

Saturday, 15th December, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL

OF INDIA

Vol. I

(1854-1855)

in Council, and the duty of this Council thereupon to repeal such Law, desires to record its opinion that the Honorable Court has not the power to disallow only a part of an Act, unless the same relates to two or more subjects so wholly unconnected that the part disallowed amounts in substance to a distinct law."

The question was put, and the President declared the motion carried *nemine dissentiente*.

Mr. PEACOCK said, he thought that it would be respectful to the Honorable Court of Directors that some communication should be made to them in answer to the Despatch; and he should therefore move that the Resolution which had just been passed, together with the Report of the Select Committee on the Despatch, be sent to the Governor General in Council, with a request that His Lordship would be pleased to transmit the same to the Honorable Court of Directors.

Agreed to.

Mr. PEACOCK then moved that Mr. Grant be requested to carry the above Message to the Governor General in Council.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

Mr. LEGEYT moved that the Bill "to amend the 122nd Article of War for the Native Army" be referred to a Select Committee, consisting of General Low, Mr. Peacock, and Mr. LeGeyt.

Agreed to.

DESERTION OF EUROPEAN SOLDIERS.

Moved by the same that the Bill "for the better prevention of desertion by European Soldiers, from the Land Forces of Her Majesty and of the East India Company in India" be referred to a Select Committee, consisting of General Low, Mr. Peacock, and the Mover.

Agreed to.

SLAUGHTER-HOUSES AND MARKETS—FALSE WEIGHTS AND MEASURES.

Moved by the same that a communication received by him from the Secretary to the Government of Bombay, on the subject of regulating Slaughter-Houses and Markets, and of prohibiting the use of False Weights and Measures, be laid upon the table, and referred to the Select Committees on 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 on the Bill "for regulating the

Mr. Peacock

Police of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

FREE IMPORTATION OF COTTON (NORTH-WESTERN PROVINCES).

Mr. ALLEN moved that Mr. Grant be requested to carry the Bill "to abolish the levy of Customs Duty on the import of Cotton into the North-Western Provinces of the Presidency of Bengal" to the Most Noble the Governor General for his assent.

Agreed to.

NOTICES OF MOTION.

Mr. PEACOCK gave notice that he would, on Saturday the 15th instant, move the first reading of a Bill to remove from the operation of the general Regulations certain districts inhabited by the Southals, and to place the same under the superintendence of an officer to be specially appointed for that purpose, and to provide for the trial and punishment of rebellion and other offences committed within the districts in which Martial Law has lately been proclaimed.

Also of a Bill for the suppression of rebellion and for the trial and punishment of offences against the State.

The Council adjourned.

Saturday, December 15, 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.
Hon. Sir J. W. Colville,	and
D. Elliott, Esq.	E. Currie, Esq.

THE PRESIDENT said, the Governor General had desired him to express to the Council his regret at being accidentally prevented from attending the Meeting to-day.

NEW MEMBER.

SIR ARTHUR BULLER took the oath as a Member of the Council.

MESSAGES FROM THE GOVERNOR GENERAL.

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

MESSAGE No. 60.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 1st December 1855, entitled "A Bill to explain and amend Act No. XXXIII of 1852."

By Order of the Most Noble the Governor General.

CECIL BEADON,

Secy. to the Govt. of India.

FORT WILLIAM, }
The 14th December, 1855. }

MESSAGE No. 61.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 8th of December 1855, entitled "A Bill to abolish the levy of Customs Duty on the Import Cotton into the North-Western Provinces of the Presidency of Bengal."

By Order of the Most Noble the Governor General.

CECIL BEADON,

Secy. to the Govt. of India,

FORT WILLIAM, }
The 14th December, 1855. }

THE CLERK presented the following Petitions :—

POLICE CHOWKEYDARS (BENGAL).

A Petition of certain Native Inhabitants of Mouzahs Bhowanipore, Chuckerbaree, and Kullighaut in Zillah 24-Pergunnahs, Bengal, offering suggestions concerning the Bill "to amend the law relating to the appointment and maintenance of Police Chowkeydars, in Cities, Towns, Stations, Suburbs, and Bazaars in the Presidency of Fort William in Bengal."

MR. CURRIE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

BILLS OF LADING.

Also a Petition from the Bengal Chamber of Commerce, stating the necessity of an amendment of the law so as to make it obligatory on Masters of Vessels to sign Bills of Lading for goods received on board.

SIR JAMES COLVILLE moved that the Petition be referred to the Select Committee on the Bill "to amend the Law relating to Bills of Lading."

Agreed to.

SEATS OF MEMBERS IN THE COUNCIL CHAMBER.

MR. GRANT presented a Report of the Standing Orders Committee, proposing a Standing Order for the assignment of seats in the Council Chamber to the several Members according to precedence.

By the direction of the PRESIDENT, the Clerk read the Report.

The Report having been read, MR. GRANT moved that the above Standing Order* be adopted.

Motion carried.

The several Members thereupon took their places in the order indicated by this Standing Order.

SONTHAL DISTRICTS—TRIAL OF STATE OFFENCES, &c.

On the Order of the Day being read for the first reading of a Bill "to remove from the operation of the general Laws and Regulations certain districts inhabited by the Sonthals and others, and to place the same under the superintendence of an Officer to be specially appointed for that purpose"—

MR. PEACOCK said, as this Bill was intimately connected with the two other Bills of the first reading of which he had given notice for this day, he thought it would be convenient to explain at once the objects of the three different measures.

The object of the first Bill was to take out of the operation of the general Regulations and Acts of Government the Damun-i-koh and other districts occupied principally by the Sonthals. It was thought that the general Regulations were not adapted for the Government of this rude and uncivilised tribe; and it was, therefore, proposed to adopt the same course in regard to them that had been adopted before on similar occasions in regard to other rude and uncivilised tribes in India. By I of 1796, a special Regulation was provided for the hill tribes of Rajmahal and Bhaugulpore. By X of 1822, a special Regulation was passed for exempting the Garrow mountaineers and other savage tribes inhabiting the north-east frontier of Rungpore. In 1833, certain districts in Ramghur, Jun-

*This Order will be found in the Appendix.

gle Mehals, and Midnapore were also taken out of the general Regulations, and placed under the superintendence of an Officer specially vested with the administration of every branch of Government within those tracts; and subsequently Act XXI of 1845 was passed by the Government of India, by which the hill tracts of Orissa were taken out of the general Regulations, and placed under the jurisdiction and superintendence of a special officer, appointed for the purpose of suppressing Meriah sacrifices. These were not the only cases in which it had been found necessary to take certain districts out of the operation of the general Regulations under particular circumstances. It was now proposed to pass a special Act for the Damun-i-koh and certain other districts in Bhaugulpore, Moorsheadabad, and Beerbhoom, occupied principally by the Southals. It was proposed to place the districts to be taken out of the general Regulations under the management of one or more officer or officers to be specially appointed by the Lieutenant Governor of Bengal, and to vest such officer or officers with the collection of the revenue, and with civil and criminal jurisdiction according to the general principles of the law administered in the East India Company's Courts. It was intended, however, that the Act should not affect the permanent settlement, or interfere in any way with the sale of lands for arrears of revenue, or with the Regulations relating to putnee talooks. The sale of lands for arrears of revenue, and of putnee talooks for arrears of rent, would continue to be made at the Cutcherry of the Collector, as it might be very inconvenient to persons to attend such sales in the middle of the Damun-i-koh or other parts of the district included in this Act. It was also intended that all civil suits in which the matter in dispute should exceed the value of Rs. 1000, should be determined according to the general Laws and Regulations, and by the ordinary courts of justice, in the same manner as if the Act were not passed.

In criminal cases it was intended that the principal officer to be appointed should have full jurisdiction, and that he should have power to pass sentence of death; but such sentence was not to be carried into effect until should be confirmed by the Sudder Court, which, upon reference being made to it, would be at liberty to pass any such sentence warranted by law as it might think just and proper.

These were the principal alterations proposed to be made in the existing law by the first Bill.

The second Bill was intended to provide for the trial and punishment of rebellion and other offences committed within the districts in which Martial Law had been proclaimed. It was separated from the third Bill, inasmuch as it applied only to the districts now under Martial Law, whereas the third Bill provided for the trial and punishment of state offences generally. He proposed to suspend the Standing Orders in regard to both the first and the second Bill. The Council was aware that, by Regulation X of 1804, the Governor General in Council was authorized to proclaim Martial Law in any district, city, or other place within the British territories in time of war, or during the existence of rebellion, and that whenever Martial Law was proclaimed, any person taken in the commission of an overt act of rebellion, or in arms in open hostility to the British Government, was liable to death, under the sentence of a Court Martial. But, under that Regulation, Courts Martial had jurisdiction only where the accused was taken in the actual commission of the offence. The Bill he proposed contained a provision which would enable the Lieutenant Governor of Bengal to issue special commissions for the trial of persons charged with treason or rebellion, or with heinous crimes against person or property, in the proclaimed districts. In trials for rebellion, it might be necessary that the Commissioners should also have the power to try for murder and other heinous offences against person or property, and the Bill accordingly gave such power.

Act V of 1841 enabled the Government of any Presidency to issue special commissions for the trial of State offences, but it also required that the proceedings of Courts convened under such Commissions should be submitted to the Sudder Courts, and it did not provide for the punishment of persons convicted under it. This Bill would enable the Commissioners appointed to deal with cases without reference to the Sudder Court. It was necessary that they should have that power, because otherwise, the great delay that must necessarily take place in consequence of references, would materially interfere with the administration of justice. No sentence of death passed by the Commissioners could be carried into effect without the sanction of the Lieutenant Governor of Bengal; and in cases of sentence of death, whether by Commissioners or by Courts Martial, the Lieutenant Governor of Bengal was empowered to commute the punishment to imprisonment with hard labor in transport-

ation for life, or to imprisonment with hard labor for any term not exceeding 14 years. He was also empowered to order that such imprisonment should be undergone in any part of the territories under his own Government, or, with the sanction of the Governor General in Council, in any part of the territories under the direct management of the Government of India.

The Bill further provided that any person who should be guilty of treason or rebellion after the passing of the Act, should be liable to the punishment of death, or of transportation for life, or of imprisonment with hard labor for any term not exceeding 14 years. The power of awarding the punishment of death was given by the law as it now stood in the case of persons convicted of treason or rebellion by Courts Martial, in a district in which Martial Law was proclaimed; but he believed that no such power existed in the case of persons convicted by the ordinary Courts of criminal judicature. It appeared to him an anomaly that the sentence should depend upon the nature of the tribunal by which the offender was tried—that, if the offender were tried by a Court Martial, he should be liable to the punishment of death; but that, if he were tried by an ordinary Court of justice, he should be liable only to a minor degree of punishment. Regulation VII of 1808 of the Madras Code was similar to Regulation X of 1804 of the Bengal Code. It subjected to the punishment of death persons convicted by Courts Martial if taken in the act of rebellion in a district in which Martial Law was proclaimed. But it was found necessary to alter that Law; and accordingly, by Regulation I of 1834 of the Madras Code, all persons who might be convicted of treason or rebellion in that Presidency either by the ordinary Courts of judicature, or before a special Commission appointed under Regulation XX of 1802, were liable to sentence of death. But another difficulty remained; in Madras, offenders were liable to sentence of death if they were convicted before the ordinary Courts of justice or under a special Commission issued according to Regulation XX of 1802. But Regulation XX of 1802 had been modified by Act No. V of 1841; and it was somewhat doubtful if any Commission could now be issued under the former Regulation. Mr. Clarke, in his edition of the Regulations, said in a marginal note opposite Regulation I of 1834—“Substitute Act V of 1841;” which showed that it was considered doubtful whether the Regulation XX of 1802 was

still in force or not. Considering, therefore, that the sentence should not depend upon the nature of the tribunal before which the offender was tried, he proposed by the third Bill to provide that all persons guilty of treason or rebellion against the State by a Court of competent jurisdiction should be liable to sentence of death, in the same manner as persons convicted by Courts Martial, or under a Commission appointed in pursuance of Regulation XX of 1802. By the second Bill, all persons convicted by the ordinary Courts of judicature, or before a Court held under a special Commission, of treason or rebellion, committed after the passing of the Act, were made liable to the punishment of death, or to transportation for life, or imprisonment with hard labor for a term not exceeding 14 years, with power to the Lieutenant Governor to commute any sentence of death for transportation for life, or for imprisonment with hard labor for a term not exceeding 14 years. With regard to persons convicted before the passing of the Act, he proposed to authorize a Court held under a special Commission to pass the same sentence as that which might now be passed by the ordinary Courts; viz., transportation for life, or imprisonment with hard labor for any term not exceeding 14 years.

He should mention that both the second and third Bills enabled the Executive Government, whenever it should deem it necessary for the public safety, to prohibit any person or any specified class of persons, to carry or have in their possession arms or instruments used for the purpose of war; and that it also provided that any person offending against the prohibition should be liable to a fine not exceeding 50 Rupees, or to imprisonment for a period not exceeding six months; and that the arms should be confiscated.

These were the general features of the three Bills.

The Bills were severally read a first time.

MR. PEACOCK then moved that the Standing Orders be suspended in order to admit of the passing of the first Bill through its subsequent stages on Saturday next.

MR. GRANT seconded the motion, which was carried.

MR. PEACOCK made the same motion in regard to the second Bill, which was also seconded by Mr. Grant, and carried. ✓

LAND CUSTOMS (BOMBAY).

MR. LEGEYTT moved the first reading of a Bill “to amend Act No. 11 of 1852.” In

doing so he said, in the year 1852, two Acts were passed simultaneously, one relating to the sea, and the other to the land Customs of Bombay. Act No. I related to the sea Customs, and Act No. II to the land Customs. It appeared that, on the passing of those Acts, it was contemplated that certain provisions of Act No. I should be applicable, in certain contingencies which might arise, to Act No. II. But such application of those provisions was found to be impracticable, and serious difficulties had occurred in the operation of Act No. II. The Government of Bombay had been advised that further legislation on the subject was necessary. The points on which Act II was deficient, were numerous, and comprised a variety of subjects which were likely to arise in the operation of a land Customs. They were—

First, The appointment of land Customs Officers.

Second, Penalties for obstructions to such Officers while in execution of their duty.

Third, Penalty for offering bribes to such Officers.

Fourth, Provisions for the detention of goods, until payment of fine in certain cases.

Fifth, Provision for exemption of goods from duty, or for the determination of the value of goods, or for under-valuation of goods.

Sixth, The falsification of documents used for passing goods.

Seventh, The granting of duplicate certificates in certain cases.

Eighth, The misdescription of any goods in applications for passing such goods.

Ninth, The adjudication of confiscations and penalties.

Tenth, The rewarding of Customs' Officers for zealous performance of their duty.

These matters were all provided for by Act I of 1852 whenever they should occur in the sea Customs Department. Act II of 1852 merely allowed the Governor in Council to impose certain duties upon imports and exports, and defined the places where those duties were to be levied. The object of the present Bill was specifically to declare that the provisions of Act I of 1852 on the above points, should be applicable to contingencies arising under Act II of 1852. This mode of legislation had been approved of by the Government of Bombay, and the draft of the Bill which he now introduced had been prepared by the Commissioner of Customs in conjunction with the Advocate General of that Presidency. If the Council should allow the Bill to be read a second time, and refer

Mr. LeGeyt

it to a Select Committee, it would be time then to consider whether the mode of legislation that was proposed, or any other, would be more expedient. The mode proposed had certainly brevity to recommend it. For his own part, he believed it would not be found attended with any inconvenience, as the subjects of both the existing Acts were so cognate with each other.

The Bill was read a first time accordingly.

SEARCH FOR CONTRABAND SALT (NORTH-WESTERN PROVINCES).

MR. ALLEN moved the third reading of the Bill "to empower officers of Customs and Land Revenue to search houses and other enclosed places for contraband salt in the North Western Provinces."

The motion was carried, and the Bill was read a third time accordingly.

Mr. ALLEN moved that Mr. Grant be requested to take the Bill to the Most Noble the Governor General for his assent.

Agreed to.

OBSCENE PUBLICATIONS.

Mr. ALLEN moved that the Council resolve itself into a Committee on the Bill "to prevent the public sale or exposure of obscene Books and Pictures;" 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.

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

The Council having resumed its sitting, the Bill was reported to it.

SALE OF LANDS BY EXECUTORS (STRAITS SETTLEMENT).

MR. ALLEN moved that a communication received by him from the Governor of the Straits Settlement, relative to 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 laid on the table and referred to the Select Committee on the Bill.

Agreed to.

POLICE.

Moved by the same that a communication received by him from the Governor of the

Straits' Settlement, relating to the Bill "for regulating the Police of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales' Island, Singapore, and Malacca," be laid on the table and referred to the Select Committee on the Bill.

Agreed to.

CONSERVANCY.

Moved by the same that a communication received by him from the Governor of the Straits' Settlement, relating to 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," be laid on the table and referred to the Select Committee on the Bill.

Agreed to.

MR. LEGEYTT moved that a communication received by him from the Secretary to the Government of Bombay, concerning Act XI of 1853, "to facilitate the removal of nuisances and encroachments below high-water mark in the Islands of Bombay and Colaba," be laid upon the table and referred to the Select Committee on the above Bill.

Agreed to.

LIMITATION OF SUITS.

SIR JAMES COLVILLE moved that Sir Arthur Buller be added to the Select Committee on the Bill "to provide for the acquirement and extinction of rights by prescription, and for the limitation of suits."

Agreed to.

CATTLE TRESPASS.

MR. CURRIE moved that Mr. LeGeyt be added to the Select Committee on the Projects of Law relating to Cattle Trespass.

Agreed to.

LICENSES FOR THE SALE OF INTOXICATING LIQUORS (BOMBAY).

MR. LEGEYTT moved that a communication received by him from the Secretary to the Government of Bombay, relative to the repeal of the existing law under which charges of breach of license for the sale of intoxicating liquors are now referred to Her Majesty's Bench of Justices, be laid upon the table and printed.

Agreed to.

NOTICES OF MOTION.

MR. GRANT gave notice that he would, on Saturday the 22nd instant, move the first

reading of a Bill "to amend the law respecting sales of Land for arrears of Revenue in the Bengal Presidency."

MR. CURRIE gave notice that he would, on the same day, move for a Committee of the whole Council on the Bill "for incorporating the Oriental Gas Company."

The Council adjourned.

Saturday, December 22, 1855.

PRESENT :

Hon. J. A. Dorin, *Vice-President*, in the Chair.
Hon. Sir J. W. Colville, D. Elliott, Esq.,
Hon. Maj. Genl. J. Low, C. Allen, Esq.,
Hon. J. P. Grant, P. W. LeGeyt, Esq. and
Hon. B. Peacock, Hon. Sir Arthur Buller.

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

MESSAGE No. 62.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 15th December 1855, entitled "A Bill to empower Officers of Customs and Land Revenue to search houses and other enclosed places for Contraband Salt in the North-Western Provinces."

By Order of the Most Noble the Governor General.

CECIL BEADGN,

Secy. to the Govt. of India,

FORT WILLIAM,
The 21st December, 1855. }

THE CLERK presented the following Petitions :—

MOCHULKAS OR PENAL RECOGNIZANCES.

A Petition of the British Indian Association relative to the 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."

MR. ELLIOTT moved that the above Petition be printed and referred to the Select Committee on the Bill.

Agreed to.