

Saturday, 7 November, 1857

PROCEEDINGS  
OF THE  
LEGISLATIVE COUNCIL OF INDIA,

FROM

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he believed, sometimes, not always, Deputy Collectors, and sometimes Deputy Magistrates. They had Police as well as fiscal jurisdiction. The Thanah Darogahs, he thought, were generally subordinate to them.

In the unsettled Provinces, where the Revenue Authorities were constantly occupied in the settlement of estates, and in hearing questions of all kinds between Zemindars and their tenantry, they had very great facilities of obtaining such information as would enable them to dispose satisfactorily of the class of cases for which this Bill provided. The examination of Moonsiffs, to which the Honorable and learned Member had referred, was only a test of the candidate's knowledge of the Laws and Regulations. This knowledge would be of little use in enabling an Officer to determine a suit in which the question at issue might be the rate of rent which a ryot should pay for a particular holding. Even in Bengal, Collectors had considerable facilities for making themselves acquainted with matters of that nature; for lands continually fell into the hands of Government by purchase or escheat or resumption, and settlements were to be made of them; there were also estates settled on temporary engagements which had to be re-settled; and these proceedings brought Collectors acquainted with the rates of rent and the relations between landlords and tenants. For these reasons, he thought that they were more suitable Officers for the trial of these cases than Moonsiffs, and he should be very sorry if any change were made in the Bill on this point. But that, of course, was a matter which the Select Committee, after receiving the opinions which the local Governments, their Officers, and others concerned might send in, would consider and determine.

He did not think it necessary to trouble the Council with any further observations in reply.

The Motion for the second reading was then put and agreed to, and the Bill read a second time.

The Council adjourned.

Saturday, November 7, 1857.

#### PRESENT:

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

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

#### KURNOOL (MADRAS PRESIDENCY).

THE CLERK reported to the Council that he had received a communication from the Government of Madras relative to the passing of an Act for the repeal of Act X of 1843 and the formation of Kurnool into a Zillah and Collectorate.

#### PORT-DUES (GULF OF CAMBAY).

MR. LEGEYT presented a Report by the Select Committee on the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay."

Mr. LeGeyt moved that the above Report be printed.

Agreed to.

#### PORT-DUES (KURRACHEE).

MR. LEGEYT also presented the Report of the Select Committee on the Bill "for the levy of Port-dues and fees in the Port of Kurrachee."

#### PORT-DUES (ADEN).

MR. LEGEYT moved the second reading of the Bill "for the levy of Port-dues in the Port of Aden."

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

#### GANJA (BOMBAY).

MR. LEGEYT moved that the Council do resolve itself into a Committee on the Bill "relating to the sale of Ganja in the Presidency of Bombay;" 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.

Agreed to.

The Bill passed through Committee without amendment.

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

### FOREIGNERS.

MR. PEACOCK moved that the Standing Orders be suspended to enable him to move that a Bill "to make further provision relating to Foreigners" be now read a first and second time and referred to a Select Committee.

General Low seconded the motion, which was then agreed to.

MR. PEACOCK said, circumstances had lately come to the knowledge of Government which rendered it necessary that the law respecting the removal of Foreigners from India should be perfectly clear and effectual for that purpose. The law on this subject was contained in the Statute of 55 Geo. III, c. 84, Sections VI and VII. He believed that Statute to be still in force; and in the case of *Ouseley versus Plowden* the Supreme Court intimated that the decision was consistent with the provisions of 3 and 4 Wm. 4. c. 85, s. 81, and that it was not repealed by that Statute.

Section VI, after reciting that it was expedient that the several Governments in the East Indies should be enabled to prevent subjects of Foreign States from residing or sojourning within the British Territories there against the consent of such Governments respectively, enacted as follows:—

"It shall and may be lawful to and for the Governor-General in Council, and to and for the Governor in Council or Chief Officer for the time being of any Presidency, or of any place not being subordinate to any Presidency under the Government of the United Company of Merchants of England trading to the East-Indies, to cause notice in writing to be given to any person, not being a native of any part of the British territories in India or within the limits of the Charter of the said United Company, other than such natural-born subjects of his Majesty, as may from time to time lawfully resort to or reside in the East Indies, to remove himself or herself from such Presidency, or from all or any part of the British territories in the East Indies, as may be deemed expedient, within a time to be limited by such notice; and in case any such person shall not obey such notice, then it shall and may be lawful to and for the Governor-General in Council, or Governor in Council, or other Chief Officer (as the case may be) of the place where such person shall be found, to cause such person to be apprehended and brought before the Court of Civil or Criminal Judicial

ture, to the jurisdiction whereof such place may be subject; and upon proof being made upon oath, to the satisfaction of such Court, by any credible witness swearing to his knowledge or belief, stating the ground of such belief, that such person is an alien and the subject of a Foreign State, and that such notice as aforesaid has been served on such person, either personally or by leaving the same at his dwelling-house, unless such person shall prove that he is a natural-born subject of his Majesty authorized to reside in India, or a native of the British territories in India, or within the limits of the Charter of the Company, for the making which proof reasonable time and opportunity shall be allowed by the said Court, such person shall be remanded by the said Court into the custody of the Governor-General, Governor, or Chief Officer, who shall, as soon as may be, cause such person to be removed in such manner as his or her rank, state, and condition in life shall require, by the first convenient opportunity, to the country or place to which he or she shall belong, if he or she shall be willing to go thereto, or otherwise to such country or place as the Governor-General, Governor, or Officer by whose authority he or she shall have been apprehended, or shall be detained, shall be of opinion shall be most proper, regard being had to the convenience of the person to be removed, and the peace and security of the British territories in the East Indies, and of the allies of his Majesty and the East India Company, and of any neighbouring Princes or States; and in the mean time and until such person can be conveniently and properly removed, it shall and may be lawful to detain him or her in such custody or under such guard as the person by whose authority he or she shall have been apprehended or shall be detained shall see fit and necessary, so as that the person detained may be put to as little inconvenience as shall be consistent with the object of his or her detention; and in case any such person, having removed him or herself in pursuance of any such notice, or having been so removed, shall again wilfully return to any country or place from which he or she shall have had notice to remove, without the consent of the Government or Chief Officer of the place to which he or she shall so return, it shall and may be lawful to and for the Governor-General in Council, or Governor in Council, or Chief Officer of the place where such person shall be found, to cause such person to be apprehended and detained in safe custody, until he or she shall be discharged out of custody, upon such terms and conditions as the Governor-General in Council, Governor in Council, or other Chief Officer at the place where he or she shall be detained, shall deem sufficient for the peace and security of the British territories, and of the allies of his Majesty and of the East India Company and of the neighbouring Princes and States."

Section VII went on to say that—

"It shall be lawful to carry into execution any warrant or authority for the apprehension, detention, or removal of any such person or persons as aforesaid, notwithstanding he, she,

or they may be in custody, or delivered to bail, or in execution on any civil process, and notwithstanding any license, privilege, or protection whatsoever, any law, statute, or usage to the contrary notwithstanding: provided always, that no British subject, nor any native of the British territories in India, or within the limits of the Charter of the said Company, shall be apprehended, detained, or removed, by virtue of any of the provisions herein contained, nor shall any thing herein contained in any wise alter or affect any law or statute under or by virtue of which any British subject may resort to or be restrained from resorting to the East Indies: provided also, that it shall not be lawful to apprehend, detain, or remove any person being the subject of any Foreign State, under or by virtue of this Act, in any way inconsistent with any treaty made or to be made by his Majesty or the East India Company, and to the benefit of which such person shall be entitled."

Subsequently by the late Charter Act, 3 and 4 William IV. c. 85, s. 81, it was enacted that—

"It shall be lawful for any natural-born subjects of his Majesty to proceed by sea to any port or place having a Custom-house establishment within the said territories, and to reside thereat, or to proceed to and reside in or pass through any part of such of the said territories as were under the Government of the said Company on the first day of January one thousand eight hundred, and in any part of the countries ceded by the Nabob of the Carnatic, of the province of Cuttack, and of the Settlements of Singapore and Malacca, without any license whatever; provided that all subjects of his Majesty not natives of the said territories, shall on their arrival in any part of the said territories from any port or place not within the said territories make known in writing their names, places of destination, and objects of pursuit in India, to the Chief Officer of the Customs, or other Officer authorized for that purpose, at such port or place as aforesaid."

There was no law requiring a Foreigner to do what this Section required from every British subject. The Section gave British subjects a right to reside in or pass through any part of the territories under the Government of the East India Company with the exception of certain parts of the territories specified in the Section: but no such right was conferred on Foreigners.

It was probably for that reason that it was not considered necessary to impose upon Foreigners similar obligations to those which were provided in regard to British subjects. He believed that in practice the provisions of the Act were not observed by British subjects.

But still the law required every British subject to report his arrival, and to make known his name, place of destination, and objects of pursuit in India; and he (Mr. Peacock) thought it would be no hardship to require a Foreigner to do what that Section required of British subjects. Government might, under the 6th Section of the Statute of 55 Geo. III, give notice to any Foreigner to remove himself from the territories of the East India Company. But there was no provision which required a Foreigner to give notice of his arrival or to make known his objects of pursuit; and there would be great difficulty in dealing with Foreigners who might be found travelling in or passing through India. It seemed doubtful whether or not a Magistrate had a right to apprehend such persons, unless they refused to remove themselves after notice in writing. Nor did it appear clear that a Foreigner could be compelled to remove himself in any particular direction; he might, therefore, if he pleased, upon receiving such notice to remove himself out of the British territories, pass into a Native State with intentions hostile to the British Government.

It appeared to him that a Magistrate ought to have power to apprehend or place under surveillance a Foreigner who might be found travelling in or passing through the British territories in India without a license, and either to send him to one of the Presidency Towns or detain him until the orders of Government were known.

The Bill enacted that every Foreigner should, upon his arrival in India, report himself and make known the nation to which he belongs and his objects of pursuit in India. It further enacted that no Foreigner should travel in or pass through the British territories in India without a license from the Secretary to Government in the Foreign Department or from certain other Officers specified in the Bill. It also enabled the Government to remove any Foreigner, or to detain him in custody, if he should neglect to remove himself by such route as the Government may direct; and if a Foreigner should be found travelling in or passing through India without a license, the Bill would enable him to be apprehended and sent to the Presidency Town, or to be detained un-

til the orders of Government were received. This of course was to be done in such a manner as to put him to as little inconvenience as possible. These were the principal alterations in the law which he proposed to make by the Bill.

In addition, however, to these provisions, he proposed to compel Masters of vessels to give notice of the names of their passengers; and the Bill authorized the Commissioner of Police or a Magistrate, upon the arrival of a vessel, to enter the same and to make such enquiries, either by himself or by an Officer of Police specially authorized, as might be necessary for the purpose of ascertaining whether any and what passengers were on board.

The word "Foreigner" was defined to mean a person not being a natural-born subject of Her Majesty or a native of a place within the limits of the Charter of the East India Company.

The Act was not to extend to the Straits nor to Aden, unless Government should make it applicable to those places.

The law was to continue in force for two years.

With these remarks he begged to move that the Bill be read a first time.

The Bill was read a first time.

MR PEACOCK moved that the Bill be read a second time. In doing so, he said that he did not wish to bind any Member, who might give his assent to the motion for the second reading, to the principle of the Bill.

THE CHIEF JUSTICE said that no Member need fear committing himself to the principle of the Bill by assenting to the motion for its second reading, as the Bill would be considered when it came before a Committee of the whole Council. For his own part, he had no objection whatever to the second reading of the Bill. The Standing Orders having been suspended, it was immaterial whether the second reading was now moved or not.

Ultimately, the motion for the second reading was not put.

MR. PEACOCK moved that the Bill be referred to a Select Committee consisting of the Chief Justice, Mr. Elliot, Mr. LeGeyt, Mr. Currie, and the Mover.

Agreed to.

*Mr. Peacock*

## NOTICES OF MOTIONS.

MR. CURRIE gave notice that he would, on Saturday the 14th instant, move the second reading of the Bill "for the amendment of the law relating to Merchant Seamen."

MR. CURRIE also gave notice that he would, in the same day, move the first reading of the following Bills, namely,

A Bill relating to Lunatic Asylums;

A Bill to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature;

And a Bill to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature.

The Council adjourned.

*Saturday, November 14, 1857.*

## PRESENT:

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

|                            |                        |
|----------------------------|------------------------|
| Hon. the Chief Justice,    | P. W. LeGeyt, Esq.     |
| Hon. Major General J. Low, | E. Currie, Esq.,       |
|                            | and                    |
| Hon. B. Peacock,           | Hon. Sir A. W. Buller. |
| D. Elliott, Esq.           |                        |

## PORT-DUES (MADRAS PRESIDENCY).

THE CLERK reported to the Council that he had received by transfer from the Under-Secretary to the Government of India in the Home Department a communication from the Madras Government regarding the levy of Port-dues under that Presidency.

MR. ELIOTT moved that the above communication be printed.

Agreed to.

## FOREIGNERS.

MR. PEACOCK presented the Report of the Select Committee on the Bill "to make further provision relating to Foreigners."

## LUNATICS.

MR. CURRIE said, some eighteen or twenty months ago, a question arose as