

Saturday, 14 November, 1857

PROCEEDINGS  
OF THE  
LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

VOL. III.

---

Published by the Authority of the Council.

---

CALCUTTA:  
PRINTED BY J. THOMAS, BAPTIST MISSION PRESS.  
1857.

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

to the right of the Superintendent of a Lunatic Asylum in this country to detain in such Asylum persons alleged to be Lunatics. The circumstances were these. One of the Calcutta Attorneys applied to Dr. Cantor, Superintendent of the Bhowanipore Lunatic Asylum, to know upon whose authority a certain Lunatic had been committed to his charge, and by whom he was still detained in the Asylum. Dr. Cantor seemed to have apprehended that legal proceedings might be instituted against him, and the correspondence was referred to the Bengal Government. A copy of it was communicated to him by order of the Lieutenant-Governor with an intimation that the Lieutenant-Governor had "been led to doubt the sufficiency of the existing law in regard to the detention in the Lunatic Asylums of the Presidency of Insane persons not being criminals as well British subjects as others," and that "at all events some steps appear to be necessary towards obtaining a law sanctioning the legal detention of Insanes, British subjects, in the Bhowanipore and other Asylums."

He (Mr. Currie) had communicated on the subject with the Advocate General, and had understood his opinion to be (as indeed Mr. Ritchie had since expressed it in writing) that, with respect to natives and persons not subject to the jurisdiction of the Supreme Court, the Executive Government had the same kind of authority for the protection of the person of a Lunatic, as the Crown in England had by virtue of its prerogative before the restrictions upon it were imposed by Parliament; and that the detention of any such Lunatic in an Asylum under the authority of Government would be perfectly legal, if unsoundness of mind really existed.

Mr. Ritchie also said (MR. CURRIE would quote from the opinion subsequently given by him in writing) that "both as to persons subject and persons not subject to the Supreme Court jurisdiction, any private individual would be justified, without the sanction either of the Court or of the Government, provided no order has been previously made or proceedings had providing otherwise for the guardianship or care of the person, in confining or restraining a person who is really a Lunatic and unable to take care of himself, whenever it is necessary for the protection of such person or of others that he should be so confined or restrained.

Therefore, in the case referred to, any prosecution would have been defeated, I think, on proof that he (the Lunatic) really was of unsound mind and incapable of taking care of himself, and that restraint in such an Asylum was really necessary for the safety of himself or others; and upon proof of those facts, the Court would, I think, have refused to discharge him on *habeas corpus*, whether he was a British subject or a resident of Calcutta or not."

It appeared therefore that, although it might be desirable that the law should be more distinctly defined, and that the Government and Superintendents of Asylums should be exempted from the possibility of being called upon to prove the unsoundness of mind of any person confined in a Lunatic Asylum, yet the chance of any practical inconvenience resulting from the state of the law in respect to the matter referred to was very remote and did not particularly press for consideration. Mr. Ritchie, however, was of opinion that a general revision of the law relating to Lunatics (with the view especially of introducing into Her Majesty's Courts in this country, some of the improvements in the proceedings relating to Lunacy which had been adopted in England under recent Acts of Parliament) was very desirable.

The question in this more general form had been recently brought under the consideration of the Bengal Government, and had been referred to him by its orders. He had therefore thought it advisable to endeavor to frame a complete set of Lunacy Laws applicable both to Europeans and Natives, and to all the territories under the Government of the East India Company; and he had accordingly prepared the three Bills of which he gave notice last Saturday.

The first, on which he was now addressing the Council, had for its object to provide by law for the reception and detention of Insanes in Lunatic Asylums. The provisions were based in part upon some of the provisions of the English Lunatic Asylums Act 1853.

The Bill provided for the superintendence and inspection of such Asylums, for the admission into them of vagrant and dangerous Lunatics under the orders of the Magistrate, and also for the reception of other Lunatics on application of the friends of the Lunatic accompanied by proper certificates.

There were also provisions for the recovery of the expenses incurred on the Lunatics' account in all cases where they were possessed of sufficient means; and there were some rules for the discharge of Lunatics, either on recovery, or on the application of their friends.

With these remarks he begged to move that the Bill "relating to Lunatic Asylums" be now read a first time.

The Bill was read a first time.

MR. CURRIE moved that a Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature" be now read a first time. He said, the object of this Bill was to assimilate the proceedings in Lunacy in Her Majesty's Courts of Judicature in this country to those which now obtained in England under recent Acts of Parliament.

He should not have ventured on a subject of this kind, dealing as it did entirely with matters of English law and the practice of Her Majesty's Courts, had not the Advocate General, in the opinion furnished to him by the Bengal Government, indicated the course of procedure which it would be expedient to adopt and the particular portions of the English Lunacy Regulation Act which might be advantageously imported into a local law; and had he not also had the assistance of the learned Clerk of the Council in putting those suggestions into a practical shape.

Mr. Ritchie said—

"With respect to British-born subjects or their legitimate children, I think it desirable that, in any re'orm of the law, the general course of recent legislation in England, as to the mode of establishing the Lunacy, appointing a guardian or Committee, and managing or administering the property, should be followed. This seems advisable with reference to the Statute 14 and 15 Vic: c. 87 which provides that such proceedings in the Supreme Courts shall have the same effect in the United Kingdom when transmitted there as if they had taken place there. The formal part of the procedure introduced by the English Acts would require alteration; and the rest of the provisions respecting Lunatic Asylums &c. would be quite unnecessary in this country; but the main provisions of the Lunacy Regulation Act 1853 as to the inquisition (Sections XXXVIII to LIV); the proceedings after inquisition (Sections LV to XCVII); the management and administration of the estate (Sections CVIII to CXXIX) omitting the rules regarding property not usually held in this country (Sections CXXXIV to CXLVI); as to the traverse (Sections CXLVIII to CLI); and supersedeas (Section CLII) might, I think,

Mr. Currie

be usefully introduced. The powers there conferred on the Lord Chancellor might be exercised by the Supreme Court, and those given to a Master in Lunacy by a Judge at Chambers."

In accordance with Mr. Ritchie's suggestions, the Bill gave to the Supreme Court the powers conferred by the Act on the Lord Chancellor, and to the Master or to a Judge of the Court the powers conferred by the Act on Masters in Lunacy. The provisions of the English Act indicated by Mr. Ritchie, abridged and modified so as to be applicable to the circumstances of this country, had been introduced into the Bill. The Bill, as now presented, had been examined by the Advocate General and had been generally approved by him.

The Bill was read a first time.

MR. CURRIE moved that 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" be now read a first time. He said, this Bill was intended to complete the series of laws relating to Lunatics. It provided for the care of the property of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature, as the second Bill of the series provided for the care of the property of persons subject to that jurisdiction.

The present law on the subject was very imperfect and insufficient. The Bombay law merely made provision for the appointment of an Administrator when the heir of a deceased person was incompetent to the management of his affairs from insanity or other cause, and there was no near relative entitled and willing to take charge of the estate—and the law of Bengal and Madras authorized interference only when the property was of a nature which might be brought under the jurisdiction of the Court of Wards, or, as in Bombay, when property devolved by inheritance to a person who was incompetent to the management of it. In Bengal, indeed, it was only in the case of a particular description of landed property that the Court could interfere. The procedure too by which, under the law in force in Bengal and Madras, the fact of unsoundness of mind was to be ascertained, was cumbrous and unsuitable; while, in the Bombay Code, no provision at all was, he believed, made for such enquiry.

The present Bill proposed to remedy these defects. It prescribed an easy mode of determining the fact of Lunacy—it provided for the appointment of a manager of the Lunatic's Estate, and contained rules according to which the management was to be conducted. The general scope and tenor of the Bill corresponded with that for the regulation of proceedings in Lunacy in Her Majesty's Courts.

He should mention that a Bill (which he introduced several months ago) "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" would secure for Lunatics in that Presidency all that was provided in this Bill. But, in dealing with the general question of Lunacy, it seemed to him to be far preferable to have a *Mofussil Law* corresponding with the Supreme Court's Law applicable to all the Presidencies; and if this Bill should be read a second time, all that part of the former Bill which related to Lunatics could be struck out by the Select Committee on that Bill.

The Bill was read a first time.

#### MERCHANT SEAMEN.

MR. CURRIE postponed the motion (of which he had given notice for this day) for the second reading of the Bill "for the amendment of the Law relating to Merchant Seamen." \*

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

MR. LEGEYNT moved that the special Report of the Select Committee on the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay" be adopted. In doing so, he said that the Report had been presented to the Council at the last Meeting, and ordered to be printed. If the Report were adopted by the Council, further proceedings on the Bill would be suspended until the receipt of a communication on the subject from the Bombay Government.

MR. PEACOCK said, although the Report had been circulated, he was not aware that the Honorable Member intended to move to-day that it should be adopted. The question had entirely escaped his attention. He must con-

cess that he had not read the Report, which he would have done if he had been aware of the Honorable Member's intention. It would be a great convenience to him if the Honorable Member would allow the motion to stand over until next Saturday.

The Motion was accordingly, by leave, postponed.

#### MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYNT moved that a communication received by him from the Government of Bombay be laid upon the table and referred to the Select Committee on the Bill "for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the Town of Bombay."

Agreed to.

#### RECOVERY OF RENTS (BENGAL).

MR. CURRIE moved that the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal" be referred to a Select Committee consisting of Mr. Peacock, Mr. Elliott, and the Mover.

Agreed to.

#### FOREIGNERS.

MR. PEACOCK moved that the Bill "to make further provision relating to Foreigners" be published for general information.

Agreed to.

#### ARTICLES OF WAR (NATIVE ARMY).

MR. PEACOCK moved that the Standing Orders be suspended to enable him to introduce a Bill "to amend the Articles of War for the Native Army."

GENERAL LOW seconded the motion, which was then agreed to.

MR. PEACOCK said, upon a recent trial of a Sepoy in the Bombay Presidency for desertion, he was sentenced by the Court Martial, by which he was tried, to two years hard labor and to be marked with the letter D as a Deserter. But the Commander-in-Chief there, on the proceedings coming before him, expressed his opinion that the Court Martial had no power to order the prisoner to be marked. He (Mr.

Peacock) had looked carefully through the Articles of War for the Native Army, but they contained no provision on the subject. The Mutiny Act for the European Forces in the Queen's and Company's Services, which provided for it, enacted as follows :—

“On the first and on every subsequent conviction of Desertion, the Court Martial, after awarding such punishment as it may think fit, may order the offender to be marked on the left side two inches below the arm-pit, with the letter D; such letter not to be less than an inch long, and to be marked upon the skin with some ink or gunpowder, or other preparation, so as to be visible and conspicuous and not liable to be obliterated.”

It had been thought desirable, in the present state of the Native Army, that some provision of this sort should be extended to the Native Army. The Government of India were of opinion, however, that the power of ordering Mutineers and Deserters to be marked should not be vested in Courts Martial, but in the Governor-General in Council and in the Executive Governments. He had accordingly prepared a Bill to that effect, and proposed to move now that it be read a first and second time and referred to a Select Committee.

The Bill empowered the Government to order a person convicted of Mutiny to be marked on the left side two inches below the arm-pit with the letter M, and a person convicted of Desertion with the letter D, together with such other marks as the Government might consider necessary for the purpose of identifying the offender at any future time, or of denoting the punishment to which he had been sentenced.

This would prevent them from ever being re-enlisted; and, in the event of their being sentenced to transportation, would enable them to be identified in case they should escape and return to this country.

The Bill provided that the letter should not be less than one inch long, and that such letter and other mark should be made upon the skin with ink, gunpowder, or other preparation, so as to be visible and conspicuous and not liable to be obliterated.

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

The motion was agreed to, and the Bill read a first time.

*Mr. Peacock*

MR. PEACOCK moved that the Bill be now read a second time.

THE CHIEF JUSTICE said, the Bill seemed to provide for the branding of Mutineers and Deserters from the Native Army, and that this should be done by order of the Government. But he would ask whether the sentences of Courts Martial necessarily went up to the Government, or (as he had understood it to be) only to the Commander-in-Chief for confirmation? If the latter, how could the Government know anything about the cases of those offenders who were to become liable to be marked?

GENERAL LOW replied, there were several kinds of sentences by Courts Martial which required the confirmation of Government; and he saw no objection to making a similar provision for the cases in question.

MR. CURRIE said that the Executive Government having the control of the Jails, orders of this kind would properly be left to it.

MR. LEGEYT said that, as in the case of European Deserters Courts Martial could now sentence them to be branded, which sentence was carried out when confirmed by the Officer by whom the Court Martial was convened, he did not see why in such a matter any difference should be made between the Sepoy and the European Soldier; and he thought that the law should be amended so as to allow Courts Martial to order branding for Mutiny and Desertion, subject to the authority who would necessarily confirm the sentence.

THE VICE-PRESIDENT said that one reason for giving the power to Government only, in the case of Sepoys, was that, by certain Acts recently passed by the Legislative Council, the Civil Authorities were empowered to try Sepoy offenders. He did not know, however, that there was any good reason why Courts Martial should not also have the power of ordering Sepoys to be marked.

THE CHIEF JUSTICE did not object to the exercise of such powers by the Executive Governments. But he thought that a concurrent power should be given to Courts Martial, so as to place the Native Soldier on the same footing as the European in this respect.

MR. PEACOCK said, the great ob-

ject was that, in respect to a very numerous class of offenders, one uniform course should be adopted. He would have no objection to give Courts Martial the power of ordering Sepoy Mutineers and Deserters to be marked, were it not that, by giving the power to Government alone, the system would be uniform. If the power were given to Courts Martial, one Court Martial might be against marking an offender, while another might be in favor of marking for the same offence committed under similar circumstances. As to the objection of the Honorable and learned Chief Justice regarding sentences of Courts Martial not coming necessarily before Government, he thought a sufficient answer had been given by the Honorable Member for Bengal in saying that Government had control of the Jails in which prisoners, who were sentenced to imprisonment, were confined; and in cases where they were sentenced to transportation it rested with the Government to carry the sentence into execution. Again, as the Honorable Vice-President had remarked, Sessions Judges and Special Commissioners had now power to try for Mutiny and Desertion, and their decisions would not come before the Commander-in-Chief. Upon the whole, he thought the power would be best vested in the Government. However, he did not propose to proceed with the Bill until next Saturday; and in the meantime the question now raised might undergo the consideration of the Select Committee to whom he proposed to refer the Bill.

The Bill was then read a second time; and, on the motion of MR. PEACOCK, referred to a Select Committee consisting of the Chief Justice, General Low, Mr. LeGeyt, and the Mover.

GENERAL LOW then moved that the Bill be printed for general information.

Agreed to.

#### FOREIGNERS.

MR. PEACOCK gave notice that he would, on Saturday the 21st instant, proceed with the Bill "to make further provision relating to Foreigners."

The Council adjourned.

Saturday, November 21, 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.,
Hon. B. Peacock,	and
D. Elliott, Esq.,	Hon. Sir A. W. Buller.

#### LIQUOR LICENSES (BOMBAY).

THE CLERK presented to the Council a Petition of retail Liquor Sellers at Bombay against the sale by public auction of licenses for the retail sale of liquor.

MR. LEGEYT moved that the above Petition be referred to the Select Committee on the Bill "for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the town of Bombay."

Agreed to.

#### CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received from the Under-Secretary to the Government of India in the Home Department, a copy of the following Despatch from the Court of Directors to the Government of India:—

477 1857 Judicial.  
"1. By our Legislative Despatch No. 2 dated 4th February 1853, we authorized you, 'if you should see fit, to proceed to pass a Law for giving effect to the Penal Code, as it may be finally arranged by you, with the concurrence of Mr. Peacock.'

2nd. By our Judicial Despatch No. 40 dated 10th September 1856, we also authorized you to bring before the Legislative Council, without reference to us, a measure for giving effect to the recommendations of the Indian Law Commissioners in regard to Procedure, with such alterations and modifications as you might consider necessary with a view to their adaptation to the Courts of the East India Company.

3rd. We observe, from the proceedings of the Legislative Council recently received, that the Penal Code and Codes of Procedure are now under their consideration.

4th. According to the Penal Code, the punishment for murder is death; and by the 8th Rule at page 96 of the First Report of the Law Commissioners, it is provided that 'no person whatever shall, by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts.'