

Saturday, 31st March, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL

OF INDIA

Vol. I

(1854-1855)

the Bill "to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund on the Neilgherry Hills," be laid on the table, and referred to the Select Committee on the Bill.

Agreed to.

POLICE AND CONSERVANCY PROJECTS OF LAW.

MR. ELIOTT next moved that Mr. Allen be added to the Select Committee appointed to take into consideration the projects of Law for regulating the Police Courts, and for the good order and civil Government of Madras; and for improving and regulating the streets, roads, and drains in the town of Madras—the projects of Law relating to the Police and Conservancy of the Settlement of Prince of Wales' Island, Singapore, and Malacca—and the papers before the Legislative Council containing proposals for revising Acts X, XII, and XIII of 1852, relating to the Conservancy and Police of Calcutta.

Agreed to.

NOTICE OF MOTION.

MR. ELIOTT gave notice that, on Saturday next, he would move the first reading of a Bill "for the better prevention of offences against the public tranquillity, and to amend the Law regarding the taking of bonds for keeping the peace." He said this was an amended Bill prepared by the Select Committee on the Draft Act to amend the Law regarding the taking of mochulkas or penal recognizances in the Presidencies of Madras and Bombay; but as it contained numerous and important alterations of that Draft Act, the Select Committee had thought it necessary to present it as an original Bill.

The Council adjourned.

Saturday, March 31, 1855.

PRESENT :

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

Hon. Major Genl. Low, A. J. M. Mills, Esq.

Hon. J. P. Grant, D. Elliott, Esq.,

Hon. B. Peacock, and

Hon. Sir James Colville, C. Allen, Esq.

MOCHULKAS OR PENAL RECOGNIZANCES.

MR. ELIOTT moved the first reading of a Bill "for the better prevention of offences against the public tranquillity, and to amend the Law regarding the taking of bonds for

Mr. Elliott

keeping the peace." He said, the Bill of which he had now the honor to move the first reading, having been some time in the hands of the Members of the Council, together with the Report of the Select Committee, in which the provisions were fully explained, he thought it necessary only briefly to recapitulate the objects which it contemplated, and the means which it provided for carrying them out.

The original intention was merely to extend to Madras and Bombay provisions similar to those of Act V of 1848, which was confined to the Presidency of Bengal. The Select Committee, however, having had before them certain Reports submitted by the Governments of Bengal and Agra upon the working of Act V of 1848, had been led to think that it required some amendments, with the view principally of regulating and controlling the proceedings of Magistrates. Those amendments had been introduced into the present Bill, which was intended to apply to Bengal, as well as to Madras and Bombay. The most important amendments were those which provided that when a Magistrate, upon information rendered to him, saw reason for requiring a person to enter into a recognizance to keep the peace, he should first issue a summons to him, calling upon him to show cause why such requisition should not be made, and setting forth in the summons the substance of the information upon which he acted; and that, when the party appeared on the summons, the truth of the information on which the process had issued should be inquired into in his presence. Upon the whole, the Select Committee were persuaded that, while a necessary power was given to Magistrates by the provisions of the Bill under this head, it was sufficiently guarded to prevent any abuse of it in practice.

The other provisions of the Bill, which stood first in order in it, Mr. Elliott observed, had a close affinity with those he had just mentioned. The intention was to deter men from assembling, and from instigating others to assemble, in bodies, under circumstances which might reasonably excite apprehensions of a serious disturbance of the public peace in pursuit of the object of the assembly. Most of these provisions appeared to him to be necessary to render any code of Criminal Law and Procedure complete. He meant, he said, those comprised in Sections I to IX; and, with the permission of the Council, he would read what the Select Committee had reported regarding those Sections:—

"The first part of the Bill contains a series of provisions calculated to deter men from assembling, and from instigating others to assemble, in bodies, under circumstances which may reasonably excite apprehension that their object is to overawe public servants in the execution of their duty; or to commit assault or mischief, or trespass; or to put any person in fear of hurt or assault; or unlawfully to take forcible possession of property. Such an assembly is declared to be a riotous assembly, and every person proved to be a Member of it, will be guilty of rioting.

"The simple offence of being a Member of a riotous assembly, is made punishable with a fine limited to Rupees 200, which punishment is also assigned to any person who has instigated the offence. If the offender be armed, or if he continue in the assembly after it has been commanded to disperse, either of these aggravations will increase the punishment heavily. The punishment may be doubled, if both these aggravations co-exist. If the offence of rioting be committed by a person armed, any person who has instigated him to commit the offence will be liable to the same punishment as the rioter. Penalties are provided for a person collecting a riotous assembly accordingly as the persons assembled are armed or not."

The next two Sections, the Hon'ble Member proceeded—the 10th and 11th—contained stringent provisions, designed to check the affrays which had unhappily become so prevalent in Bengal. He begged leave to read the observations of the Select Committee on these Sections:—

"We have thought it expedient," said the Committee, "to provide specially for the imposition of a penalty upon the owner or occupier of land or premises upon which a riotous assembly takes place, if he fail to give notice to the Police of such assembly, and to use all the means in his power to prevent it.

"Under similar conditions, we propose to subject to penalty any person connected with land, on whose behalf or interest a breach of the peace is committed by a riotous assembly, unless he can show that he took all proper precautions to prevent such assembly. This provision is founded on the certain fact that, whenever the peace is broken in India by an assemblage of persons acting in promotion of the interested purposes of men of influence, in the enormous majority of cases, or it may probably be more truly said in every case without exception, those in whose interests the *lattials* or other rioters act, are the real, though always the concealed originators of the crime. Hence, the strong presumption is against such persons; and as, by the constitutional tenure of land in India, it is the duty of all those connected with it to assist in the preservation of the peace, the burthen of proving that he has done his duty on such an occasion, is in reason thrown upon him who is presumably the author of the whole disturbance."

The special provisions of Sections X and XI, Mr. Eliott observed, were thus ground-

ed on the violent presumption of complicity which arises against a party in the circumstances supposed, unless it be rebutted by his acting in support of order and for the maintenance of the public tranquillity, in the manner indicated.

These were the more important provisions. He (Mr. Eliott) did not think it necessary to make any further observations upon the Bill at present, and would conclude by moving its first reading.

Bill read a first time accordingly.

FIRES (CALCUTTA.)

Mr. MILLS moved that the Bill "for the better regulation of buildings, and for the more effectually preventing accidents by fire, within the town of Calcutta," be now read a second time.

Motion carried, and Bill read a second time accordingly.

Mr. MILLS then moved that the Bill be referred to a Select Committee, consisting of Mr. Peacock, Mr. Eliott, and Mr. Allen.

Agreed to.

AFFRAYS (BENGAL)

Mr. MILLS moved that the Council resolve itself into a Committee on the Bill "for the more effectual suppression of affrays concerning the possession of property."

Mr. PEACOCK said, this Bill was connected with the Bill for the better preservation of offences against the public tranquillity, and to amend the Law regarding the taking of bonds for keeping the peace—which had been read to-day for the first time; and it would, therefore, be better if it stood over until the other should have been passed, or discussed. Its object was to repeal Act IV of 1840. It certainly appeared to him not to be better than that Act—he rather thought it was not so good. At any rate, he should propose that the Council postpone going into Committee upon it, until the Bill which had been read for the first time to-day, should have come on for discussion. He did not mean to go fully into the provisions of the present Bill now; but he would remark that, while it proposed to repeal Act IV of 1840, he did not see that it provided any remedy for riotously assembling to oppose or resist the execution of a Magistrate's order. The Bill for the better prevention of offences against the public tranquillity would provide a remedy for that offence; but if the present Bill were to be passed before the other came

into force, there would be no punishment in the interim, except a fine not exceeding 500 rupees, for the forcible opposition of an order passed by a Magistrate under the Act. Section VII of Act IV of 1840, enacted that any person opposing by force the execution of an order for possession or use made under the Act, or refusing obedience thereto, or knowingly contravening it, as also all persons aiding and abetting such resistance or contravention, should be liable to simple imprisonment for a term not exceeding six months, or to a fine not exceeding 200 rupees, commutable, if not paid, to simple imprisonment for a term not exceeding six months, or to both imprisonment and fine. The present Bill took away the punishment of imprisonment for contravention of a Magistrate's orders, and made the offence punishable only by fine. It appeared to him that mere punishment by fine was scarcely adequate. Assembling to resist the execution of an order made under the Law, was a grave offence, and ought, in his judgment, to be punished by imprisonment. It might be said, it was open to him now to propose that a clause to that effect should be introduced into this Bill; but he conceived it would hardly be necessary to do this, when such a clause appeared in the other Bill. He should, therefore, propose that the consideration of the present Bill in Committee be postponed until the other Bill should have been discussed. At present, the Council did not know whether that Bill would pass even the second reading.

Mr. GRANT suggested the expediency of the Honorable and learned Member putting his proposal in the shape of an amendment, for a simple opposition to the motion of the Honorable Member in charge of the Bill, if successful, would have the effect of throwing out the Bill altogether. An amendment might be moved postponing the Committee on the Bill until the next meeting of the Council.

Mr. PEACOCK said, he should move, as an amendment, that this Bill stand over until after the Bill for the better prevention of offences against the public tranquillity should have been discussed and settled by a Committee of the whole Council. Or, probably, that would be rather premature, because the Council did not know whether the latter Bill would pass the second reading. Even if it did pass that stage, it would be three months before it could be discussed in Committee, because, as it affected the three Presidencies, it must be published three months previously

Mr. Peacock

in the *Gazette*. So that, if the Bill in question were to pass now, during the interim between the present time and the discussion of the other Bill three months hence, there would be no provision for an adequate punishment of the offence of assembling to resist the execution of an order made by a Magistrate under the Act. He should move, that the Bill stand over until this day fortnight; and at the Meeting of the Council on that day, if the Bill for the better prevention of offences against the public tranquillity should pass the second reading, then he should move that it further stand over until the other Bill should have been discussed and settled by a Committee of the whole Council.

Mr. MILLS said, he had no objection to let the Bill stand over for a fortnight; but he did not agree with all the reasons which had been advanced for the postponement. It was true that the Select Committee had modified Section VII of Act IV of 1840; but, in the concluding paragraph of their Report, they stated that they proposed, in the Amended Bill, to alter the penalty for contravention of orders under this Law, by taking away the punishment of imprisonment, and increasing the amount of fine. The offence for which the penalty so modified was provided, was opposing by force, or show of force, the execution of an order passed by a Magistrate under the Act, or knowingly contravening it. If an actual breach of the peace was committed, the parties committing it would be subject to punishment for that offence, according to its nature and degree; but for merely opposing the order of a Magistrate, or for a simple contravention of it, the Select Committee had thought that the punishment by fine not exceeding 500 Rupees, which this Bill provided, would be a sufficient penalty. He had no objection, however, to the Bill standing over as proposed, though he regretted that he should not be present to take a part in the discussion which would thus be postponed; but he felt satisfied that the Bill would be fully considered by the Council whenever it might come before it for discussion.

Sir JAMES COLVILLE said—personally, he had no objection whatever to the proposition that this Bill should stand over. But it seemed to him that, even if there were force in the argument as to the insufficiency of the Bill, in the absence of the one read for the first time to-day, to check riotous and violent resistance to a Magistrate's awards, the Council might meet that difficulty by postponing the third reading, having

allowed the Bill to be considered in Committee to-day. In that case, if the other Bill should be thrown out, and it should be necessary to introduce other provisions into this Bill, this might be done by re-committing the Bill before it was read a third time and passed. He should only suggest that, if the Council should go through the Bill in Committee to-day, it would have the advantage of discussing it in the presence and with the aid of the Honorable Member who had introduced it, and who was understood to have formed a very decided opinion on the principal question which arose upon it—namely, the propriety of allowing an appeal from the orders of a Magistrate passed under the Act, to the Sessions Judge. He (Sir James Colville) was not sure that he had yet made up his mind how he should vote upon this question; but he certainly thought it would be better if the Council heard all that the Honorable Member could say in support of the view which he took of it. It might be that, after his departure, the Council would not have an opportunity of hearing so fully all the reasons that might be advanced on that side of the question. If, therefore, the Honorable Member felt disposed to proceed with the Bill to-day, he (Sir James Colville) should support the motion for going into Committee upon it.

MR. PEACOCK said, no one could value more than himself the assistance of the Honorable Member who had moved that the Bill be considered in a Committee of the whole Council. He deeply regretted that, in the event of the Bill standing over, the Council would lose the benefit of that Honorable Member's assistance. But still, he felt that, before the Council knew whether all or any of the provisions of the other Bill would be adopted, they were not in a situation properly to discuss this Bill in Committee. He had several amendments to propose in the present Bill: but there were some of them which it would be unnecessary to make, if the other Bill should be passed as it stood. But if some of the provisions of the other Bill should be thrown out, he should have to move that additional clauses be introduced into this Bill. If, therefore, the Council should resolve to go into Committee upon this Bill now, he would be placed in this predicament—either he must move amendments in the Bill which might not be necessary; or he must let it pass in its present state, without knowing what alterations the other Bill might undergo.

MR. PEACOCK'S amendment was then put, and carried.

STANDING ORDERS.

MR. GRANT moved that the Council resolve itself into a Committee to consider certain amendments, proposed by the Standing Orders Committee, of Standing Orders Nos. LXXXVI, LXXXVII, and LXXXVIII.

Agreed to.

MR. GRANT then moved that Standing Orders LXXXVI and LXXXVII be consolidated so as to stand as Order LXXXVII. In doing so, he said that the Report upon which this motion was founded, was before the Council, and he, therefore, did not think it necessary to take up the time of the Council with any further explanation on the subject.

Agreed to.

MR. GRANT next moved that the following Order be inserted as Order No. LXXXVI:—

“Any Member, before notice of the third reading and passing of a Bill is given, may move that the Bill be re-committed to a Committee of the whole Council for the purpose of correcting any errors therein, or considering any proposed amendment thereof. If the Bill be re-committed on such motion, the Committee shall settle the same, and the Chairman shall again certify the Bill according to the form prescribed in Order No. LXXXII; after which, the Council may at once receive the Report, and notice may be given of a day on which the third reading and passing of the Bill will be moved.”

Agreed to.

MR. GRANT next moved that the words “the Clerk of the Council shall read the title only, and,” be inserted after the word “carried” in the second line of Order No. LXXXVIII. The Honorable Member said, the object of this amendment was to remedy a slight oversight in this Standing Order. As the Order now stood, on the third reading of a Bill, it would be necessary for the Clerk to read the whole Bill, instead of the title only.

Agreed to.

The Council having resumed —

MR. GRANT moved that the Council resolve itself into a Committee on the Standing Orders proposed by the Standing Orders Committee, for the publication of the printed papers of the Council.

Agreed to.

MR. GRANT then moved that the following new Order be introduced into the Standing Orders:—viz.

“Except in the cases specified in Order next following, the Clerk of the Council shall

cause to be printed a certain number (to be fixed from time to time by the Standing Orders Committee) of spare copies of every paper ordered by the Council to be printed; and shall deliver them to some book-seller, or publisher, in Calcutta, who will engage to sell them to the public at such fixed rates as may from time to time be determined by the Standing Orders Committee. The price at which each printed copy of every such paper is to be sold, shall be printed upon the outer sheet or cover thereof."

MR. GRANT remarked that the principle of this Order having been discussed when the Standing Orders Committee were instructed to prepare such an Order, it was unnecessary for him to make any further observation upon it now.

Agreed to.

MR. GRANT next moved that the following new Order be introduced into the Standing Orders:—

"When any paper ordered by the Council to be printed, may appear to the Clerk of the Council, by reason of its containing matter reflecting upon the character of individuals, or for any other reason, unfit for publication either wholly or in part, it shall be the duty of the Clerk of the Council, before causing such paper to be printed, to bring the subject to the notice of the Standing Orders Committee. Thereupon, the Committee shall give such directions concerning the printing or publication of the paper as to them may seem fit, and report thereon to the Council."

Agreed to.

The Council having resumed—

MR. GRANT moved that the Council resolve itself into a Committee on the Standing Order proposed by the Standing Orders Committee, for the admission of certain privileged persons into the Council Chamber during the sittings of the Council.

Agreed to.

MR. GRANT then moved that the following new Order be introduced into the Standing Orders:—

"Subject to the rules applicable to the admission of strangers, a Governor of a Presidency, a Lieutenant Governor of a Lieutenant Governorship, a Member of the Council of any Presidency, and a Judge of any of Her Majesty's Supreme Courts, may be admitted without an order into the Council Chamber during the sittings of the Council and Committees of the whole Council. Seats shall be provided for the accommodation of such visitors."

Agreed to.

The Council having resumed, the above amendments of the Standing Orders were adopted.

MR. GRANT then moved that the Report of the Standing Orders Committee relating

to the Official Reporter, be adopted, and communicated to the Honorable the President in Council. He said the Standing Orders Committee had been instructed to examine candidates for the office of official Reporter to the Council. They had made trial of such candidates as had offered themselves, and found Mr. Gomes to be best qualified for the office, and had reported to the Council accordingly, recommending his appointment. He (Mr. Grant) thought that every Member of the Council would agree with him when he said that the Reports of its proceedings had been executed very faithfully and very creditably by Mr. Gomes.

Agreed to.

POST OFFICE ACT.

MR. PEACOCK said, a short time ago, a communication had been received from the Governor of the Straits Settlements respecting Section LVIII of the Post Office Act, No. XVII of 1854. The Governor of the Straits Settlements was under the impression that, as the 58th Section of the new Post Office Act now stood, the fines leviable under the Act could not be imposed by Justices of the Peace in the Straits Settlements. By the 58th Section however, such fines could be imposed by a "Magistrate;" and the majority of the Select Committee—one of the Members, Mr. Malet, having unfortunately left the Presidency—having considered the matter, had come to the conclusion that the word "Magistrate" in the Section was sufficient to include a Justice of the Peace in the Straits Settlements, and that it must be read in the same manner as if the words "Magistrate or Justice of the Peace" had been used. They found that there were several Acts relating to the Straits Settlements in which "Magistrate or Justice of the Peace" were used as synonymous terms; and they, therefore, did not recommend any alteration of the Act, unless it should be judicially determined that the word "Magistrate" does not include a Justice of the Peace, and that a Justice of the Peace is not a Magistrate.

SIR JAMES COLVILLE said, possibly it might be best to leave it to the Courts in the Straits Settlements to determine whether the difficulty which the Governor anticipated, did really exist. But certainly, it seemed to him that the Council had framed the Act so as to raise a question upon the point. No doubt, the term "Magistrate" would include

a Justice of the Peace. But in the very Section to which the hon'ble Member had referred, the Council had drawn a distinction between a Magistrate and a Justice of the Peace for any of the three Presidency towns of Calcutta, Madras, and Bombay; and by the 52nd and 57th Sections, it had provided that graver offences against the Act, involving imprisonment and fine, should be punished on conviction before a Magistrate; and he certainly did not understand that the Legislature intended to give to Justices of the Peace a power of summary conviction for offences involving such heavy penalties. He would not, however, oppose the adoption of the recommendation of the Committee. There might be no necessity for legislating on the subject; but he was afraid that the Governor of the Straits Settlements was justified in supposing that there might be a doubt regarding it.

MR. PEACOCK said, he agreed in thinking that the Governor of the Straits Settlements was quite justified in raising the question, and bringing it before the Council. He (Mr. Peacock) had the honor of being a Member of the Select Committee upon the new Post Office Act, and when the Act was reported upon to the Council by the Committee, the words "Justice of the Peace" were not limited by the words "for any of the Presidency towns of Calcutta, Madras, or Bombay." But he was, unfortunately, absent when the Bill was discussed by a Committee of the whole Council; and he, therefore, could not explain the reason why the words "for any of the Presidency towns of Calcutta, Madras, or Bombay" were introduced into the Section. He had given the best consideration that he could to the subject, and was of opinion that, notwithstanding the context, the word "Magistrate" in the 58th Section would include a Justice of the Peace in the Straits. If the Courts in the Straits Settlements should decide differently, it would be necessary to alter the Act; but he thought there was no occasion for interfering with it before such a judicial decision was given, especially as an offence, if committed, might be punished by the Court of Judicature at their General or Quarter Sessions, even if it should be held that it was not punishable by a Justice of the Peace under Section LVIII.

MR. PEACOCK'S motion was then put, and carried.

Upon the motion of MAJOR GENERAL LOW the Council adjourned until the 14th of April.

Saturday, April 14, 1855.

PRESENT :

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

Hon. Major Genl. Low, Hon. Sir James Colville,
Hon. J. P. Grant, D. Elliott, Esq. and
Hon. B. Peacock, C. Allen, Esq.

The following Messages from the Most Noble the Governor General were brought by MR. PEACOCK, and read :—

MESSAGE No. 34.

The Governor General informs the Legislative Council, that he has given his assent to the Act passed by them on the 24th February 1855, entitled "An Act for the amendment of Procedure in cases of regular appeal to the Sudder Court in the Presidency of Fort St. George."

By Order of the Most Noble the Governor General.

G. F. EDMONSTONE,
*Secy. to the Govt. of India,
with the Governor General.*

OOTACAMUND, }
The 21st March 1855. }

MESSAGE No. 35.

* The Governor General informs the Legislative Council, that he has given his assent to the Act passed by them on the 24th February 1855, entitled "An Act to amend the Law relating to the attendance and examination of witnesses in the Civil Courts of the East India Company in the Presidencies of Fort St. George and Bombay, and to amend the provisions of Section XL Act XIX of 1853.

By Order of the Most Noble the Governor General.

G. F. EDMONSTONE,
*Secy. to the Govt. of India,
with the Governor General.*

OOTACAMUND, }
The 21st March 1855. }

MESSAGE No. 36.

The Governor General informs the Legislative Council, that he has given his assent to the Act passed by them on the 3rd