

Saturday, 30th June, 1855

**PROCEEDINGS**

**OF THE**

**LEGISLATIVE COUNCIL**

**OF INDIA**

**Vol. I**

**(1854-1855)**

By Order of the Most Noble the Governor General.

G. F. EDMONSTONE,  
*Secy. to the Govt. of India,  
with the Govr. Genl.*

OOTACAMUND, }  
*The 29th May 1855.* }

SEARCH FOR CONTRABAND SALT  
(NORTH-WESTERN PROVINCES).

MR. ALLEN moved that the Bill "to empower officers of the Customs and Revenue Departments to search manufactories and houses for contraband salt in the North-Western Provinces" be referred to a Select Committee, consisting of Mr. Elliott, Mr. Currie, and the Mover.

Agreed to.

NOTICES OF MOTION.

SIR JAMES COLVILE gave notice that he would, on Saturday next, move the first reading of a Bill "to provide for the acquirement and extinction of rights by prescription, and for the limitation of suits."

MR. LEGEYT gave notice that he would, on Saturday next, move that a communication from the Bombay Government and the correspondence therein contained, relative to a judgment of the Supreme Court at that Presidency, in the matter of a writ of execution issued under process from the Zillah Court of Surat, be referred to a Select Committee.

TENASSERIM AND ARRACAN.

MR. PEACOCK moved that Mr. Currie be added to the Select Committee on the Bill "to provide for the administration of civil and criminal Justice, and of Police, and for the collection of the public revenue in the Provinces of Tenasserim and Arracan."

Agreed to.

The Council adjourned.

*Saturday, June 30, 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. LeGoyt, Esq.,
Hon. B. Peacock,	and
Hon. Sir James Colvile,	E. Currie, Esq.

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

MESSAGE No. 43.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 5th of May 1855, entitled "A Bill to remove doubts relating to the power to grant pardons and reprieves, and remissions of punishments in India."

By Order of the Most Noble the Governor General.

G. F. EDMONSTONE,  
*Secy. to the Govt. of India,  
with the Govr. Genl.*

OOTACAMUND, }  
*The 6th June 1855.* }

APPEALS.

THE CLERK brought under the consideration of the Council a Petition from certain Mookhtears attached to the Sudder Dewanny Adawlut at Calcutta, and others, suggesting some amendments in the law relating to appeals.

MR. PEACOCK moved that the above Petition be printed.

Agreed to.

REGISTRATION OF ASSURANCES.

Also a Petition from Mr. Archibald Grant, Solicitor, praying that a Draft of a proposed Act for the registration of Assurances in India, which accompanied the Petition, may be taken into consideration by the Council.

REPORTS OF SELECT COMMITTEES.

MR. PEACOCK stated that he was not prepared to present to the Council the Report of the Select Committee, which appeared in the Orders of the Day, on the law relating to Patents for Inventions.

MR. PEACOCK presented the Report of the Select Committee on the Bill "to substitute penal servitude for the punishment of transportation in respect of European convicts, and to amend the law relating to the removal of such convicts."

SIR LAWRENCE PEEL presented the Report of the Select Committee on the Bill "to amend the English law in force within the Territories in the possession and under the Government of the East India Company

relating to the administration of the estates of deceased persons charged with any money by way of mortgage, and descending or devised."

MR. ELLIOTT stated that he was not prepared to present to the Council the preliminary Report of the Select Committee, which appeared in the Orders of the Day, on the Bill "for the warehousing of goods intended to be exported from Madras, and to facilitate mercantile dealings concerning goods warehoused."

#### LIMITATION OF SUITS.

SIR JAMES COLVILLE postponed the first reading of a Bill "to provide for the acquirement and extinction of rights by prescription, and for the limitation of suits."

#### PATENTS.

MR. PEACOCK postponed the first reading of a Bill for the protection of Inventions.

#### LIGHTING OF CALCUTTA.

MR. CURRIE moved that a Bill "to provide for the better lighting of the Town of Calcutta" be now read a first time. The first object of this Bill, he said, was to provide means for lighting with gas that part of Calcutta in which mains were about to be laid down by the Gas Company; but it also provided for the more efficient lighting of those other parts of the town in which gas, on its first introduction, would not be available.

He would say a few words regarding the necessity of immediate legislation on this subject.

Honorable Members had, no doubt, seen something of the published correspondence between the Gas Company and the Municipal Commissioners. The Gas Company, though not yet incorporated, had given substantial proofs of its existence. It had expended, he understood, upwards of £40,000 in the purchase of apparatus, a great part of which was now on the way to Calcutta; it had sent out an Engineer; and it was erecting gas-works upon lands which had been made over to it by the Government. It now sought for some assurance that the outlay thus made, would not be in vain. It necessarily looked to the public lights as the only sure source of return; for it was, of course, quite uncertain to what extent private individuals would avail themselves of gas;

and it would not have embarked in the undertaking unless it had the countenance and encouragement of the Government and the Municipal Commissioners, with a clear understanding that, wherever it should be determined to lay down mains, the public lamps would be lighted with gas. But the Municipal Commissioners, while they admitted the reasonableness of the Company's request, were not in a position to give the guarantee which it asked for.

The whole annual income at the disposal of the Municipal Commissioners was already appropriated to other purposes—purposes which were altogether indispensable; and the Commissioners had no means of meeting the heavy expense which would have to be incurred for lighting even a part of the town with gas. If, therefore, the undertaking was to be carried out, and Calcutta was, at length, to have the benefit of this great improvement, means of paying for it must be provided, and the Gas Company must be at once assured that those means would be forthcoming.

These were the reasons for the introduction of the Bill at the present moment.

He would now explain briefly the provisions of the Bill.

In providing for the lighting of a part of the town with gas, it seemed essentially necessary to provide also for the better lighting of those other parts to which gas would not, at first, be extended. If we were to have a lighting rate, that rate could not refer to the gas-lit streets alone. It appeared to him that it must be made applicable to the whole town.

The Bill then provided, in the first place, that the compulsory gate lamps which were required by Section L Act XII of 1852, should be dispensed with. They had proved to be of little use, and they constituted a very unequal and, in many instances, a very heavy tax upon occupiers. Thus, while the occupier of a house letting at 60 rupees, was free, his neighbour, who might be the occupier of a house letting at 70 rupees, was burdened with an obligation which was equal to a tax of 5 per cent. on the rental; whereas to the occupier of a house letting at 350 rupees, the obligation was equal to only 1 per cent. of the rental. He believed the removal of this obligation would be a great relief to the less wealthy class of occupiers.

In the streets to be lighted with gas, the number of lamps must, of course, be such as would provide for a proper degree of illumination. In the streets to be lighted with oil, the Bill provided that the number of

lamps should not be less than the aggregate number of the public lamps, and the compulsory gate lamps now existing in them. The Municipal Commissioners and the Engineer of the Gas Company were of opinion that this number, disposed to the best advantage, would provide efficiently for the lighting of those streets.

The rate or rates to be imposed must, of course, be regulated by the expense which would be incurred. The Council was, no doubt, aware that lighting was one of the purposes to which the proceeds of the rate of  $6\frac{1}{4}$  per cent. assessed on owners by Act X of 1852, might be applied. But considering how very much the Municipal Commissioners were pressed for means to carry out the improvements in drainage and ventilation which the state of the town so urgently required, it seemed to be very desirable that the small sum of rupees 16,000 per annum, which was all that they had been able to spare for lighting, should be given up to those purposes; and that the whole expenses of lighting both with oil and with gas, should fall upon the new lighting rate, which it was proposed to levy on occupiers.

From data given in a Report which had been sent in to Government by the Municipal Commissioners, it appeared that the total rental of the town was divided in pretty nearly equal proportions between the streets to be lighted with gas, and the streets to be lighted with oil. The expense of lighting with gas, as compared with the expense of lighting with oil, would be in the proportion of about 3 to 1.

He should have mentioned before that, in the 51 streets which were to be lighted with gas, the Municipal Commissioners estimated the cost of the lights at 90,000 rupees annually. This would be the cost of a somewhat smaller number of lamps than the Engineer of the Gas Company thought would be necessary; but the estimate of the Municipal Commissioners might be taken as representing the probable amount. The expense of the proposed number of oil lights would be about 30,000 rupees annually; making a total of 1,20,000 rupees to be provided.

As he had said already, the expense of the gas lamps as compared with that of the oil lamps would be as 3 to 1; but it would not be fair that the rates to be levied on the gas-lit streets and the oil-lit streets should be in the same proportion; for this reason—that the streets to be lighted with gas would consist, for the most part, of the prin-

cipal bazars and thoroughfares; and the public who use those bazars and thoroughfares, would derive almost as much benefit from the gas lights as the occupiers of houses in them. It would not be equitable, therefore, to make the whole cost of this public benefit fall upon the occupiers of those streets. He did not know how the adjustment of rates was managed, in similar circumstances, in English towns; but he understood from the Gas Company's Engineer that, in the last European town in which he had established gas works—namely, Stockholm—the tax upon occupiers was equal throughout the town, although the gas extended to only three parishes out of eight. It was not proposed that the same principle should be adopted here. That, perhaps, would be as unfair on the one side, as it would be, on the other side, to charge the whole of the difference of the cost to the occupiers of the streets in which gas was used. It appeared to him that the equitable course would be to have a single rate for streets lighted with oil, and a double rate for streets lighted with gas; so that, if occupiers in oil-lit streets were rated at 2 per cent., occupiers in gas-lit streets would be rated at 4 per cent. He mentioned these rates because they were the rates prescribed in the Bill as the maximum within which the actual rates should be fixed by the Executive Government. It would be necessary to leave this power to the Executive Government, because the rates should be regulated by the actual cost, which would be liable to variation from the extension of gas lights to new streets, and from other causes. According to a calculation made on information obtained from the Municipal Commissioners, it appeared that, if the estimate of the aggregate amount of annual cost was not exceeded, and if, also, the assessment were extended to all houses paying a monthly rental of upwards of 5 rupees, as provided in the Bill—instead of making the limit 10 rupees as proposed by the Commissioners—rates of  $3\frac{1}{2}$  and  $1\frac{1}{4}$  per cent. respectively would be sufficient. But it was very probable that the estimate of annual cost might be exceeded; and, as a maximum, rates of 4 and 2 per cent. were certainly not excessive. These rates might appear high; but they were not higher than was actually required. It must be remembered, too, that they would not be altogether a new tax: or rather, there would be a certain set-off against them; because the present compulsory gate lamps, which constituted an average tax of 1 per cent.

upon the whole rental of the town, would be dispensed with. This tax, as he had said before, was a very unequal one, and occupiers of houses of from 70 to 170 rupees rental in the oil-lit portions of the town, would be gainers by the proposed change.

It was intended that the Act should not have effect until the arrangements of the Gas Company should be completed; and the lamps should be ready for lighting. The precise time must be left to be fixed by the Executive Government.

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

The Bill was read a first time accordingly.

#### MINORS (FORT ST. GEORGE).

MR. ELIOTT moved that the Bill "for making better provision for the education of male minors, and the marriage of male and female minors, subject to the superintendence of the Court of Wards in the Presidency of Fort St. George," be recommended to a Committee of the whole Council for the purpose of considering proposed amendments thereof.

Question put, and agreed to.

The Council accordingly resolved itself into a Committee for the further consideration of the Bill.

Section IX provided as follows:—

"Whoever knowingly aids or abets the marriage of any minor, the superintendence of whose property or education is vested by this Act in a Collector of Revenue, or the marriage of an infant sister of such minor, without the leave of the said Collector of Revenue to such marriage first had and obtained, shall, on conviction before a Court of Session, upon the prosecution of such Collector, be liable to a fine not exceeding two thousand rupees, or to imprisonment not exceeding the term of six months, with or without hard labour."

MR. ELIOTT moved an amendment in the above, which was agreed to, and made it stand thus:—

"Whoever knowingly aids or abets the marriage of any minor whose property is under the superintendence of the Court of Wards, or the marriage of a younger brother or sister of such minor without the leave of the Collector of Revenue acting under the Court of Wards to such marriage first had and obtained, shall, on conviction before a Court of Sessions, upon the prosecution of such Collector, be liable to a fine not exceeding two thousand rupees, or to imprisonment not exceeding the term of six months, with or without hard labour."

The Preamble was amended.

The Council then resumed its sitting, and the President reported the Bill with amendments.

#### NOTICES OF MOTION.

MR. ELIOTT gave notice that he would, on Saturday next, move that the above Bill be read a third time and passed.

MR. PEACOCK gave notice that, on Saturday next, he would move that the Council do resolve itself into a Committee on the Bill "to substitute penal servitude for the punishment of transportation in respect of European convicts, and to amend the law relating to the removal of such convicts."

SIR LAWRENCE PEEL gave notice that, on Saturday next, he would move that the Council do resolve itself into a Committee on the Bill "to amend the English law in force within the territories in the possession and under the Government of the East India Company relating to the administration of the estates of deceased persons charged with any money by way of mortgage, and descending or devised."

#### ENFORCEMENT OF JUDGMENTS.

MR. LEGEYT moved that a communication from the Government of Bombay, and the correspondence therein contained, relative to a judgment of the Supreme Court at that Presidency, in the matter of a writ of execution issued under process from the Zillah Court of Surat, be referred to a Select Committee for report. Honorable Members, he said, had had these papers before them for some time, and were therefore in a position to judge whether it was not desirable that something definite should be determined regarding the question to which they related.

The question was one of jurisdiction. The Supreme Court of Bombay had examined into the merits of a case which came before it under Act XXXIII of 1852 for the arrest of certain parties against whom a decree had passed in the Zillah Court of Surat. The Supreme Court, in the exercise of its discretion, cancelled the writ on which the parties were arrested, set them free, and directed that the case should be removed from the records of the Court. The Sudder Dewanny Adawlut of Bombay objected to this; and, in a long letter to the local Government, set forth its reasons for thinking that the Supreme Court had gone beyond its jurisdiction.

This was not the first time that a similar question had arisen, though, he believed, it

was the first time it had occurred under Act XXXIII of 1852. He remembered that, some years ago, on a motion for execution in aid of the process of a Zillah Court under Act III of 1840, the then Chief Justice of the Supreme Court of Bombay refused to issue process, and held that it was optional with the Supreme Court to grant such process or not. There the question remained, until Act XXXIII of 1852 was passed, which, it was supposed, was sufficiently definite to prevent the recurrence of such disputes. As it had not proved so, it was highly desirable that some rule should be made, or some course adopted, which would set all doubts on the subject at rest; and he thought that the best means of securing that object was to refer the communication and the papers which had been received from Bombay to a Select Committee, who would report whether any further legislation was necessary or not; and, with that view, he hoped that his motion would be assented to.

The motion was put, and carried.

Mr. LEGEYT then moved that Sir Lawrence Peel, Mr. Peacock, Sir James Colville, Mr. Elliott, and the Mover should form the Select Committee.

Agreed to.

#### NOTICE OF MOTION.

Mr. CURRIE gave notice that he would, on Saturday next, move 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."

The Council adjourned.

*Saturday, July 7, 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.
Hon. B. Peacock,	and
Hon. Sir James Colville,	E. Currie, Esq.

#### REPORTS OF SELECT COMMITTEES.

Mr. PEACOCK presented the Report of the Select Committee on the Law relating to Patents for Inventions.

Mr. ELLIOTT presented the preliminary Report of the Select Committee on the Bill "for the ware-housing of goods intended to

*Mr. LeGeyt*

be exported from Madras, and to facilitate mercantile dealings concerning goods ware-housed."

#### LIMITATION OF SUITS.

SIR JAMES COLVILLE moved the first reading of a "Bill to provide for the acquirement and extinction of rights by prescription, and for the limitation of suits." He said, the Bill which he had the honor to present, had no pretensions to originality. It was, with a few additions and modifications, the measure formerly proposed by the Indian Law Commission. The history of that measure was probably well known to some of the Council. He would, however, shortly recapitulate it.

Early in 1841, Mr. Amos, he believed on the suggestion of Mr. Carmichael Smith, prepared a Draft Act with the double object of amending the law of limitation existing in the Courts of the East India Company, and of extending to the Crown Courts in India the amendments introduced into the English law of limitation by certain modern Statutes not then in force in India. That Draft Act was read for the first time in Council in April 1841. The measure was referred to the Law Commissioners for consideration, and they, by their Report of the 26th of February 1842, proposed to substitute for the Draft Act of Mr. Amos, an Act for the acquirement and extinction of rights by prescription, and for the limitation of suits; but limited, as to the first object, to the territories beyond the limits of the Presidency towns; and as to the latter object, to the Courts of the East India Company.

The Act, as its title imported, introduced for the first time the principle of positive prescription; and, though its operation was limited, as he had just stated, the Commissioners, by their Report, adverted to the anomaly of having one law of limitation and prescription within, and another without the limits of the local jurisdiction of the Queen's Courts; and expressed a desire to make the provisions of their Draft Act generally applicable, if, after consulting Her Majesty's Judges, Government should deem it expedient to do so.

A majority of the then Judges of the Supreme Courts, having declared themselves in favor of an uniform law of prescription and limitation, the Draft Act was amended accordingly, and a second Report of the Law Commissioners was made thereon on the 1st October 1842. A considerable correspond-