

Saturday, 11th August, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL

OF INDIA

Vol. I

(1854-1855)

Council resolve itself into a Committee upon the Bill "to facilitate the payment of small deposits in Government Savings Banks to the representatives of deceased depositors."

MR. PEACOCK gave the same notice in regard to 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."

Also in regard to the Bill "for the repeal of the Usury Laws."

The Council adjourned.

Saturday, August 11, 1855.

PRESENT :

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

Hon. Major Genl. Low,	C. Allen, Esq.,
Hon. B. Peacock,	P. W. LeGeyt, Esq., and
D. Elliott, Esq.,	E. Currie, Esq.

AFFRAYS (BENGAL).

THE CLERK brought under the consideration of the Council a Petition from the Secretary of the British Indian Association on the Bill "to repeal Act IV. of 1840, and to amend the Law for giving relief in cases of forcible dispossession within the Presidency of Fort William in Bengal."

LANDS FOR PUBLIC WORKS (BOMBAY).

Also a Petition from the Secretaries to the Bombay Association on the Bill "to facilitate the acquisition of land needed for public purposes in the Presidency of Bombay."

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

Agreed to.

AFFRAYS (BENGAL).

MR. CURRIE moved that the Petition from the British Indian Association on the amended Affrays Bill be printed and referred to the Select Committee on the Bill "for the better prevention of offences against the public tranquillity, and to amend the Law regarding the taking of bouds for keeping the peace."

Agreed to.

MERCHANT SHIPPING ACT.

THE CLERK reported that he had received, by transfer from the Home Depart-

ment, a printed copy of the Merchant Shipping Act. and of the instructions issued to public officers in pursuance of the Act.

MUNICIPAL TAXES (BOMBAY AND COLABA).

MR. LEGEYT postponed moving the first reading of the Bill to amend and consolidate the Laws relating to the Municipal Taxes in the Islands of Bombay and Colaba.

COURT OF WARDS AND GUARDIANSHIP OF MINORS (BENGAL).

MR. CURRIE said, the two Bills which he had the honor of bringing before the Council to-day—namely, a Bill "to explain and amend Regulation X of 1793, and Regulation LII of 1803"—the Regulations by which the Courts of Wards were constituted—and a Bill "for making better provision for the care of the persons and property of minors, lunatics, and other disqualified persons in the Presidency of Fort William"—had both a common origin. The subject matter of them also was closely connected; and he therefore proposed to speak of them together.

Some little explanation would be necessary to make the mode in which the subject was treated, intelligible.

Some years ago, the Sudder Court at Calcutta took objections to the course which the Board of Revenue proposed to adopt in regard to certain descriptions of property belonging to wards of the Court of Wards. By Law, the Court of Wards exercised jurisdiction only in the case of a disqualified proprietor of an entire estate paying revenue direct to Government, or of any two or more proprietors of such an estate, both or all of whom were disqualified. The Civil Courts, on sufficient cause being shown, might appoint a guardian to take charge of the person and property of the disqualified proprietor of a share in a joint undivided estate. The Revenue Board contended that, when the Court of Wards took the disqualified proprietor of an entire estate under its protection, the whole property belonging to that proprietor, of whatever description, became subject to the jurisdiction of the Court of Wards. They maintained that this was clearly the intention of the Law, and in accordance with its express provisions. The Sudder Court, on the other hand, held that the Law gave an exclusive jurisdiction to the Civil Court in the case of the disqua-

lified proprietor of a share in a joint undivided estate; and that, if it should happen that the same person was the proprietor of both a whole estate and a share in a joint undivided estate, the only legal course, as the law now stood, was that the Court of Wards should take the management of the whole estate—by which, it was to be observed, it would become bound to appoint a guardian of the person of the minor proprietor—and that the Civil Court should appoint a guardian to take charge of the share in the joint undivided estate, who would also, according to law, have the care of the person of the minor. The effect of this ruling was, that two guardians might be appointed by two distinct authorities to take care of the person of the same individual. Of course, the Sudder Court admitted that this was an anomalous state of things, and they proposed an amendment of the law. For his own part, he was of opinion that the difficulty raised by the Sudder Court did not really exist; but as the interpretation of the Sudder Court made the law, it had become necessary that an Act should be passed declaratory of the bearing of the present law, if no amendment of its provisions was thought necessary.

The Sudder Court sent up a Draft Act, which was submitted to the Government of India. Sir Charles Jackson, who was then the Legislative Member of Council, recorded an opinion that the provisions of the law relating to minors were altogether incongruous, and made certain suggestions, the general purport of which was that the Court of Wards should have charge of the property of all disqualified persons, whether proprietors of entire estates, or of shares in joint undivided estates, or of landed property of any other description. These suggestions were communicated to the Sudder Court and the Board of Revenue. The Sudder Court acquiesced: the Board of Revenue dissented. They explained what they conceived to be the principle of the law; and endeavoured to show that, bearing that principle in mind, its provisions were not incongruous.

The matter was still before the Government of India when the Legislative business was transferred to this Council. It was then taken up by his predecessor, Mr. Mills, who framed a Bill which, though more comprehensive in its provisions, did not differ very materially from the Draft Act which had been sent up by the Sudder Court. Subsequently, however—he would quote Mr. Mills' own words—Mr. Mills wrote—

“On further consideration of the subject, I have come to the conclusion that the Bill did not go far enough, and that it was desirable to take advantage of the present opportunity of legislating on the subject, and to supply the many deficiencies of the Laws of 1793 and 1800, by introducing a more comprehensive measure.”

He (Mr. Mills), accordingly, framed a more comprehensive measure; and his revised Draft had formed the basis of the two Bills which he (Mr. Currie) had the honor to introduce to-day.

The first of these was a short Bill of only four Sections. Its object was merely to remove all doubts respecting the jurisdiction of the Court of Wards over all descriptions of property belonging to the proprietor of a whole estate paying revenue to Government who might be taken under the protection of the Court of Wards. He had thought it convenient to separate this part of the subject from the more important and difficult question of giving extended powers to the Civil Courts.

It would be seen that he had maintained that provision of the existing law which restricted the jurisdiction of the Court of Wards to the case of disqualified proprietors of whole estates paying revenue direct to Government. His reasons for doing so were identical with those which were stated by the Board of Revenue in their letter to Government, dated the 18th of March 1852, and which, with the permission of the Council, he would read:—

“The Board are not prepared to concur in the Statement made in paragraph 2 of Under-Secretary Mr. A. R. Young's letter, that the present law relative to the estates of disqualified proprietors is reconcilable with no principle. The principle appears to them to be this, that the interference of the Revenue Authorities as a Court of Wards is regulated by the *status* of the disqualified person as a proprietor paying revenue to Government. If he be proprietor of an integral estate, and singly responsible for the payment of its revenue, the Revenue Authorities relieve him of that responsibility, and take the estate into their own hands. But if he possess only a share in an undivided estate, for the revenue of which other parties, together with the disqualified person, are jointly responsible, the Revenue Authorities do not interfere; and should the interests of the disqualified person require protection, such protection is afforded by the Civil Court, with which the cognizance of such matters properly rests.

“In considering the bearing of the present law, the object of the Legislature in establishing the Court of Wards must be borne in mind. That object was not the protection of the interests of disqualified persons exclusively, and without reference to fiscal considerations. Had it been so, the provisions of the existing Law must be admitted to be incongruous, and indeed, in that case, the incongruity would not be entirely removed by the Law proposed by the

Supreme Council. For the complete protection of the disqualified landholder would seem to require that under-tenures should be taken under the management of the Court of Wards, as well as entire estates paying revenue direct to Government, or the shares of such estates. But it appears plain to the Board that the reasons which led to the establishment of the existing law in regard to the property of disqualified persons, had reference mainly to the security of the Government revenue. On the one hand, it was obviously necessary to provide for the sure realization of the revenue by whomsoever payable: on the other, it seemed hard to resort to sale, or other harsh measures, when the owner of the property was incapable of managing it. Hence the origin of the Court of Wards.

"The great difference between the case of a disqualified proprietor of an *entire* estate, and the disqualified proprietor of a *share* of an estate, consists in this; that the Government, in the latter case, have the other sharers to look to for the revenue; and these, taking care of their own interests, in a manner protect those of the disqualified sharer also, so far at least as his liability to Government is concerned. If a disqualified sharer could bring his share under the Court of Wards, an immense amount of landed property would soon be brought under the jurisdiction of the Court, and the Revenue administration be placed in a position of great difficulty in recovering the revenue of those portions of the estates which were not under the Court of Wards. For, in the absence of explanation on that point, the Board assume that the Honorable the President in Council proposes to place these shares, when under the Court, upon the same footing as if they were entire estates: that is to say, they would be by law exempt from the process of sale for the recovery of arrears due upon them. But the principle of the revenue law being to hold the whole estate liable for arrears accruing upon any share of it, the shares not under the Court of Wards would participate in the advantage of this exemption, and the proprietors thereof might decline to pay any revenue, and defy the Collector to enforce it.

"But although the principle of the existing law is, in the Board's estimation, a correct one, some embarrassment has arisen in its practical operation from the unforeseen contingency of the same person being proprietor both of whole estates and of shares in undivided estates. But all that is necessary, in their opinion, is to make legal provision for this contingency, maintaining the principle of holding the joint estate answerable for the payment of its revenue; and this is done by the Draft of the Sudder Court. The course which is reasonable and proper with respect to a whole estate cannot, as the Board have shown, be applied to a share in a joint estate; and it is better to keep the distinction wide and clear, as is done by the different systems of administration prescribed by the existing law, than to place all estates of disqualified persons indiscriminately under the charge of the Court of Wards.

"The Draft of the Sudder Court in all its sections is, in the judgment of the Board, rather declaratory of the bearing of the present law,

upon points not expressly provided for, than an alteration of any of the provisions of that law; and they think the inconvenience which has been experienced, may be best met by passing the declaratory law proposed by the Court."

It seemed to him that the apparent inconsistency of the law was here fully explained, and the principle of its provisions vindicated. He saw no sufficient reason for abandoning that principle—a course which would be followed with much embarrassment. It might be said that the objection taken by the Board of Revenue with regard to the difficulties which would be experienced in the collection of revenue, might be obviated by declaring all joint undivided estates liable to the usual process for the recovery of arrears of revenue notwithstanding the interference of the Court of Wards. But there would be much difficulty in enforcing such process against an estate which was partly in the Collector's own charge; and if such estates were numerous, the embarrassment would be very great. Again, it might be said that it was proposed that shares in joint undivided estates should be brought under the management of the Court of Wards where they belonged to disqualified proprietors of whole estates; and why should they not be subject to the same jurisdiction where the disqualified proprietor did not also own a whole estate? The answer to that was, that when the Court of Wards took charge of a whole estate, it was compelled, by a sort of necessary consequence, to assume the management of all the property belonging to the proprietor of that estate. This course was not altogether free from objection; but it was the best that could be adopted under the circumstances. That, however, was quite a different thing to burthening the Court of Wards with the charge of all shares in estates, and all under-tenures, the proprietors of which might be disqualified; and also of personal property similarly circumstanced, with which the Revenue authorities could have no possible concern.

But if the existing law was not incongruous, there could be no doubt that it was defective. It authorized the Civil Courts to interfere only with respect to one particular description of property, and that only when a complaint was made that the person who had assumed charge of it was unfit for the trust. There was no apparent reason why one description of property should be protected more or less than another; and with regard to the favored description, it might well happen that no one was sufficiently interested in the matter to take the trouble

of petitioning the Court, however untrustworthy the manager might be. Even where the Court did interfere, it could only appoint a guardian: it could take no cognizance of that guardian's proceedings.

The second Bill was designed to remedy these defects. It gave the supervision over every description of property belonging to disqualified proprietors, except such as might be taken charge of by the Court of Wards, to the Civil Court; and provided an agency for that supervision.

It required all who claimed to have charge of property in trust for others, to apply to the Civil Court for a certificate; and it directed the periodical submission and examination of accounts.

He did not consider it necessary to enter further into details explanatory of the means by which the general purpose of the Bill was to be worked out. These details were explained, so far as explanation was necessary, in the Statement of Objects and Reasons annexed to the Bill.

That it was desirable to afford protection to those who were unable to protect themselves, could not admit of a doubt; and it was equally clear that the provisions of the present law were insufficient for that end. The only question was, whether the provisions of this Bill were suited to the constitution of the Mofussil Courts, and were such as could be efficiently worked by them. He believed that they were. But if the Bill should pass the second reading, and be published in the usual course, the Council would, no doubt, receive advice upon those points from those who were best qualified to give it.

The measure which he proposed was, of course, a departure from the principle of non-interference laid down in the law of 1799. But the interference to be exercised according to the Bill as presented to the Council, was very much more restricted than that which was proposed in Mr. Mills' Draft. That Draft provided for the interference of the Civil Court in all cases of succession, whether the heir was qualified or disqualified. He (Mr. Currie) had limited its interference to the cases of disqualified successors. It did not appear to him that a general Law of Administration was required in the present state of Native society; and he thought that such a law would be very unacceptable to the people. It was not impossible that Mr. Mills himself had felt doubts as to the expediency of such a measure, for he hesitated to bring in the Bill which he had prepared, and eventually decided to separate those

clauses which referred to general administration from those which provided for the protection of minors. He had left a note of his intentions, which would be published with the rest of the annexures to the Bill.

With regard to the particular provisions of the Bill, he might mention that there was one which prescribed a mode of inquiry in cases of alleged insanity. This was very necessary. The course laid down in the Court of Wards Regulation required the intervention of the Sudder Court and the Governor General in Council. A more simple form was proposed in this Bill; and opportunity had been taken in the Bill "to explain and amend Regulation X of 1793, and Regulation LII of 1803," to repeal the clauses to which he had referred, and make the new course of procedure prescribed for cases occurring under this Bill applicable to such as might occur under the jurisdiction of the Court of Wards.

The Bill also provided for summary inquiry, where a petition was presented by a disqualified proprietor, or some one on his behalf, for an account from an administrator or executor. It seemed right that such petitioners should not be subjected to the delay and expense of a regular suit. He had provided that the procedure prescribed for Small Cause Courts by the Bill which had recently passed through the Council, should be applicable to such cases.

He would only refer to one other provision of the Bill—a provision connected with Act XXVI of 1854 relative to the education of male minors under the Court of Wards. It was proposed to make that Act applicable to the case of minors for whom Guardians might be appointed by the Civil Court under the provisions of this Bill. The opportunity had been taken to declare it to be the duty of Magistrates to enforce that provision of Act XXVI of 1854 which vested the custody of the person of a minor in his Guardian. He was informed that, since the passing of the Act, a case had occurred in which the Magistrate had refused to interfere; and he was not aware in what manner redress, if any, had been obtained.

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

The Bills were read a first time accordingly.

GOVERNMENT SAVINGS' BANKS.

Mr. PEACOCK moved that the Council resolve itself into a Committee upon the

Bill "to facilitate the payment of small deposits in Government Savings' Banks to the representatives of deceased depositors;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I of the Bill was passed, after a slight alteration.

Section II provided as follows :—

"The Secretary of any such Bank may take such security as he shall think necessary from any person or persons to whom he shall pay any money under the preceding Section for the due administration and distribution of the money so paid."

MR. ELIOTT moved that the following words be added to the Section :—

"And may assign the same to any person or persons interested in the due administration and distribution thereof, which person or persons may sue on the same in his or their own names."

The motion was carried, and the Section, so amended, was passed.

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

The Council resumed its sitting.

BANKS OF BENGAL, MADRAS, AND BOMBAY.

MR. PEACOCK moved that the Council resolve itself into a Committee on 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;" and that it be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Clauses 1 and 2 of Section I of the Bill were passed as they stood. By Clause 1, the Banks of Bengal, Madras, and Bombay were empowered "to take charge of any Government Securities or Shares in any of the said Banks;" and by Clause 2, "to receive the interest or dividends on any such Securities or Shares."

MR. ALLEN moved that the following Clause be inserted after Clause 2; namely—

"To invest any money deposited in any of the said Banks in the purchase of any such Securities or Shares."

Agreed to.

Clause 3 was passed as it stood. It empowered the Banks—

Mr. Peacock

"to sell or transfer any such Securities or Shares deposited with them: or to receive any principal money that may become payable thereon."

By Clause 4, the Banks were empowered—

"To re-invest the principal, interest, or dividends so received, or the proceeds arising from such sale in Government Securities or Shares, in any of the said Banks, or to hold or pay such principal, interests, dividends, or proceeds, or, according to the instruction of their constituents and at their risk, to remit the same by public or private Bills, whether payable in India or not, or by Notes or Bank Post Bills of their own or any other Bank, payable in India on demand."

MR. PEACOCK moved that the words "and to do all acts necessary or proper for the purpose of making such remittances" be added to the Section.

The motion was carried, and the clause, so amended, was passed.

The Preamble and the Title were severally passed as they stood.

The Council resumed its sitting.

USURY LAWS.

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill "for the repeal of the Usury Laws;" and that it be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Motion carried, and Committee formed.

Section I of the Bill was passed, after a slight verbal amendment.

Sections II, III, and IV were severally passed as they stood.

MR. CURRIE proposed to introduce the following Section after Section IV :—

"Stipulations regarding compound interest shall be binding on the parties; and when no such stipulation is made, and the debt or account is of more than one year's standing, compound interest shall be allowed—the balance, including simple interest due at the customary period of settlement in each year, being carried forward to the next year's account as a principal sum bearing interest."

After some conversation, in which it appeared to be the opinion of the Council that a specific provision on this point was not required—

MR. CURRIE, with the leave of the Council, withdrew his motion.

Section V was passed, after a slight amendment.

Sections VI, VII, and VIII, the Schedule, the Preamble, and the Title, were severally passed as they stood.

The Council then resumed its sitting, and the President reported to it the several Bills passed in Committee with amendments.

CODE OF CIVIL PROCEDURE.

MR. ALLEN said, he had received a letter from the Secretary to the Government of the North-Western Provinces regarding a Draft Code of Civil Procedure which had been prepared by Messrs. Mills and Harington. On this occasion, he proposed merely to move that the letter be laid on the table and printed; but on Saturday next he intended to move that a Message be carried to the President in Council requesting him to furnish this Council with a copy of the Code.

The Honorable Member's motion was agreed to.

NOTICES OF MOTION.

MR. PEACOCK gave notice that, next Saturday, he would move the third reading of the Bill "to facilitate the payment of small deposits in Government Savings' Banks to the representatives of deceased depositors."

Also of 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."

Also of the Bill "for the repeal of the Usury Laws."

SMALL CAUSE COURTS.

MR. LEGEYTT moved that a communication which he had received from the Government of Bombay, relative to the Bill "for the more easy recovery of small debts and demands," be laid on the table and printed.

Agreed to.

BUILDINGS (BOMBAY).

MR. LEGEYTT moved that a communication which he had received from the Government of Bombay, relative to the Bill "to amend Act No. XXVIII of 1839," be laid upon the table and printed.

Agreed to.

ORIENTAL GAS COMPANY.

MR. CURRIE moved that Mr. Grant be added to the Select Committee on the Bill "for incorporating the Oriental Gas Company."

Agreed to.

LIGHTING OF CALCUTTA.

MR. CURRIE moved that Mr. Grant be added to the Select Committee on the Bill "to provide for the better lighting of the town of Calcutta."

Agreed to.

The Council adjourned.

Saturday, August 18, 1855.

PRESENT :

The Honorable Sir Lawrence Peel, *Vice-President*,
in the Chair,

Hon. J. A. Dorin,	D. Elliott, Esq.,
Hon. Major Genl. Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq., and
Hon. B. Peacock,	E. Currie, Esq.

SMALL CAUSE COURTS:

THE CLERK brought under the consideration of the Council a Petition of certain Vakeels and others at Oosoor, in Zillah Salem, in the Presidency of Fort St. George, relative to the Bill "for the more easy recovery of small debts and demands."

Mr. ELIOTT moved that this Petition be printed.

Agreed to.

USURY LAWS.

THE CLERK also brought under the consideration of the Council a Petition of certain Land-holders residing in Dacca against the Bill "for the repeal of the Usury Laws."

Mr. PEACOCK said, as this was the day for the third reading of the Bill, he should move that the Clerk read the above Petition at the table.

The Honorable Member's motion was agreed to, and the Petition was read accordingly.

MESSAGES FROM THE GOVERNOR GENERAL.

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

MESSAGE No. 44.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 16th of June 1855, entitled "A Bill to amend the Law relating to District Moonsiffs 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 Govr. Genl.

OOTACAMUND, }
The 24th July, 1855. }

MESSAGE No. 45.

The Governor General informs the Legislative Council that he has given his assent