

Saturday, 5 September, 1857

PROCEEDINGS  
OF THE  
LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

VOL. III.

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1857.

## STRAITS' FERRIES.

MR. CURRIE moved that General Low be requested to take the Bill "for regulating Ferries in the Settlement of Prince of Wales' Island, Singapore, and Malacca" to the Governor-General for his assent.

Agreed to.

## MADRAS UNIVERSITY.

MR. LEGEYNT moved that General Low be requested to take the Bill "to establish and incorporate an University at Madras" to the Governor-General for his assent.

Agreed to.

## NOTICES OF MOTIONS.

THE VICE-PRESIDENT gave notice that he would, on Saturday the 5th of September, move the third reading of the Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same."

MR. LEGEYNT gave notice that he would on the same day move the third reading of the Bill "to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay."

## PORT-DUES (BOMBAY, TUNKARIA, AND BROACH).

MR. LEGEYNT moved that a communication received by him from the Government of Bombay be laid on the table and referred to the Select Committees on the Bill "for the levy of Port-dues and fees in the Port of Bombay" and the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach."

Agreed to.

The Council adjourned.

Saturday, September 5, 1857.

## PRESENT :

The Honorable J. A. Dorin, *Vice-President*,  
in the Chair.

Hon. the Chief Justice,	Hon. B. Peacock,
His Excellency the	P. W. LeGeyt, Esq.,
Commander-in-Chief,	E. Currie, Esq.,
Hon. Major General	and
J. Low,	Hon. Sir A. W. Buller.

## STRAITS' FERRIES.

The following Message from the Governor-General was brought by General Low, and read :—

## MESSAGE No. 113.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 29th August 1857, entitled "A Bill for regulating Ferries in the Settlement of Prince of Wales' Island, Singapore, and Malacca."

By order of the Right Honorable the Governor-General.

CECIL BEADON,

*Secy. to the Govt. of India.*

FORT WILLIAM, }  
The 5th Sept. 1857. }

## MADRAS UNIVERSITY.

The following Message from the Governor-General was also brought by General Low, and read :—

## MESSAGE No. 114.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 29th August 1857, entitled "A Bill to establish and incorporate an University at Madras."

By order of the Right Honorable the Governor-General.

CECIL BEADON,

*Secy. to the Govt. of India.*

FORT WILLIAM, }  
The 5th Sept. 1857. }

## CIVIL PROCEDURE (BOMBAY).

THE CLERK reported that he had received from the Officiating Under-Secretary to the Government of India in the Home Department a copy of a communication from the Government of Bombay on the working of Act XVI of 1853 ("for amending the Law of Special Appeals"), forwarded for consideration in connection with the new Codes of Civil Procedure.

MR. LEGEYNT moved that the above communication be referred to the Select Committee on the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay."

Agreed to.

## MINORS (MADRAS).

MR. CURRIE moved the first reading of a Bill "to extend the provisions of Act XXI of 1855 in the Presidency of Fort St. George to Minors not subject to the superintendence of the Court of Wards." He said, on the 22nd of last month, a communication from the Madras Government was presented to the Council, and had since been printed by order of the Council. That communication, which was addressed to the Clerk of the Council, was to the following effect:—

SIR;

I am directed by the Right Honorable the Governor in Council to forward the accompanying copy of a letter from the Register to the Court of Sudder Udalut dated 10th July 1857, about conferring on the Judges of that Court the powers vested in the Court of Wards by Act XXI of 1855.

2. Regulation V of 1804 Section XX, extended by Regulation X of 1831 Section III, requires Zillah Judges to nominate guardians, subject to the confirmation or rejection of the Court of Sudder Udalut, for the management of certain estates, real and personal, belonging to heirs incapacitated from regulating their affairs by minority, sex, or natural infirmity; and Section XXI Clause 9 of the former of these enactments enjoins on such guardians the appointment, subject to the approval of the Sudder Udalut, of a teacher for the education of his Ward in a manner suitable to his rank and condition in life. But in circumstances similar to those referred to by the Sudder Udalut in the letter herewith transmitted, where it is desirable to remove a Minor to a School or College at some distance from his place of residence, the Sudder Udalut has not the power by Law to direct his being sent thither for instruction.

3. The Court of Wards have this power conferred on them by Act XXI of 1855; and the Right Honorable the Governor in Council agrees with the Court of Sudder Udalut that they should be in like manner vested with it.

4. I am therefore directed to request that you will be so good as to adopt measures for bringing before the Legislative Council of India the propriety of making the provisions of Act XXI of 1855 applicable to the Court of Sudder Udalut in respect of the Minors placed under their control by Regulation V of 1804.

I have the honor to be,  
Sir,

Your most obedient Servant,  
E. MALTBY,  
*Acting Chief Secretary.*

FORT ST. GEORGE, }  
22nd July 1857. }

In the absence of the Honorable Member for Madras, he had taken it upon himself to prepare a Bill in accord-

ance with the request contained in this letter. The effect of the Bill, if it should pass into Law, would be simply to give to the Zillah Courts and the Sudder Adawlut, in respect of Minors for whom guardians were appointed by them, the same powers as by Act XXI of 1855 were given to Collectors of Revenue and to the Court of Wards with respect to Minors whose property was under their management. If it was for the interest of a Minor under the Court of Wards that the Court of Wards should have the power of providing effectually for his education, it must be equally for the interest of a Minor under the Civil Court that that Court should have the same power in regard to him.

Many months ago, he had introduced into the Council a Bill for Bengal containing provisions similar to those now proposed for Madras. The scope of the Bengal Bill was, however, much wider. It provided for the effective supervision by the Civil Court of the property of the Minor, as well as for the care of his person. But the Law of Bengal and the Law of Madras were not altogether the same on this point; and he was not sure that what had seemed to be necessary for Bengal was required for Madras. He had therefore thought it expedient to limit this Bill to the single object indicated in the letter of the Madras Government.

The Bill was read a first time.

## PORT-DUES (CUTTACK).

MR. CURRIE moved the second reading of the Bill "to provide for the levy of Port-dues in certain Ports in the Province of Cuttack."

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

## ARMS AND AMMUNITION.

On the Order of the Day being read for the third reading of the Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same"—

MR. PEACOCK moved that the Bill be re-recommended for the purpose of considering proposed amendments.

Agreed to.

After a verbal amendment in Section V—

THE CHIEF JUSTICE said, there seemed to be an erroneous impression abroad as to the effect of this Section. He hoped that, when the Act came into operation, the Executive Government would take care to explain to the Officers who would have to give effect to it, what these provisions really meant. To him it appeared perfectly clear that, under them, no person was to be liable to be disarmed, whether he had or had not a pass, unless there were reasonable grounds for supposing that his going armed was dangerous to the public peace. He (the Chief Justice) made these remarks because he had seen comments in the newspapers and elsewhere founded on the hypothesis that every person who travelled without the certificate or license provided for by the latter part of this Section, would be disarmed whether he were or were not likely to be a disturber of the public peace. The certificate (if produced) would, no doubt, control the discretion given to the Magistrates or other Officers mentioned; but all those Officers ought to understand that, in the absence of a certificate, this discretion, like every other discretionary authority, was to be reasonably exercised; and that no person should be disarmed, unless there were some grounds for the conclusion that it was dangerous to the public peace to allow him to go armed. He (the Chief Justice) thought that, if the provisions of this Section were carried into effect rationally, no European traveller carrying weapons for his own defence, whether with or without a license, would be deprived of those weapons—unless, indeed, he misconducted himself in such a way as to show that he could not safely be trusted with them.

MR. PEACOCK said, if the Bill was so worded as to render the construction doubtful, it ought to be amended; but he did not think that any person who had read the Bill carefully, could put upon it the construction suggested. It was only when, in the judgment of the Magistrate or other Officer mentioned in the Section, it would be dangerous to the public peace to allow a person to go armed, that such person could be disarmed under the provisions of this Section. If he should produce a license from a Magistrate to carry arms, or a certificate that he had been exempted by Go-

vernment from the provisions of the Bill, the Magistrate or other Officer named in the Section would have no discretion to act under this Section, but would be bound to let him proceed with his arms, unless he should be carrying them under such circumstances as to afford just grounds of suspicion that he intended the arms to be used for an unlawful purpose dangerous to the public peace.

THE CHIEF JUSTICE said, he entirely acquitted many of the critics of this Bill of having read it. For instance, he had seen a complaint that Europeans were to be compelled by it to take out a license to possess arms; whereas the Council well knew that the provisions to that effect had been struck out of the Bill some weeks ago. His object in provoking this discussion was, not to move any amendment on the Section as it stood, but to remove a misconception which appeared to exist in some quarters, and which might extend to those whose duty it would be to put the Act in force.

The Section, as amended on Mr. Peacock's motion, was then passed.

Sections IX, XVI, XVIII, and XXII were passed after verbal amendments.

MR. LEGEYNT said, he wished to call the attention of the Council to Section XXXI. As it now stood, it provided that "the word 'Magistrate' shall include any Officer exercising the full powers of a Magistrate."

By this, he supposed, that all the powers given by this Bill would be exercised by every person who was empowered by any Regulation or Act to exercise the full powers of a Magistrate. In the last number of the Bombay Government Gazette he saw the following announcement:—

"Under the provisions of Act XIV of 1835, Lieut. T. Thatcher, Assistant Superintendent of Police at Ahmednuggur, is appointed an Assistant Magistrate in that Zillah; and, under Section IV of Act IV of 1851, is also vested with the full powers of a Magistrate, with the exception of the power of review."

He also found, on reference to the Government Gazette of this Presidency, that, on the 5th, the 27th, and subsequent dates of last month, Assistants to Magistrates were appointed to Hazareebaugh, Behar, and other districts, with the full powers of a Magistrate. He would ask if it was intended—he could hardly think that it was—to confer on

all these Officers the powers given by this Bill? From the discussions that had taken place in the Council, he thought it was intended that the word "Magistrate" should mean the Zillah Magistrate; and that many of the powers given by the Act to Magistrates should be wholly limited to those Officers. But, as Section XXXI now stood, Officers like those to whose appointments he had just referred, and doubtless all Superintendents of Police, would have all the powers which this Bill expressly directed should be exercised by Magistrates. He did not see the use (after the new Section which was introduced into the Bill on Saturday last, and which now stood as Section XXXII) of retaining any interpretation of the term "Magistrate," and he desired to move as an amendment that

"The word 'Magistrate' shall include any person exercising the full powers of a Magistrate; and,"

in the beginning of the Section, be left out. The Magistrate might then be understood to mean the Zillah Magistrate.

THE CHIEF JUSTICE said, he could not support the amendment. He presumed that, if extraordinary appointments of persons with the powers of Magistrates were made in particular districts, they were made because the necessities of the country required them, and the ordinary Magistrates were not found sufficient to keep the peace in those districts. In making these appointments, it would be in the discretion of the Executive to limit the powers of the nominees; and, if they thought fit, they might withhold from them the powers to be given by this Act. But it appeared to him most desirable that such Officers should have and exercise the powers given by this Act in districts like that of Hazareebaugh, where probably there would be no other person on the spot, or within a reasonable distance, who could exercise them.

THE CHAIRMAN said, that would be the case. In many of the non-Regulation Provinces there was no such Officer as a Magistrate, and there might be no one to exercise the powers to be given by this Act but persons specially appointed with the full powers of a Magistrate.

*Mr. Le Geyt*

MR. LEGEYT said, the persons appointed Assistant Superintendents of Police, would probably be young Officers; and he could not think that the Council intended that these young Officers should be invested with at least the judicial powers given by this Act.

THE CHIEF JUSTICE said, these same young Officers were *ex concessis* appointed to exercise the full powers of a Magistrate, and, if so appointed, they had, under the general Law, the power of sentencing persons to imprisonment for two years. If they were fit to be entrusted with such a power, they might surely be entrusted with the powers given by this Bill.

MR. CURRIE said, with respect to Bengal, he believed that the words "shall include any person exercising the full powers of a Magistrate" had been introduced for the purpose of including not only such appointments in the non-Regulation Provinces as those alluded to by the Honorable the Vice-President, but also the very appointments to which the Honorable Member for Bombay had called attention. The Officers so appointed were placed in charge of subdivisions, and when such Officers were vested with the full powers of a Magistrate, it seemed to him quite right, and indeed necessary for the efficient working of the Bill, that they should exercise the powers given by the Bill to Magistrates. With respect to Superintendents of Police at Bombay, if the Bombay Government considered them fit persons to be entrusted with the full powers of a Magistrate, he could not see why they should not be equally entrusted with the powers given by this Bill.

MR. PEACOCK said he agreed with what had fallen from the Honorable Member for Bengal and the Honorable and learned Chief Justice. Section XXIII provided that any "Magistrate" might, on reasonable cause for suspicion, enter and search for arms, ammunition, or sulphur liable to confiscation; and Section XXXI said that the word "Magistrate" should include any person exercising the full powers of a Magistrate. Surely, an Officer of the experience of an Assistant Superintendent of Police, and whom the Government had thought fit to invest with the full powers of a Magistrate, might safely be entrusted with such

powers as that of entry and search provided by this Bill. If an Officer was competent to exercise the full powers of a Magistrate under the ordinary Acts, which, in many cases, gave him the power of sentencing to imprisonment for two years, he (Mr. Peacock) could not see why he might not be invested with the powers given to a Magistrate by this Bill.

MR. LEGEYNT, with the leave of the Council, withdrew his motion.

Section XXXII provided as follows :—

“Whenever, in any Presidency or place, the immediate control and superintendence of the Police is vested in any person other than the Magistrate or such Commissioner of Police as aforesaid, all or any of the Acts which, by Sections I, III, IV, V, and XXIII of this Act, the Magistrate or Commissioner of Police is authorized or required to perform, may be performed by such person, if the Executive Government shall so direct.”

It was passed after amendments which made it run thus :—

“Whenever, in any Presidency or place, the immediate control and superintendence of the Police is vested in any person other than the Magistrate or such Commissioner of Police as aforesaid, the Executive Government may order that all or any of the powers given by this Act to a Magistrate, other than powers of conviction and confiscation upon conviction, shall be exercised by such person; and that all notices hereby required to be given to a Magistrate, shall be given to such person.”

Section XXXVI was passed after a verbal amendment.

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

THE VICE-PRESIDENT moved that the Bill be now read a third time and passed.

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

#### LAND CUSTOMS (BOMBAY).

On the Order of the Day being read for the third reading of the Bill “to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay”—

MR. LEGEYNT moved that the Bill be recommitted, for the purpose of considering proposed amendments.

Agreed to.

Section XVI was passed, after verbal amendments.

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

MR. LEGEYNT moved that the Bill be now read a third time and passed.

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

#### ARMS AND AMMUNITION.

THE VICE-PRESIDENT moved that General Low be requested to take the Bill “relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same” to the Governor-General for his assent.

Agreed to.

#### LAND CUSTOMS (BOMBAY).

MR. LEGEYNT moved that General Low be requested to take the Bill “to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay” to the Governor-General for his assent.

Agreed to.

The Council adjourned.

*Saturday, September 12, 1857.*

#### PRESENT:

The Honorable J. A. Dorin, *Vice-President.*

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General	and
J. Low,	E. Currie, Esq.
Hon. B. Peacock,	

The Members assembled at the Meeting did not form the Quorum required by Law for a Meeting of the Council for the purpose of making Laws.

The following were read :—

#### ARMS AND AMMUNITION.

#### MESSAGE No. 115.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 5th September 1857, entitled “A Bill relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same.”

By order of the Right Honorable the Governor-General.

CECIL BEADON,

*Secy. to the Govt. of India.*

*Fort William,*  
} *The 11th Sept. 1857.*