

Saturday, 6th October, 1855

**PROCEEDINGS**

**OF THE**

**LEGISLATIVE COUNCIL**

**OF INDIA**

**Vol. I**

**(1854-1855)**

tors and Administrators to sell and dispose of the same." In doing so, he said that he had recently stated the objects and reasons of the Bill, and therefore he thought it unnecessary to detain the Council with any observations upon it at this stage.

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

#### BUILDINGS (BOMBAY).

Mr. LEGEYT moved that the Bill "to repeal Section VII of Act XXVIII of 1839" be read a third time and passed.

Motion carried, and Bill read a third time.

Moved by the same that General Low be requested to carry the Bill to the President in Council, in order that it might be forwarded to the Most Noble the Governor General for his assent.

Agreed to.

#### NOTICES OF MOTION.

Mr. ELLIOTT gave notice that, this day fortnight, he would move the second 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";—and the Bill "for regulating the Police of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Mr. PEACOCK gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee on the Bill "relating to the Emigration of Native Laborers to the British Colonies of St. Lucia and Grenada."

#### MOFUSSIL MUNICIPAL LAW.

Mr. LEGEYT moved that a communication which he had received from the Government of Bombay relative to the receipts and disbursements of the Municipal Funds of Surat, Kurrachee, and Sholapore, be printed and referred to the Select Committee on the question of Mofussil Municipal Laws.

Agreed to.

#### SALE OF LANDS BY EXECUTORS (STRAITS SETTLEMENT).

Mr. PEACOCK moved that the 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" be referred to a Select Committee, consisting of Sir James Colville, Mr. Elliott, and the Mover.

Agreed to.

The Council adjourned.

Saturday, October 6, 1855.

#### PRESENT :

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

Hon. J. P. Grant,

C. Allen, Esq.,

Hon. B. Peacock,

P. W. LeGeyt, Esq. and

D. Elliott, Esq.,

E. Currie, Esq.

#### MARRIAGE OF HINDU WIDOWS.

THE CLERK presented a petition from certain Hindu inhabitants of Bengal submitting the Draft of an Act for legalizing the Marriage of Hindu Widows.

Mr. GRANT moved that the Petition be printed.

Agreed to.

#### SALE OF UNDER-TENURES FOR AR- REARS OF RENT.

THE CLERK presented a Petition from certain land-holders residing in Dacca, praying for a law to relieve them from the difficulties which they state the new Act for the repeal of the Usury Laws has greatly increased, either by enabling them to recover quarterly, by sale of the Talooks, the rents that may fall due, or otherwise.

Mr. CURRIE said, the more easy recovery of rents from under-tenants was a subject involved in the Draft Act which was submitted by the Board of Revenue, and which stood as No. LXI in the list of the legislative business depending before the Government of India on the 20th May 1854. He had that Draft Act now under consideration, and hoped to bring it before the Council on an early day. It was a measure calculated to meet the object of the Petitioners. He thought, however, that the Petition had better be printed.

Agreed to.

#### LIGHTING OF CALCUTTA.

THE CLERK presented a Petition from certain rate-payers and occupiers of houses and land in the town of Calcutta against the Bill "to provide for the better Lighting of the Town of Calcutta."

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

Agreed to.

#### LAND REVENUE OF THE TOWN OF MADRAS.

Mr. ELIOTT moved the first reading of a Bill "to amend Act No. XII of 1851 (for securing the Land Revenue of Madras.)" The object of this Bill, he said, was to supply a defect in that Act. The preamble of the Act declared that it was expedient that the land revenue of the town of Madras should be ascertained and collected in as summary a manner as in other parts of the territories of the East India Company. In Section IX it was declared that the claim of the East India Company for land revenue or rent has priority over all other claims upon the land, and in Section XVI, that

"the ground-rents payable to the East India Company from lands in Madras are revenue within the meaning of the Act of Parliament, 21 George III, c. 70,"

and therefore exempt from the jurisdiction of the Supreme Court. But the land itself was not declared to be saleable for arrears of such revenue; and the Government of Madras had represented that, from the want of a provision to that effect, the Act had failed in its object to secure the land revenue of the town. The present limits of the town of Madras were very extensive. They were conterminous with those of the Supreme Court, which had itself admitted that its local limits had been enlarged so as to give it an extent of jurisdiction greater than it could have contended for. The greater part of the area comprised within the limits of the town of Madras, therefore, consisted of villages and cultivated lands which, but for this arbitrary arrangement, would have been subject to the ordinary revenue laws of the country. The consequence was, the anomaly of lands of exactly the same character—rice-grounds, for example—depending on the same source of irrigation, and watered by the same channel, being divided by an imaginary line, on the two sides of which different rules prevailed—on the one side, arrears of land revenue being recoverable only by distress and sale of personal property found upon the land; on the other, the land itself being responsible. A great part of the land in Madras was held under documents of the nature of leases for 99 years which provided for the sale of the land for arrears by the process of re-entry. About

an equal portion was held under documents which acknowledged quit-rent to be a commutation of the Government land revenue. The remainder was held without documents, but was subject to the ordinary demand for revenue to Government, which revenue was recoverable, in all other parts of the territories of the Company, by sale of the land. The Bill which he submitted, was intended to make all lands in Madras which were subject to rent, or assessed for revenue to Government, liable to sale for arrears of such rent or revenue, failing the recovery thereof by the process of distress and sale under Act XII of 1851.

He might mention that the land revenue of Madras amounted to Rs. 66,000; of which only Rs. 18,000 belonged to ground within the town proper, the rest belonging to out-lying parts.

He was aware that the question of the sale of the land itself, had been discussed when the Act for securing the land revenue of Calcutta was under consideration, and that a provision to make the land saleable was advisedly omitted from that Act. When the Madras Board of Revenue proposed the enactment of a law similar to the Calcutta Act, they stated that they apprehended that the omission of a provision making land saleable would probably frustrate the object of the law. But they did not press for its insertion, and the law was passed without it. The consequence had been, that the anticipations of the Board had been realised.

At Calcutta, owing to the late survey and registry of lands, the Collector said that no difficulty was now experienced in tracing out the owners; but that, from the want of a provision for the compulsory registry of transfers, he apprehended that difficulty would be experienced in future. At Madras, very great difficulty was experienced. The Collector stated that—

"no sufficient means are available for ascertaining who the owner, or fairly liable party is. Lands and houses are perpetually changing hands, without any registry of the transfer being made in this office, and even without the knowledge of our officers. But the annual Bills are not altered unless the registry is altered. The warrant of distress is made out against the party named in the Bill; and thus it frequently happens that the warrant is served upon a party not named either in it or in the Bill; and the only proof forthcoming, in many cases, is the assertion of the Conicopolies" (that is sircars and peons) "that he is liable."

The Collector then referred to a suit lately filed in the Supreme Court against himself and others, as affording an apt illustration of

the risk which the Revenue Officers incurred in attempting to give effect to the present law.

All authorities were agreed that these difficulties should be removed by a new enactment making the land saleable; and, with that view, he begged to introduce the present Bill.

The Bill was read a first time.

#### DESTRUCTION OF CATTLE (BENGAL).

MR. ALLEN moved the first reading of a Bill "to prevent the malicious or wanton destruction of Cattle." The object of this Bill, he said, was to prevent the poisoning of animals, particularly bullocks in agricultural districts, by ill-disposed persons for the sake of their skins. It was believed that the crime had increased very much of late years in consequence of an increased demand for hides for export to Europe and America. Recent inquiries had shown that, in the Province of Benares, the crime was of very frequent occurrence; and he believed that it was also common in other parts of the country. It was not mentioned in terms in the Bengal Regulations; and though there was little doubt that offenders could be punished under the Mahomedan Law, which might be called the General Law of the Country, still the procedure was very defective; for offenders would not be proceeded against except after a personal complaint to the Magistrate, which must be presented on stamped paper. The General Law of procedure for Police Officers in Bengal was laid down in Regulation XX of 1817. The 25th Section of that Regulation said:—

"Upon a complaint being preferred in writing to a Darogah, or other Police officer authorized to receive the same, or on the receipt of credible information, whether given by confessing prisoners against accomplices, or by other persons, against any person subject to his jurisdiction, for any crime of a heinous nature, such as murder, robbery, housebreaking, maiming, wounding, theft, setting fire to a village, house, or other building, counterfeiting the current coin, or knowingly uttering base coin, or any crime involving a dangerous breach of the peace, such as a violent affray, or assembling persons to commit an affray, or any similar offence requiring the immediate apprehension of the offender, and on the complainant or any other credible person or persons acquainted with the case, deposing on oath (or under a solemn declaration) to the truth of the complaint, the Darogah shall examine the complainant, or party deposing to the circumstances of the case; and on his being satisfied, from the particulars communicated, that there are grounds to believe that the charge is well founded, and that the immediate apprehension of the offender is necessary to the ends of justice,

the Darogah or other Police officer, by a warrant under his seal and signature, drawn out according to the form No. 17 of the appendix, shall cause the person accused to be apprehended and sent in safe custody to the Magistrate, within forty-eight hours after his apprehension, unless any special reason appear why the issue of process for apprehending the party accused should be stayed until the charge be reported for the orders of the Magistrate; in which case such report shall be made without delay."

Now, it was to be observed that the power of arrest and inquiry of their own motion here given to Police officers, was given in cases of "a heinous nature" only; and the question had been put to the Sudder Nizamut whether the offence of poisoning cattle for their hides was or was not a heinous offence within the meaning of the Section. A majority of the Judges ruled that, as the offence was not mentioned in the Section, it was not a heinous offence within its meaning, and therefore could not be inquired into by the Police until the person aggrieved should have preferred his complaint before the Magistrate upon stamped paper.

The object of those who poisoned bullocks was, no doubt, the wrongful acquisition of the hides of the beasts; but nevertheless, the offence did not amount to theft. If the offence had amounted to theft, he should not have brought forward any Bill on the subject, because it was not proposed to provide a severer punishment for cattle-poisoning than that which existed for cattle-stealing. It could not be said that the intention of the offenders was to steal the skins of the animals they poisoned; for, by common usage, in the greater part of the country, in agricultural villages, cattle, when dead, ceased to be the property of the Zemindar or other owner. The skin and carcase become the property of the Chumar of the village, not so much by the gift of the owner of the beast, as by a sort of prescriptive right. The Chumar took the hide; and, in return, he made shoes, leather bags, and harness to the extent required by the Zemindars and cultivators of the village. Many Zemindars, and the higher class of Hindus, would think themselves degraded by selling the hide or carcase of a dead bullock, or by having anything to do with it.

It appearing, therefore, that this offence, though committed with the intention of taking the hide, did not amount to stealing, it was thought advisable to introduce a Bill specifically bringing it under Section XXV of Regulation XX of 1817, and providing for it the same punishment as that for cattle-stealing.

The Presidencies of Madras and Bombay were not included in the Bill, because Regulation XIII of 1832 of the Madras Code contained special provisions on the subject for the former Presidency, and Regulation XIV of 1827, Section XLII, of the Bombay Code, for the latter. Clause 2 Section XLII of the Bombay Regulation said—

“ Any person forcibly or secretly destroying or injuring the property of another, shall be punishable with fine, ordinary imprisonment not exceeding five years, or flogging not exceeding fifty stripes, or any of these combined.”

He might mention that the offence in question was now punishable by the English Law with transportation for fifteen years. In the reign of George IV, it was punishable with death. By the reform of the Criminal Law in the reign of William IV, it was made punishable with transportation for life. There was again a reduction of punishment in the present reign, when the maximum period of transportation was reduced to fifteen years.

The Bill which he laid before the Council was a very short one. It merely said that a person charged with maliciously or wantonly causing the death of any cattle, the property of another, might be proceeded against in the mode prescribed in Section XXV of Regulation XX of 1817 of the Bengal Code for proceeding against persons charged with a heinous offence, and awarded the same punishment as for cattle-stealing; leaving it to the discretion of the Magistrate to commit the offender to trial before the Sessions Judge, who, on conviction, might sentence him to imprisonment with hard labor for any period not exceeding nine years.

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

The Bill was read a first time accordingly.

#### AMEENS (BENGAL).

Mr. CURRIE said, it might perhaps be in the recollection of the Council that, about three months ago, he deferred a motion, of which he had given notice, for the second reading of the Bill “ to amend the Law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William.” His reason for deferring the motion was this. The Bill provided that the Ameens should be remunerated by fixed salaries instead of fees as heretofore, the object being to secure the services of a better class of persons. The Bill also provided that fees should be still levied from all persons at

*Mr. Allen.*

whose instance, or for whose benefit, the Ameens might be employed, and that the amount of such fees should be credited to Government. After he had given notice of the motion for the second reading, it was suggested to him that, as the measure involved an increase of establishments, it ought to have received the sanction of the Government of India before it was introduced. He confessed that it had never occurred to him before, nor was he satisfied even then, that such a course was necessary; for the class of officers which the Bill proposed to constitute was intended to be self-supporting—that is to say, as he had explained on the motion for the first reading, it was intended that the salaries to be paid to the Ameens, and the fees to be levied for their services, should be so adjusted as to secure the Government from loss. However, as the delay of a month or two was of no great moment, he thought it unadvisable to risk the chance of opposition on that ground, and he had requested the Government of Bengal, at whose instance the Bill had been brought in—though he himself was responsible for the particular shape in which it appeared—to ask the concurrence of the Government of India before he proceeded further with the Bill. That had been done; the Government of India had given their concurrence; and there now remained no objection, real or imaginary, to the progress of the measure.

He therefore begged to move the second reading.

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

#### EMIGRATION TO St. LUCIA AND GRENADA.

Mr. PEACOCK moved that the Council resolve itself into a Committee on the Bill “ relating to the Emigration of native laborers to the British Colonies of St. Lucia and Grenada,” and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

The motion was carried, and the Bill passed through Committee without amendment.

#### NOTICES OF MOTION.

Mr. ELLIOTT gave notice that, on Saturday next, he would move the second reading of the Bill “ to amend Act No. XII of 1851 (for securing the land revenue of Madras.)”

MR. GRANT gave notice that, at the first Meeting of the Council after the 13th instant, he would move the first reading of a Bill "to remove all legal obstacles to the Marriage of Hindoo Widows."

#### AMEENS (BENGAL).

MR. CURRIE moved that Mr. Elliott, Mr. Allen, and himself be appointed a Select Committee on the Bill "to amend the Law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William." Agreed to.

#### NOTICES OF MOTION.

MR. ALLEN gave notice that, on Saturday next, he would move the second reading of the Bill "to prevent the malicious or wanton destruction of Cattle."

MR. PEACOCK gave notice that, on Saturday next, he would move the third reading of the Bill "relating to the Emigration of native laborers to the British Colonies of St. Lucia and Grenada."

MR. CURRIE gave notice that, on Saturday next, he would move the first reading of a Bill "to amend the Law relating to the sale of under-tenures."

MR. LEGEYTT gave notice that, on Saturday next, he would move the first reading of a Bill "to amend Regulation XIII of 1827 of the Bombay Code."

The Council adjourned.

Saturday, October 13, 1855.

#### PRESENT :

The Honorable Sir Lawrence Peel,	<i>Vice-President,</i>
in the Chair,	
Hon. J. A. Dorin,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGoyt, Esq.
Hon. B. Peacock,	and
D. Elliott, Esq.,	E. Currie, Esq.

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

#### MESSAGE No. 52.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 18th of August 1855, entitled a Bill "to facilitate the payment of small deposits in Government Savings' Banks to the representatives of deceased depositors."

By Order of the Most Noble the Governor General.

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

OOTACAMUND, }  
The 19th September 1855. }

#### MESSAGE No. 53.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 18th August 1855, entitled "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."

By Order of the Most Noble the Governor General.

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

OOTACAMUND, }  
The 19th September 1855. }

#### MESSAGE No. 54.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 18th of August 1855, entitled "A Bill for the repeal of the Usury Laws."

By Order of the Most Noble the Governor General.

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

OOTACAMUND, }  
The 19th September 1855. }

#### ADMINISTRATOR GENERAL'S ACT.

THE CLERK reported that he had received from the Under-Secretary to the Government of India in the Home Department, a copy of a Despatch from the Honorable the Court of Directors in reference to Act VIII of 1855 "to amend the Law relating to the office and duties of Administrator General."