Buller.

HINDOO POLYGAMY.

THE CLERK presented two Petitions from Hindoo Inhabitants of Burdwan and

Nuddea praying for the abolition of Hindoo Polygamy.

MR. GRANT moved that the above Petitions be printed.

Agreed to.

EXECUTION OF CRIMINAL PROCESS.

THE CLERK presented a Petition from the British Indian Association against the Bill "to provide for the execution of Criminal process in places out of the jurisdiction of the authority issuing the same."

MR. CURRIE moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

ARTICLES OF WAR FOR THE NATIVE ARMY.

THE CLERK reported that he had received, by transfer from the Secretary to the Government of India in the Military Department, a correspondence with the Resident at Hyderabad on the subject of amending the 101st Article of War for the Native Army, so as to empower the Government to introduce trial by European Courts Martial into the Hyderabad Contingent.

POLICE CHOWKEYDARS (BENGAL.)

MR. CURRIE presented the Report of the Select Committee on the Bill "to amend the law relating to the appointment and maintenance of Police Chowkeydars in Cities, Towns, Stations, Suburbs, and Bazaars in the Presidency of Fort William in Bengal."

LANDHOLDERS' LIABILITY IN RESPECT OF CERTAIN OFFENCES.

MR. ALLEN moved the first reading of a Bill "to extend the provisions of Regulation VI. 1810 of the Bengal Code," which defines the penalties to which zemindars and others shall be subject for neglecting to give due information of robberies and for harbouring robbers. He said, the object of the Bill was to extend the provisions of Regulation VI. 1810 to descriptions of professional thieves who were not mentioned in it. The Regulation was a penal enactment which imposed upon landholders, under pain of fine and imprisonment, the duty of reporting to the Police the resort, within the limits of the estate or farm held by them, of any dacoits, cozauks, thugs, or budhuks, or of any other description of professional rob-