

Saturday, 3rd March, 1855

**PROCEEDINGS**

**OF THE**

**LEGISLATIVE COUNCIL**

**OF INDIA**

**Vol. I**

**(1854-1855)**

Banks, to the representatives of deceased depositors,"—and of the Bill "for the repeal of the Usury Laws."

The Council adjourned.

*Saturday, March 3, 1855.*

**PRESENT :**

Hon'ble J. A. Doria, Senior Member of the Council of India, *Presiding.*

Hon. J. P. Grant,	D. Elliott, Esq.,
Hon. B. Peacock,	A. Malet, Esq. and
A. J. M. Mills, Esq.,	C. Allen, Esq.

THE CLERK reported that he had received a communication from the Secretary to the Government of India in the Financial Department, transmitting copy of a Despatch from the Honorable the Court of Directors, and of a Resolution of the Government of India thereon, with a view to the passing of an Act to enable the Banks of Bengal, Madras, and Bombay to transact certain business now devolving on the Government Agents.

**PENAL SERVITUDE.**

Mr. PEACOCK presented the Report of the Select Committee on certain papers received from the Government of India relating to the transportation of European convicts.

Mr. PEACOCK said, the Select Committee on the above papers having presented their Report, he had the honor to move the first reading of a Bill (which they had prepared) "to substitute penal servitude for the punishment of transportation in respect of European convicts, and to amend the Law relating to the removal of such convicts." Her Majesty's Government having recently deemed it expedient to discontinue the transportation of convicts to Van Diemen's Land and other parts of Australia, there was now no place to which European or American convicts could be transported from India with safety to their health; and it had, therefore, become necessary for the Government of this country to consider what should be done with that class of convicts. Act 16 and 17 Victoria, c. 99, substituted penal servitude for the punishment of transportation in certain cases. It enacted that, after the passing of the Act, no person should be sentenced to transportation who, if the Act were not passed, would not have been liable to be sentenced to transportation for life, or for fourteen years or upwards; and substituted certain terms of penal servitude. It further

enacted that no person should be transported for any term less than fourteen years. The Select Committee were of opinion that this Act of Parliament did not extend to sentences passed in India, and had therefore prepared this Bill, which followed, to a great extent, the English Act. It did not follow the Act in allowing transportation where the offender would have been liable to transportation for life, or for fourteen years or upwards, because there was now no place to which the Government of India could transport European or American convicts with safety to their health. It, therefore, provided that no European or American convict should be sentenced to transportation; but that in any case in which he would now be liable to be sentenced to transportation, he should be liable to be sentenced to be kept in penal servitude instead. The terms of penal servitude proposed by the Bill were as follows:—instead of transportation for 7 years, or for a term not exceeding 7 years, penal servitude for the term of 4 years. Instead of any term of transportation exceeding 7 years, and not exceeding 10 years, penal servitude for any term not less than 4 and not exceeding 6 years. Instead of any term of transportation exceeding 10 years and not exceeding 15 years, penal servitude for any term not less than 6 and not exceeding 8 years. Instead of any term of transportation exceeding 15 years, penal servitude for any term not less than 6 and not exceeding 10 years. Instead of transportation for the term of life, penal servitude for the term of life.

The Bill also provided that persons sentenced to penal servitude, should be imprisoned in such place or places of confinement as the Governor General in Council might direct. It had been thought better to leave this to the Governor General in Council, as it was left to Her Majesty in Council at home, instead of to the different Governments of Bengal, Bombay, and Madras, inasmuch as it might be necessary to erect one Jail in a healthy place for convicts sentenced from the three Presidencies, instead of providing a separate Jail for each Presidency.

The Bill further provided for the custody of convicts during the interval between the sentence passed upon them, and their removal to the place of confinement directed by the Governor General in Council. It authorized the local Governments to imprison them, with or without hard labor, and to deal with them in all other respects in the same manner as persons sentenced to imprisonment and hard labor; but it also directed that the

time of such intermediate imprisonment, and of removal from one prison to another, should be counted as part of the sentence passed, so that the parties could complain of no hardship.

There was also a provision by which Courts might order a person to be kept in penal servitude where he was not sentenced to penal servitude. By 9 of George IV, the Supreme Courts of Judicature had power, where sentence of death was passed and they thought it ought not to be carried into effect, to record the sentence, but order transportation. In such a case, the sentence was sentence of death. The order for transportation was not the sentence, but a commutation of it, which the Supreme Courts were authorized to make. This Bill provided that, in those cases in which the Courts might now order transportation, they might order penal servitude, which penal servitude should be counted as if it were awarded by the original sentence of the Court.

With these observations, he (Mr. Peacock) begged to move the first reading of the Bill.

Bill read a first time accordingly.

#### BANKS OF BENGAL, MADRAS, AND BOMBAY.

MR. PEACOCK then moved the first reading of a Bill "to enable the Banks of Bengal, Madras, and Bombay to transact certain business in respect of Government securities and shares in the said Banks." In doing so, he said the Clerk of the Council had reported the receipt of certain papers from the Government relative to this subject; and he (Mr. Peacock) would now briefly state the reasons and objects of the Bill. The Government of India, having resolved to put an end to the Government Agencies in the several Presidencies, had considered it right to withdraw the restrictions by which the Banks of Bengal, Madras, and Bombay were at present prevented from transacting agency business in Government securities and shares in those Banks. The object of the Bill was to remove those restrictions, and enable the Banks, if they thought fit, to engage in such business, with or without commission. It, therefore, provided that, in addition to the business which they were now authorized to undertake, they might take charge of Government securities or shares in any of the said Banks; receive interest or dividends upon them; sell or transfer any such securities or shares depo-

sited with them, or receive any principal money that might become payable thereon; re-invest the principal, interest, or dividends so received, or the proceeds arising from a sale, in Government securities or shares in any of the said Banks; or hold, pay, remit, or re-invest such principal, interest, dividends, or proceeds; and do all acts necessary and proper for the purpose of making remittances. In fact, it authorized them to accept the same class of business which the Government Agents now transacted.

With this statement of reasons and objects, he begged to move that the Bill be now read for the first time.

Bill read a first time accordingly.

#### MUNICIPAL LAW (BENGAL)

MR. MILLS postponed moving the second reading of the Bill "to modify Act XXVI of 1850, so far as it relates to places in the Bengal Division of the Presidency of Fort William,"—until Saturday next, in order that it may be discussed when all the Members of the Council are present.

#### GOVERNMENT SAVINGS' BANKS.

MR. PEACOCK moved that the Bill "to facilitate the payment of small deposits in Government Savings' Banks to the representatives of deceased depositors,"—be now read a second time.

Motion carried, and Bill read a second time accordingly.

#### USURY LAWS.

MR. PEACOCK moved that the Bill "for the repeal of the Usury Laws" be now read a second time. At the last Meeting of the Council, he had stated the principle and objects of this Bill, and did not think it necessary to add anything on this occasion, unless any Honorable Member had objections to make against the principle of the Bill.

MR. ELIOTT said, he entirely concurred in the principle of the Bill, and was prepared to vote for the second reading. But he desired to take this opportunity of drawing the Honorable Member's attention to certain of the provisions which appeared to him to be objectionable, and not to follow out the principle on which the Bill itself was founded in the main. The provisions to which he alluded were Sections VI and VII. These appeared to him to retain the

very objectionable principle of the Usury Laws. The 6th Section provided that "whenever, under the Regulations of the Bengal Code, a deposit or tender may be made of the principal sum and interest due upon any future mortgage or conditional sale of land, the amount of interest to be deposited or tendered shall be at the rate stipulated in the contract, *but if no rate has been stipulated, at the rate of 6 per cent. per annum.*" And the 7th Section contained a similar provision as to all future adjustments of accounts between the lender and the borrower of money on any mortgage, conditional sale of landed property, or other contract whatsoever. These provisions were a departure from the principle of free trade, and also from the general principle of the Bill itself, inasmuch as they proposed to fetter the creditors to interest at 6 per cent. where no rate had been stipulated in the contract. The 5th Section, again, provided that compound interest shall not be recoverable unless, after the original interest has become due, the debtor has agreed in writing that it shall be deemed principal. This he considered also objectionable. In fact, if the provisions to which he referred were retained, the Bill might be termed a Bill for the abolition of the Usury Laws as to all contracts in writing, but for the continuance of them as to all other transactions. At present, he did not propose to enter into any discussion upon the Bill; but he had thought it right to bring to notice, at this stage, the objection to which he considered the 5th, 6th, and 7th Sections were open.

MR. PEACOCK said, as the Honorable Member did not object to the second reading of the Bill, it was scarcely necessary for him now to enter into the question which he had raised; but he could not agree with him in thinking that the provisions to which he had referred were contrary to the principle of free trade. The object of the 6th Section was to enable a person borrowing money on a conditional sale of land, to prevent that sale from being rendered absolute by reason of the creditor evading receipt of the debt within the time limited for the discharge of it. The Bill provided that a person might enforce at Law any rate of interest, if it was mentioned in the contract; but if it was not mentioned in the contract, it fixed a certain rate beyond which the Courts should not decree interest. The Honorable Member who objected to this provision, had not stated how he proposed to alter it. In the present state of the Law,

*Mr. Elliott.*

a conditional sale of lands became absolute if the amount of the principal and interest were not paid or tendered on or before a day fixed by the contract; but if the lender kept out of the way, the borrower could not pay or tender the money to him; and thus, the sale might become absolute, and the estate of the borrower pass from him for no real default of his own. Regulations had been passed to protect the borrower, by providing that he might reserve his right of redemption by paying into Court the principal with the stipulated interest thereon, *not exceeding 12 per cent.*, or, if no rate had been stipulated, with interest at the rate of 12 per cent. The object of the Section under discussion, was, to allow the borrower to reserve his right of redemption by paying into Court the principal and interest, the latter at the rate stipulated in the contract, without any limitation of the rate; or, if no rate had been stipulated, at the rate of 6 per cent. per annum. How did the Honorable Member propose to deal with this provision? Suppose a person borrowed money on a conditional sale of land, and the lender made him contract that the sale should become absolute if he did not pay principal and interest on a given day, without stipulating what the rate of interest should be. How was the borrower to know what interest he ought to tender or pay into Court in order to reserve his right of redemption? If he tendered or paid into Court too little, his right of redemption would be gone, the sale would become absolute, and his property would pass to the lender. To protect borrowers of this class from a result like this, the 6th Section said, that if the parties did not stipulate for any definite rate of interest, the Legislature would fix a limit beyond which interest should not be allowed by the Courts, so that a conditional sale should not become absolute if the borrower paid into Court principal with interest at 6 per cent. There was no interference with free trade in that. If the parties stipulated for any rate of interest in their contract, they could, by this Bill, recover it at that rate; but if they did not choose to stipulate for any rate of interest, they would not recover interest exceeding the rate of 6 per cent. per annum.

The Honorable Member had said that if the Sections which he considered objectionable were retained, the Bill might be termed a Bill for the abolition of the Usury Laws only as to contracts made in writing. But that was not the whole scope and effect of the Bill. By the law in force now, if a

British subject received interest at a higher rate than 12 per cent., he was liable to a penalty of three times the amount of the principal money lent, and that although the debtor might be willing to pay the interest. The Bill before the Council did away with that. Under this Bill, any person might receive interest on a loan or discount of a Bill of Exchange at 50 or 100 per cent. without making himself liable to any penalty. But it said, if no rate of interest had been stipulated, the Court should decree interest at a rate not exceeding 6 per cent.

With regard to compound interest, parties were at liberty, by Section V. of the Bill, to take it; but they could not enforce it in a Court of Law unless the debtor agreed in writing, after the interest became due, that the same should be deemed principal.

The proposed enactments to which he had alluded, did not appear to him to violate the principles of free trade. If they did, he would have been the last person to propose them. If, however, the Honorable Member should convince him, when the Bill came to be considered in Committee, that his view was correct, he (Mr. Peacock) should be very willing to give up his present opinion, and introduce any amendments which would throw the Bill perfectly open to the principles of free trade.

With these observations, the Honorable Member begged to move that the Bill be now read a second time.

Motion carried, and Bill read a second time accordingly.

#### MESNE PROFITS AND IMPROVEMENTS.

MR. PEACOCK said, his Honorable and learned friend Sir James Colville being unable to attend this Meeting of the Council, in consequence of the Criminal Sessions at which he was presiding, had requested him to move, on his behalf, that the Bill "relating to mesne profits, and to improvements made by holders under defective titles, in cases to which the English Law is applicable," be now read a third time and passed.

Motion carried, and Bill read and passed accordingly.

#### EXECUTORS AND ADMINISTRATORS.

MR. PEACOCK made a similar motion, in respect of the Bill "to enable Executors, Administrators, or Representatives, to sue and be sued for certain wrongs."

#### COMPENSATION FOR ACCIDENTAL DEATH.

Also in respect of the Bill "to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong."

Both motions were carried, and the Bills were read and passed accordingly.

#### MILITARY BAZARS (MADRAS.)

MR. ELIOTT moved that the Bill "for the better regulation of Military Bazaars" be re-committed to a Committee of the whole Council, in order that he might amend the title by an addition which had been suggested to him.

The motion was carried, and the Bill being re-committed—

MR. ELIOTT moved that the words "in the Presidency of Fort St. George" be added to the title.

Amendment agreed to.

The Bill was then reported to the Council as amended, and, on MR. ELIOTT'S motion, was read a third time and passed.

#### JOINT POLICE OFFICERS (BOMBAY.)

MR. MALET moved that the Bill "to amend Regulation III of 1833 of the Bombay Regulations," be now read a third time, and passed.

Motion carried, and Bill read and passed accordingly.

#### BADGES (BOMBAY.)

MR. MILLS moved that the Bill "to amend the Law in force in the Presidency of Bombay concerning the use of badges," be re-committed to a Committee of the whole Council, in order that he might propose an amendment in the 2nd Section. This Section said "no person, not being a servant of Government, shall wear any belt or badge intended to resemble any belt or badge worn by servants of Government, or any badge not bearing, in the characters of the language of the district in which it is worn, the name or designation of the party by whom the wearer is employed." In the Presidency of Bombay, as in the Presidency of Fort William in Bengal, different languages were current in different districts. Under this Section, the peon of a private individual going into a neighbouring district, would be liable to be punished, if his badge did not bear the name or designation of his employer in the character of the language of that district. This would be a great

hardship. In the Mofussil, merchants and others had frequent occasion to send peons in charge of goods to distant parts of the country ; but, under this Section, the peons would be liable to be apprehended and pay a fine of 100 Rupees in any of the several districts through which they must pass, if the characters in which the names or designations of their masters were inscribed on their badges did not correspond with those of the language current in that district, though they might be the characters of the language current in the district in which the men were employed. He was, therefore, of opinion that the Section was objectionable, and should propose either that the words "in the characters of the language of the district in which it is worn" be omitted, or, if the Council preferred it, that, for the words "it is worn," the words "such person is employed" be substituted.

Mr. MALET said, he should object to the Bill being re-committed for the purpose of being amended as proposed by the Honorable Member opposite (Mr. Mills.) The Government of Bombay had suggested that the Balbodh characters should be used ; but he, with the other Members of the Select Committee, had considered it would be more consistent with the objects of the Bill to require the use of the vernacular characters instead. If a private person chose to employ peons wearing badges, to travel through districts differing in language, it could be no hardship upon him, while it would be of the greatest importance to the people of the country, to require that his name or designation should be inscribed on the badges in characters which could be read in the districts through which the peons might pass. He (Mr. Malet) should, therefore, object to the re-committal of the Bill.

Mr. ALLEN said, this Bill was the proposed reform of a stringent Badge Law now in force in Bombay. By that Law, no person not a servant of Government was permitted to employ a peon with a badge. This Bill removed that prohibition, but required that badges, if worn, should be worn under certain restrictions. The object of these restrictions was solely to prevent persons from making use of badges for unlawful purposes,—from converting them into a means of extortion and oppression amongst the ignorant natives in the Mofussil. For what purpose could the Legislature be asked by private persons to permit them to give badges to their peons ? Simply, he imagined, from a desire of show—as in the case

Mr. Mills.

of a livery or uniform—and not for any purposes of oppression. And yet, without the restrictions proposed, badges would be used, as they were now used, for such purposes. He (Mr. Allen) had been for two years at a Military station up the country through which a large trunk road passed ; and from the experience he had there, he knew that badges worn by peons of private individuals were used in the Mofussil for improper ends. A man wearing a badge in the Mofussil could get certain supplies—such as grass and wood—which he wanted, without paying for it. The ignorant native villagers dared not refuse, because they were afraid of him, supposing him to be a servant of the Government. If his badge bore the name of his employer in the characters of the district in which he wore it, some one of the villagers would be able to read the inscription, and he would tell his fellow-villagers that they need not submit to the impositions of the man. A merchant sending a peon in charge of goods to another district, could have no object in arming him with a badge, other than that which he (Mr. Allen) had mentioned before—*viz.*, a desire for show. It could not be for the protection of the goods, for that object would be better obtained by arming the peon with a sword or a gun, instead of a badge.

Mr. GRANT said he should support the motion for the re-committal of the Bill. Although he was not prepared to support either of the amendments which had been suggested by his Honorable friend (Mr. Mills), he did think that some amendment might be made with great advantage in the 2nd Section. There were several districts upon the borders between two Provinces, in which the languages of both Provinces were current, and in respect of which a badge in either language would be sufficient. Therefore, if the Bill was re-committed, he should propose that for the words "or any badge not bearing in the characters of the language of the district in which it is worn," the words "or any badge not bearing in the characters of a language current in the district in which it is worn" be substituted.

The question that the Bill be re-committed, being put.

The Council divided.

Ayes 4.

Mr. Mills.  
Mr. Peacock.  
Mr. Grant.  
The President.

Noes 3.

Mr. Allen.  
Mr. Malet.  
Mr. Elliott.

Majority for the re-committal—1.

The Council accordingly resolved itself into a Committee for the further consideration of the above Bill.

MR. MILLS then moved that the words "in the characters of the language of the district in which it is worn," be omitted from the Section. Act XVIII of 1835 for the Presidency of Bengal, from which this Bill was taken, merely said—"Any badge worn by a private person shall bear the name of the party by whom such person is employed," without directing in what characters the inscriptions should be. It was advisable to make the Law for Bombay correspond with the Law for Bengal; and he therefore made his present motion with the view of assimilating the one to the other.

MR. GRANT moved as an amendment, that the words "in the characters of the language of the district in which it is worn" be omitted from the Honorable Member's motion, and that the words "the language of" be substituted for them. If his amendment was carried, he should next move that, before the word "district" in the Section, the words "a language current in" be inserted. The Honorable Member opposite (Mr. Mills) proposed that the clause requiring the badge to bear the name of the employer in certain characters, should be omitted altogether—the Honorable Member was of opinion that, as in Bengal, it should not be made compulsory to have the name inscribed in any vernacular character whatever. The object of the mover of the Bill, however, was, that, for the protection of the villagers, the name should be inscribed in the characters of the language of the district in which the badge was worn. But there were many bordering districts in each of which two languages were current, although, strictly speaking, the language of each might be different. In such cases, there would be no reason to prohibit a peon passing from one district to the other with the same badge. The amendment which he (Mr. Grant) proposed, would alter the Section so as to meet this case.

MR. MALET said, he should not object to this amendment, if the Council thought it necessary. To him, it hardly did appear so, for he thought the words "the language of the district" now in the Section would, in effect, include any one of two languages current in the district. But if it were thought that there might be a doubt upon the point, he should not object to the amendment proposed.

MR. ALLEN said, he should object most strongly to the motion. If it were

carried, the Council might as well do away with the Bill altogether. The object was to prevent extortion and oppression, by requiring that the badges worn should be such as would bring to the knowledge of the people of the country the names and designations of those who employed the persons wearing them, so that the people might see whom these persons really did serve. If the names and designations of the employers were not to be inscribed in characters known to the residents of the district in which the badges were worn, they might as well be inscribed in Hebrew or Greek, and the Bill before the Council had better be thrown out altogether.

With regard to the amendment proposed on the motion, the wording of that fully retained the principle of the Bill; and, as it had been carried that the latter should be re-committed, he would support the amendment rather than the motion.

MR. PEACOCK said, he would vote for the amendment. The object of the Bill was, that badges worn should be badges not only of authority, but badges for the purpose of detection:—as badges of authority, they should show that the persons wearing them were in a service by which they could be lawfully deputed to do that which they came to do; and as badges for detection, that the wearers might be known if they acted illegally. As a badge of authority, a brass-plate inscribed in a language which no one could understand, would be useless for the purpose for which it was intended, and, by giving some appearance of authority, would be likely to mislead if worn for an improper purpose; as a badge for the purpose of detection, if the wearer should act illegally, a brass-plate bearing an inscription in characters not known in the district in which it was worn, would be of no assistance to the people of that district. He (Mr. Peacock) should, therefore, vote for the amendment moved by his Honorable Friend opposite (Mr. Grant).

The amendment was then put, and carried.

MR. GRANT then moved that the words "a language current in" be inserted before the words "the district" in the Section.

Agreed to.

The Section, as altered by the above amendments, stood as follows:—

"No person, not being a servant of the Government, shall wear any belt or badge intended to resemble any belt or badge worn by servants of Government, or any badge not bearing in the characters of a language current

in the district in which it is worn, the name or designation of the party by whom the wearer is employed."

The amended Section was agreed to.

The Bill as amended was then reported to the Council.

Mr. MALET moved that the Bill be now read a third time and passed.

Motion carried, and Bill read and passed accordingly.

#### GOVERNMENT SAVINGS' BANKS.

Mr. PEACOCK moved that the Bill "to facilitate the payment of small deposits in Government Savings' Banks to the representatives of deceased depositors" be referred to a Select Committee consisting of Mr. Elliott, Mr. Allen, and the Mover.

Agreed to.

#### USURY LAWS.

Mr. PEACOCK moved that the Bill "for the repeal of the Usury Laws" be referred to a Select Committee consisting of Mr. Elliott, Mr. Allen, and the Mover.

Agreed to.

#### MESSENGER.

Mr. GRANT was requested to take the Bill "relating to mesne profits and to improvements made by holders under defective titles in cases to which the English Law is applicable"—the Bill "to enable Executors, Administrators, or Representatives to sue and be sued for certain wrongs"—the Bill "to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong"—the Bill "for the better Regulation of Military Bazaars in the Presidency of Fort St. George"—the Bill "to amend Regulation III of 1833 of the Bombay Regulations"—and the Bill "to amend the Law in force in the Presidency of Bombay concerning the use of badges"—to the President in Council, in order that they might be transmitted to the Governor General for his assent.

#### NOTICES OF MOTION.

Mr. PEACOCK gave notice that, on Saturday next, he would move the second reading of the Bill "to substitute penal servitude for the punishment of transportation in respect of European convicts, and to amend the law relating to the removal of such con-

victs"—and the Bill "to enable the Banks of Bengal, Madras, and Bombay to transact certain business in respect of Government securities and shares in the said Banks."

The Council adjourned.

Saturday, March 10, 1855.

#### PRESENT :

Hon'ble J. A. Dorin, Senior Member of the Council of India, *Presiding*.

Hon. J. P. Grant, A. J. M. Mills, Esq.  
Hon. B. Peacock, D. Elliott, Esq., and  
Hon. Sir James Colville, C. Allen, Esq.

#### COPPER CURRENCY (STRAITS)

Mr. GRANT presented the Report of the Select Committee on the Bill "to improve the Law relating to the Copper Currency in the Straits."

#### MUNICIPAL LAW (BENGAL)

Mr. MILLS moved that the Bill "to modify Act XXVI of 1850, so far as it relates to places in the Bengal Division of the Presidency of Fort William," be now read a second time. In doing so, he remarked that, since the first reading of the Bill, two communications had been received respecting it—one from the Government of Bombay; the other from the Lieutenant Governor of Agra—which had been printed. Both were in favor of the principle of the Bill.

The question being proposed—

Mr. GRANT said, he felt compelled to oppose the second reading of this Bill; but in opposing it, he was very far from intending to object to the principle of local taxation for local purposes. He approved of that principle, and looked forward to the enforcement and gradual extension of it, not only over Bengal, but over the whole of India, as one of the most promising means of improving the condition of the people. But the question which the Council had now to consider was, not whether the principle was a correct one, but whether the Act proposed was a proper Act for the enforcement of it. He had considered the Bill with all the attention that he was able to give to it; and he could not think that it was one which it was possible for the Council to pass. He did not altogether agree with the Honorable the Lieutenant Governor of Bengal, who thought that Act XXVI of 1850 was an excellent Act whenever it