

Saturday, 22nd September, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL

OF INDIA

Vol. I

(1854-1855)

Saturday, September 22, 1855.

PRESENT :

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

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

The following Message from the Honorable the President in Council was brought in by MR. DORIN, and read :—

MESSAGE No. 50.

The President in Council, in reply to the Message of the 18th ultimo, has the honor to state that it appears on inquiry that one copy of the Code of Civil Procedure prepared by Messrs. Mills and Harington, has already been supplied to the Legislative Council, and that there are no more than two copies of the Code in the Home Office Library, which cannot be spared. The President in Council regrets, therefore, that he is unable to comply with the request of the Legislative Council.

• CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM, }
The 7th September, 1855. }

OBSCENE PUBLICATIONS.

THE CLERK presented a Petition from Rajkissore Day and others, relative to the Bill “to prevent the public sale or exposure of obscene books and pictures.”

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

Agreed to.

MOFUSSIL MUNICIPAL LAW.

THE CLERK presented a Petition from certain inhabitants of Dacca, complaining of the mode of collection and expenditure of the money raised for Conservancy purposes ; and urging the early introduction of measures for the better administration of the Conservancy of the Mofussil Cities and Towns.

MR. CURRIE moved that this Petition be printed, and referred to the Select Committee on the question of Mofussil Municipal Laws.

Agreed to.

REPORTS OF SELECT COMMITTEES.

MR. PEACOCK postponed presenting the Report of the Select Committee (which appeared in the Orders of the Day) on the Bill “relating to the Emigration of Native Laborers to the British Colonies of St. Lucia and Grenada.”

MR. ELIOTT postponed presenting the Report of the Select Committee (which appeared in the Orders of the Day) on the Projects of Law for the Conservancy of the Towns of Calcutta and Madras, and the Straits Settlements.

SALE OF LANDS BY EXECUTORS
(STRAITS SETTLEMENT).

MR. PEACOCK said, he proposed to move the first reading of a Bill “to remove doubts respecting the liability of real estate within the Settlement of Prince of Wales’ Island, Singapore, and Malacca, to the payment of debts of deceased persons ; and to enable Executors and Administrators to sell and dispose of the same.”

The Council, he said, was aware that, by Act XX of 1837, all immoveable property situate within the Straits Settlement was, for the purpose of transmission either in cases of intestacy or under will, to be deemed of the nature of chattels real, and not of freehold. By the English Law, freeholds passed to the heir-at-law, and not to Executors or Administrators ; but by Act XX of 1837, every real estate, whether freehold or not, was, as regarded transmission, to be considered in the nature of a chattel real, and not of freehold. A doubt, however, had arisen whether, under the words of the Act, any interest vested in the Executor or Administrator. One of the questions to which this gave rise, was whether an Executor or Administrator could convey a good title by selling a freehold estate, or whether the person or persons beneficially interested in it should not join in the sale and conveyance. The practice in the Settlement had been for Executors and Administrators to convey such estates.

Another question was, whether lands of which a person died seized, could be taken in execution in an action against his Executors or Administrators, or were assets for the payment of his debts. By Statute 9 Geo. IV. c. 33, commonly known as Fergusson’s Act, any real estate of a deceased British subject within the local jurisdiction of either of Her Majesty’s Supreme Courts, was declared to

be assets in the hands of the Executor or Administrator for payment of the debts of the deceased ; and there could be no valid reason why a freehold estate, which could be seized and sold under a writ of execution during the life-time of the owner, should, on his death, pass to his heir-at-law, or any other person free from liability for his debts. In practice, freehold estates in the Settlement had, for a long series of years, been treated in this respect as chattels real, and Executors and Administrators had sold them for payment of the debts of the deceased owners. But there appeared to be some doubts whether such sales were valid in Law. These doubts had been suggested by the learned Recorder of the Settlement in his observations with reference to the Act for the abolition of real actions and fines and common recoveries, which had been recently introduced in this Council. Upon that, a letter was written to the learned Recorder, and he drafted an Act for the purpose of removing the difficulty. The present Bill was based upon that draft. It followed the principle of Ferguson's Act, and declared all real estate within the Settlement to be assets for the payment of debts ; vested it in the Executor or Administrator of the deceased owner, in the same manner as a chattel real, and enabled the Executor or Administrator to sell and convey it. Of course, an Administrator selling a freehold estate would be subject, as in the case of chattels real, to account for the proceeds to the person beneficially interested, and would be liable to him for any improper sale or misappropriation of the proceeds.

The object of this Bill was to remove all doubts upon this subject for the future, and to confirm the practice which had been followed for many years in the Settlement.

The Bill was read a first time.

CONSERVANCY.

MR. ELLIOTT postponed the first reading of the Bill for the conservancy and improvement of the towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca.

BUILDINGS (BOMBAY).

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to amend Act No. XXVIII of 1839" (Bombay Building Act), and that the Committee be instructed to consider the Bill in the amended form in which the Select Com-

mittee had recommended that it should be passed.

Agreed to.

The Bill passed through Committee without amendment.

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

ABKAREE REVENUE (CALCUTTA AND MADRAS).

MR. CURRIE moved that Mr. Elliott, Mr. Allen, and himself be appointed a Select Committee on the Bill "to amend Act No. XI of 1849 and Act No. XIX of 1852."

Agreed to.

NOTICE OF MOTION.

MR. LEGEYT gave notice that, on Saturday next, he would move the third reading of the Bill "to repeal Section VII of Act No. XXVIII of 1839."

The Council adjourned.

Saturday, September 29, 1855.

PRESENT :

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

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

The following Message from the Most Noble the Governor General was brought by General LOW, and read :—

MESSAGE No. 51.

The Governor General informs the Legislative Council, that he has given his assent to the Bill passed by them on the 21st of July 1855, entitled "A Bill to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund on the Neilgherry Hills."

By Order of the Most Noble the Governor General.

G. F. EDMONSTONE,

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

OOTACAMUND, }
The 8th September 1855. }

CRUELTY TO ANIMALS.

THE CLERK presented a Petition from certain native inhabitants of Calcutta, praying for the insertion, in the proposed Act for regulating the Police of Calcutta, of some provision against cruelty to Animals.