

Saturday, 1st September, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL

OF INDIA

Vol. I

(1854-1855)

Saturday, September 1, 1855.

PRESENT :

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

Hon. J. P. Grant, C. Allon, Esq.,
Hon. B. Peacock, P. W. LeGeyt, Esq. 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. 46.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 7th of July 1855, entitled "A 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."

By Order of the Most Noble the Governor General.

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

OOTACAMUND, }
The 9th August 1855.

MESSAGE No. 47.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 14th of July 1855, entitled "A Bill for the regulation of Ports and Port-dues."

By Order of the Most Noble the Governor General.

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

OOTACAMUND, }
The 13th August 1855.

MESSAGE No. 48.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 14th of July 1855, entitled "A Bill to amend the Law relating to the Administration of the

Estates of deceased persons charged with money by way of Mortgage."

By Order of the Most Noble the Governor General.

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

OOTACAMUND, }
The 13th August 1855.

MESSAGE No. 49.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 14th of July 1855, entitled "A Bill to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the Law relating to the removal of such convicts."

By Order of the Most Noble the Governor General.

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

OOTACAMUND, }
The 13th August 1855.

ABKAREE REVENUE.

MR. CURRIE postponed the motion, of which he had given notice for this day, for the first reading of a Bill to amend Act No. XI of 1849.

FREE IMPORTATION OF COTTON
(N. W. PROVINCES).

MR. ALLEN moved the first reading of a Bill "to abolish the levy of Customs duty on the import of Cotton into the North-Western Provinces of the Presidency of Bengal." In doing so, he said the introduction of the measure required very few words from him in explanation. The Bill was so short, that its title told what it was.

In the year 1843, by Act XIV, all the Customs Laws relating to the North-Western Provinces were consolidated into one Act; and by that Act, the importation of Sugar was prohibited, and a duty was imposed upon Salt and Cotton. All other articles were admitted duty free. By another Act, which had been passed previously to 1843—

namely, in 1836—a drawback was allowed in Calcutta upon all Cotton which had paid duty in the North-Western Provinces, and which, upon exportation from thence, was proved to be intended for export by sea. Practically, strictness in requiring proof of this fact had been nugatory. It had been found impossible to limit the drawback to Cotton of this particular class; and a drawback had, in reality, been allowed upon all Cotton exported from Calcutta for which Rowannahs could be produced. The effect of this was, that the amount of duty realized upon Cotton in the North-Western Provinces was paid away by Government on the export of Cotton; and the Government was thus subjected to the expense of levying a duty on the frontier, and re-paying it in Calcutta, without any advantage to itself.

As this Bill had reference to the finances of the country, the Lieutenant Governor of the North-Western Provinces had asked the consent of the Supreme Government to it before desiring him to introduce it into this Council. That consent had been accorded; and he (Mr. Allen) now begged to move the first reading of the Bill, with the hope that his motion would be seconded by the Honorable Member to his right (Mr. Grant), as was required by the Standing Orders of the Council.

MR. GRANT seconded the Honorable Member's motion.

The Bill was then read a first time.

GUARDIANSHIP OF MINORS, &c. (BENGAL).

MR. CURRIE moved that the 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 in Bengal," be now read a second time.

The Bill was read a second time accordingly.

COURT OF WARDS (BENGAL).

MR. CURRIE moved that the Bill "to explain and amend Regulation X of 1793 and Regulation LII of 1803," be read a second time.

The Bill was read a second time accordingly.

CUSTOMS (FORT ST. GEORGE).

MR. ELIOTT moved that the Council do resolve itself into a Committee on the Bill "for amending Act No. VI of 1844;" and

Mr. Allen

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 Council having resolved itself into a Committee—

The Bill passed through Committee without amendment.

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

CATTLE TRESPASS.

MR. CURRIE moved for a Select Committee to take into consideration the projects of law which had been at different times proposed relating to Cattle Trespass, and to prepare such Bill or Bills as might be necessary with reference thereto. The subject, he said, was one of acknowledged difficulty, and had been frequently under the consideration of the Legislature, without any definite result. For this reason, he had thought it right to move for a Select Committee to deal with it, instead of himself venturing to propose a Bill for the consideration of the Council. At the same time, he thought that the papers which had been printed contained ample proof of the inconvenience resulting from the present state of the law; and that it was incumbent upon the Council to meet the difficulty, and either to pass such a law as would be suited to the circumstances of the country, or to declare definitively that legislation is inexpedient.

He would review, as briefly as possible, what had been placed upon record respecting former discussions upon this subject, and the projects of law which had, at different times, been proposed.

In the year 1807, the course to be followed in cases of Cattle Trespass was brought under the consideration of the Sudder Court; and that Court was of opinion

"that no fine could be levied by Police Officers from the owners of stray cattle under the existing Regulations; but that the owner of the crop had an undisputed right of impounding stray cattle when found trespassing on his cultivation; and that the expense incurred in feeding and attending the cattle while impounded, should be defrayed by the owner, besides making compensation for damages, if any, previously to the cattle being released from the pound."

At that time, and for thirty years afterwards, pounds existed at all the thannahs, and it was customary to drive to them cattle which were found trespassing. If the cattle were claimed, they were released, upon

payment of a small fine by the owners: if they were not claimed, they were sent to the Sudder station. Since the period to which he alluded, pounds had been suppressed in most districts; but in some places, they still existed, and the old practice in regard to cattle found trespassing was maintained.

In 1834, the subject was brought under the consideration of Government by a representation from the Salt Board. The Board complained of damage done to the preserved fuel lands of the Bullooh Agency. The matter was referred to the Sudder Court at Calcutta. That Court called for opinions from Commissioners and Magistrates, and framed the draft of a Regulation. The draft proposed to legalise the system of pounds and fines, and to make cattle trespass a criminal offence. The Calcutta Court communicated a copy of the draft to the Court at Allahabad, which also called for opinions from the local Officers, and prepared a draft Regulation of their own. This draft was based upon the Calcutta draft, but differed from it in making the agents for receiving cattle and realising fines the Mofussil Revenue Officers, instead of the Police Darogahs.

Nothing was done by the Government upon these drafts, until a year or two afterwards, when the drafts were made over to the Law Commission, with the whole of the correspondence. There, the general subject was never taken up. In a letter signed by their Officiating Secretary, and dated in July 1837, the Law Commission stated—

“With respect to the question of enacting a law for the pounding of cattle, the Law Commissioners observe that a part of this question has been disposed of by them, by the provisions in the Penal Code on the subject of trespass, by which the intentional driving of cattle on the property of another party would be a punishable offence.”

The rest of the question, they said, must lie over until it could be taken up in the regular progress of their labors.

In 1840, the Government of Bengal sent up to the Government of India an extract from a Report from the Superintendent of Police in the Lower Provinces, in which the subject of cattle trespass was very fully treated. The Superintendent of Police pressed for an enactment; and Mr. Amos, who was then Legislative Member of Council, partly in accordance with his recommendation, prepared a draft Act for authorizing and regulating the distraining of animals unlawfully doing damage to property. That draft Act proposed to legalise the d restraint and detention of cattle pending the decision

of a summary suit, which was to be instituted immediately by the distrainer before the Moonsiff, whose decision should be final. The Government hesitated to adopt this draft. It stated in a letter to the Bengal Government that

“the Governor General in Council had considerable doubts upon the propriety of legislating on this subject in the manner desired by the late Superintendent of Police. Assuredly, the evil complained of deserves careful consideration; but, on the other hand, it seems very difficult, under the circumstances and habits of the Indian agricultural community, to frame an effective law which shall not be liable to very great abuse and perversion, and be likely, in the long run, to produce more evil than it was intended to prevent.”

The letter proceeded to intimate that it was the intention of the Government of India to inquire into the practice respecting cattle trespass in the other Presidencies, and suggested that the Bengal Government should call for further information from its own officers as to the extent of the evil, and the remedy required.

In 1841, the Government of Bengal submitted another Report from the then Superintendent of Police in the Lower Provinces. That Officer differed entirely from his predecessor. He recommended that the system of pounds and fines should be put down, and said he did not think legislation was necessary, unless it were to provide penalties for wilful trespass. Upon this, Mr. Amos prepared the draft of another Act, which had been printed among the papers. It proposed to make both negligent and wilful trespass a criminal offence, and to authorize the party endamaged being compensated from the fine levied from the trespasser. The Act was read in Council, and published; but it did not appear to meet with much acceptance. The Calcutta Court thought it altogether unsuitable. It said that a party endamaged would never resort for redress to the distant Court of the Magistrate. Mr. Amos then revised his draft, making it applicable only to cases of wilful trespass, and giving Moonsiffs the power of adjudicating such cases, in order to meet the objection of the Calcutta Court.

Here the matter had dropped. It did not appear that the Government of India had recorded any Resolution regarding it; but about this time, they informed the Government of Madras that they had postponed legislating on the subject.

In 1845, the question of wilful trespass came again before the Sudder Court. It

was considered by both Courts; and the result seemed to be, that it was determined that neither negligence nor wilful trespass was an offence punishable under the General Regulations.

It would appear that the state of the law in the other Presidencies was not in a more satisfactory state than in Bengal. The Government of Madras, in reply to the inquiry as to what was the practice in regard to cattle trespass there, had referred to a Regulation which authorized the heads of villages to take charge of stray cattle the owners of which were unknown; and stated that it was the practice, in many places, for the heads of villages to levy fines from owners upon proof of trespass. In Bombay, there existed a Regulation which authorized the Magistrate to take charge of stray cattle, and to require from the owners payment of all expenses which had been incurred on account of them before returning them, and, if necessary, to sell the cattle, or so many of them as might be requisite, for such expenses. This law, it appeared, had been construed to authorize an inquiry into alleged cases of trespass, and the levy of compensation, and, in case of necessity, the sale of the cattle for that purpose. Mr. Amos, to whom these replies were submitted, was of opinion that the levy of the village fines in Madras, like the levy of the Police fines in Bengal, was illegal; and that the construction which had been given to the law in Bombay was inadmissible.

The whole question had now again been agitated in these Provinces in consequence of a Petition from the Indigo Planters' Association, in connection with which Reports had been called for by the Government of Bengal; and it so happened that simultaneously the Sudder Court at Agra had also taken up the subject. After referring to past proceedings, the Court observed—

"It therefore remains to be considered how far the expediency of present legislation to supply an acknowledged defect in the law, is suggested by the requirement of the case, or whether the early contemplated introduction of the Penal Code may be thought to supersede that necessity."

With respect to this, it was to be observed that the Penal Code would apply only to cases of wilful trespass, and that wilful trespass was but one part of the subject; moreover, even as to wilful trespass, some special rules of procedure would probably be necessary, in regard to the treatment of cattle found trespassing.

Mr. Currie

The Lieutenant Governor of Bengal, with the several Reports upon this subject before him, had expressed a strong opinion that legislation was called for.

Enough, he (Mr. Currie) thought, had been adduced to show that the question was one which required full and careful consideration. He did not think it necessary to detain the Council with extracts from many of the Reports which had been received; but, with permission, he would read a passage from the confession of a dacoit, which had been submitted to Government by the Commissioner for the suppression of Dacoitees in Bengal. The confession was of one Bishtoo Ghose, of Zillah Nuddea, who, after expressing a wish to make a full confession, and being desired to give an account of his life, said—

"I have two brothers, one older and the other younger than myself, who with me resided at my father's house in Polta Thannah, Nuddea. My father employed us in looking after his cows, or driving the cattle used for the plough, &c. As I grow up, I was the strongest built of the three, and my father, in consequence, appointed me to the sole charge of his cattle; for in my country it requires strong and courageous men to watch cattle grazing, as there are perpetual rows and fights amongst the Gowalas or with other villagers. By having continually to make use of my latee, I became expert and courageous. I used to take the cattle into other people's pastures or in other villages, where, of course, I had always to fight."

This was the early training of a lad who afterwards became a professional *lattial* and dacoit; and it afforded an illustration of the lawless habits which the practice of systematic cattle trespass engendered.

The Sessions Judge of Tipperah, again, wrote—

"The evil consequences of cattle trespass are far from being limited to the injury done to the owners of crops, whether the Indigo Planter with his hundreds of acres of valuable cultivation, or the humble ryot with his half dozen kanees of rice land. It is highly provocative of serious crimes, and it is quite remarkable how many abstracts of cases of homicide or severe wounding open with—'some cows belonging to the deceased, or the prosecutor (as the case may be) trespassed on and injured the prisoners' crops.'"

Another intelligent Officer wrote—

"I speak from an experience of above thirty years in India. I believe the trespass of cattle on crops of all sorts is the greatest scourge the population of India labor under. It is the cause of much strife, quarrels, affrays, and murder."

He would not trouble the Council with any further extracts, but would conclude by moving that a Select Committee be appointed

to take into consideration the projects of law which had, at different times, been proposed relating to cattle trespass, and to prepare such Bill or Bills as might be necessary with reference thereto.

Agreed to.

Mr. CURRIE then moved that Mr. Elliott, Mr. Allen, and the Mover be appointed a Select Committee for the above purpose.

Agreed to.

GUARDIANSHIP OF MINORS AND COURT OF WARDS (BENGAL).

Mr. CURRIE next moved that Mr. Allen, Mr. LeGeyt, and the Mover be appointed a Select Committee on the 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 in Bengal."

Agreed to.

Also on the Bill "to explain and amend Regulation X of 1793 and Regulation LII of 1803."

Agreed to.

NOTICES OF MOTION.

Mr. ELLIOTT gave notice that, on Saturday next, he would move the third reading and passing of the Bill "for amending Act No. VI of 1844."

Mr. ALLEN gave notice that, on Saturday next, he would move the second reading of the Bill "to abolish the levy of Customs duty on the import of Cotton into the North-Western Provinces of the Presidency of Bengal."

The Council adjourned.

Saturday, September 8, 1855.

PRESENT :

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

Hon. J. A. Dorin,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.
Hon. B. Pencock,	and
D. Elliott, Esq.,	E. Currie, Esq.

THE CLERK brought under the consideration of the Council the following Petitions :—

KOOLIN POLYGAMY.

A Petition from certain inhabitants of Burrisaul and Furreedpore praying for the abolition of Koolin Polygamy.

SEARCH FOR CONTRABAND SALT (NORTH-WESTERN PROVINCES).

A Petition from certain Bankers and Merchants of Furruckabad, offering suggestions on the Bill "to empower officers of the Customs and Revenue Departments to search manufactories and houses for contraband Salt in the North-Western Provinces."

Mr. ALLEN moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

ABKAREE REVENUE (CALCUTTA AND MADRAS).

Mr. CURRIE moved the first reading of a Bill "to amend Act No. XI of 1849 and Act No. XIX of 1852." He said, a few words would be sufficient to explain the object of this short Bill. Act XI of 1849, which it proposed to amend, was the law which provided for the administration of the Abkaree Revenue of Calcutta. Section II of that Act placed the collection of the revenue arising from the retail of spirituous and fermented liquors and intoxicating drugs, within the town of Calcutta, under the charge of the Collector of Calcutta, subject to the control of the Commissioner of Abkaree and the Board of Customs, Salt and Opium : and Section XXXVI provided that,

"when any penalty or confiscation shall be adjudged by a Justice of the Peace under this Act, the Commissioner of Abkaree, or, in his absence, the Board of Customs, Salt, and Opium, within one month after judgment given, may call for the proceedings of the case, (with which requisition the Justice of the Peace shall be bound to comply), and, if he or they shall see cause, may direct that the seizure, or any part thereof, be restored, and may remit or mitigate any penalty, and discharge the party."

Both the authorities here mentioned—the Commissioner of Abkaree and the Board of Customs, Salt and Opium—had now ceased to exist. The powers formerly exercised by the Board of Customs, Salt, and Opium, had been transferred by a later Act to the Board of Revenue ; but there was no legislative provision made for the powers exercised by the Commissioner of Abkaree. The office of Commissioner of Abkaree was constituted under Act XXV of 1840, which provided that

"whenever a Commissioner or Commissioners shall be appointed by the Governor of Bengal, or by the Governor or Lieutenant Governor of the North-Western Provinces, with the sanction of the Government of India, for the superintendence of the Abkaree Revenue, such Commissioner or Commissioners shall exercise, within such districts as may be