

Saturday, 5th December, 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.

Saturday, December 5, 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,	H. B. Harington,
D. Elliott, Esq.	Esq.

The following Messages from the Governor-General were brought by General Low, and read :—

ARTICLES OF WAR (NATIVE ARMY.)

MESSAGE No. 119.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 21st Instant, entitled "A Bill to amend the Articles of War for the Native Army."

CECIL BEADON,

Secy. to the Govt. of India.

FORT WILLIAM,
The 28th November 1857. }

FOREIGNERS.

MESSAGE No. 120.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 28th Ultimo, entitled "A Bill to make further provision relating to Foreigners."

CECIL BEADON,

Secy. to the Govt. of India.

FORT WILLIAM,
The 5th December 1857. }

GANJA (BOMBAY).

MESSAGE No. 121.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 28th Ultimo, entitled "A Bill relating to the sale of Ganja in the Presidency of Bombay."

CECIL BEADON,

Secy. to the Govt. of India.

FORT WILLIAM,
The 5th December 1857. }

PORT DUES (CUTTACK).

MR. CURRIE presented the Report of the Select Committee on the Bill "for the levy of Port-dues in certain Ports in the Province of Cuttack."

COTTON-FRAUDS (BOMBAY.)

MR. LEGEYT moved that a Bill "for the suppression of frauds in the Cotton-Trade in the Presidency of Bombay" be now read a first time. The object of this Bill, he said, was to prevent the false packing and deterioration of Cotton in the Presidency of Bombay. The evils sought to be remedied by it were of very old standing; and so long ago as the year 1829, a Regulation, No. III of that year, was passed with the view of checking these frauds in the Mofussil Provinces of Bombay; and, again, in 1851, Act XV of that year was passed by the Legislative Council "for the better suppression of fraudulent practices in the Cotton Trade in Bombay," and had operation within the Islands of Bombay and Colaba. These two enactments, although they had been in force now for several years, had not by any means attained the object for which they were designed. Their inoperativeness, he might safely say, did not at all proceed from the offence being uncommon, or carried on with any degree of secrecy, but from the fact that, when the frauds were committed, the native seller and purchaser were generally parties to them, and there was consequently no one having a direct interest to bring the cases to notice, or to prosecute them when they were brought to notice. Hitherto, where any prosecution had been instituted, it had been instituted by Officers of Government.

From information which he had received from the Government of Bombay, he observed that there had never been a single conviction under Act XV of 1851, and but very few under Regulation III of 1829. A recent decision of the Bombay Sudder Adawlut had rendered it more difficult now than ever successfully to conduct a prosecution; for it had ruled that, to sustain a conviction under Regulation III of 1829, there must be proof of a sale of falsely-packed or deteriorated Cotton; and the Court had further laid down, in the same case, that there should be a complainant having an actual interest in the Cotton before the Cotton could be even examined. The Government of Bombay, in remarking upon this decision, said—

"The frauds which it is now sought to prevent, affect mostly the interests of third par-

ties whom the circumstances of the trade compel to place themselves in the hands of others. Unless these interests are efficiently protected, serious injury must accrue to the export trade in Cotton, which it is a most important national object to foster. The commercial interests of Great Britain, as well as of India, imperatively require that we should do all in our power to improve the character of Indian Cotton; and His Lordship in Council is persuaded that no measure will more certainly tend to this end than the prevention of the system of fraud which is maintained, with short-sighted indifference to ultimate consequences, by an unprincipled set of local traders intent only on immediate gain."

Among the suggestions forwarded by local Officers in the Mofussil of Bombay for the better prevention of these frauds, was one by the Magistrate of Broach, whose decision had been quashed by the decision of the Sudder Adawlut to which he (Mr. LeGeyt) had referred. That Officer proposed that the provision of Section IV of Act XV of 1851 should be extended to all places in which Regulation III of 1829 had relation. That Section provided that "any person who, in the Island of Bombay or Colaba, shall knowingly and wilfully have in his possession any such mixed or adulterated Cotton as aforesaid, with a view to any fraudulent sale or disposition thereof, shall be deemed guilty of a misdemeanor." The Magistrate justly observed that, if this were the law in the Mofussil, "all persons would join the Government in putting down frauds in Cotton. No Native dealer," he proceeded, "or dulloi, takes falsely-packed or deteriorated Cotton without knowing that it is so, as he would subject himself to punishment were it found in his possession."

The Bombay Government, in a subsequent part of the letter from which he had quoted, said—

"It must be borne in mind that it is not the object of the proposed legislation to put a stop to legitimate and fair trade in inferior and mixed Cotton for which there exists a demand at corresponding prices; but to prevent the fraudulent substitution of such Cotton for Cotton of superior value."

With this information before him, he had prepared a Bill which repealed Regulation III of 1829 and Act XV of 1851; and he had introduced provisions into it of similar import to those which existed in those enactments, with the addition of such provisions as had been approved of by the Government of Bom-

bay as being calculated to ensure the object in view.

The Bill was read a first time.

PORT-DUES (MADRAS).

MR. ELIOTT moved that a Bill "for the levy of Port-dues and Fees at Ports within the Presidency of Fort St. George" be now read a first time.

Some time ago, he said, a Bill had been introduced by the Honorable Member for Bengal, at the instance of the Government of Fort St. George, for the levy of Port-dues and Fees at certain Ports within that Presidency, and to provide against the discharge of ballast in certain other Ports. Objections had been made to this Bill on the motion for the second reading, which had induced the Honorable Member to withdraw it; and, in communicating those objections to the Government of Fort St. George, he had suggested that two separate Bills should be substituted for the one withdrawn—the one to fix rates of Port-dues for the several Ports to be subject to the Harbour Act generally, the other to be applied to the smaller Ports to which it might be expedient to extend particular provisions of the Harbour Act.

The Honorable Member had particularly noticed that, while the Bill which had been withdrawn provided a uniform maximum rate for the levy of Port-dues at certain Ports, no data had been provided to shew what rates might be actually necessary at those Ports, remarking that, when the Harbour Act was passed, it was expressly stipulated that the rates to be fixed for each Port should be regulated according to its actual requirements—that is, according to the expenses now incurred, and the estimated cost of any improvements that might be projected for it.

The Government of Madras had since transmitted to the Clerk of the Council a communication from the Marine Board of that Presidency representing that the data requisite for fixing the Port-dues, the want of which had been complained of when the former Bill was before the Council, had previously been furnished to the Government of India. The Schedules containing the said data had lately been obtained from the Office of the Home Department of the Government of India, and had been printed. The

information furnished in these Schedules was not so detailed as it ought to have been; but as the period during which the collection of the present Port-dues was authorized by Act XXIV of 1857 would expire in little more than two months, it was not possible to obtain from Madras a more complete specification in time for the passing of a law to sanction the levy of Port-dues in future to have effect from the expiration of the said Act. He had, therefore, at once prepared a Bill with reference to the data afforded by the said Schedules and the above mentioned communication from the Marine Board, and begged leave now to submit it to the Council.

The present rate of Port-dues at the Port of Madras was three annas per ton, which yielded a revenue considerably exceeding the actual charges as stated in the Schedule. He thought that the maximum rate to be fixed by law ought not to exceed this rate, which he had therefore adopted instead of the rate of four annas proposed in the former Bill and still advocated by the Marine Board.

It was observed by the Marine Board that "should a Pier or Break-water or both be constructed, it will be necessary that the Port-due should be increased." It was obvious that the addition of one anna per ton would not be sufficient to meet the expense of any such work, which would certainly amount to many lakhs of Rupees. Whenever such a work was undertaken, it should be provided for by a special Act. There was no present occasion for raising the rate above three annas; and it appeared that no increase was contemplated.

At the out-Ports, the present rate was uniformly one anna per ton on square-rigged vessels, and half an anna on dhonies. For the most part, the Port-charges more or less exceeded the income derived from Port-dues; and in some of the Ports, particularly Cochin and Cocanada, improvements were contemplated or were in progress, which would require a considerable outlay. It was stated, however, that there was no intention at present to increase the rates even at those Ports, apparently from the apprehension that the imposition of an additional burden would check their growing prosperity. Still, it was proposed that, following the former Bill, a maxi-

imum rate of four annas per ton should be authorized for all the out-Ports as well as for Madras. Conceiving any such contingent provision to be inconsistent with the intention of Act XXII of 1855, he had not followed the former Bill in this respect. He proposed, however, that, on account of the improvements to be made at the Ports of Cochin and Cocanada, the maximum rate for the former should be fixed at two annas, and for the latter at three annas per ton, leaving it to the local Government to determine the rates to be actually levied within those limits at its discretion.

He observed that the actual charges of the Port of Tutacorin were four-fold of the income derived from the present Port-dues; and, it appearing to him to be expedient therefore to authorize the increase of the rate, he proposed that the maximum for this Port should be fixed at three annas. This would not bring up the income to equality with the charges, but the increase was probably as much as the trade would bear.

At all the other Ports, he proposed to fix the maximum at the present rate of one anna per ton.

He had excluded Paumben from the Schedule of Ports at which Port-dues were to be levied, as it was a Channel and not a Port; and, in point of fact, no Port-dues were levied there.

He had followed the Calcutta Act in making all vessels, except dhonies and country-coasting vessels, liable to the Port-due every time they entered any of the Ports to which the Bill applied, restricting the charge on dhonies &c. to once in sixty days. At present, in the Madras Presidency, no vessels were chargeable with Port-dues oftener than once in six months. He did not see any reason for a difference in this respect between the Madras Ports and Calcutta.

He had thought it advisable to adopt from the old Law for Madras a provision exempting vessels entering a Port, and leaving it within a limited time without breaking bulk, from payment of the full rate. He proposed that, if the vessel left the Port within forty-eight hours, the charge should be one-half only. At present, the charge was 2-5ths if the vessel left within forty-eight hours, and 7-10ths if it stayed more than forty-eight hours but less than four complete days.

The Bill was read a first time.

PORT-DUES (MOULMEIN, &c.)

MR. CURRIE moved that the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Kyouk Phyoo, Akyab, and Chittagong" be now read a third time and passed. He said, after the Bill had passed through Committee, it had been republished, because the rates for two of the Ports, Moulmein and Akyab, had been considerably increased, and the Port of Kyouk Phyoo had been added. It had now been published more than two months, and no objection had been taken from any quarter to the rates fixed in Committee. He therefore moved that it be read a third time and passed.

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

NAWAB OF SURAT.

MR. LEGEYT said, on the 17th of October last a Petition was presented to the Council from Meer Jaffer Ali Khan, Bahadoor, of Surat, praying for the passing of an Act to amend Act XVIII of 1848 ("for the administration of the Estate of the late Nawab of Surat, and to continue privileges to his family.") He had looked into such of the papers referred to in the Petition as he had been able to obtain access to; and it appeared to him desirable to make a call on the Government of Bombay for some further information regarding the allegations put forward by the Petitioner.

The object of the Petition was to get rid of Section II of Act XVIII of 1848, which runs as follows:—

"The Governor of Bombay in Council is empowered to act in the administration of the property, of whatever nature, left by the late Nawab of Surat, in regard to the settlement and payment of the debts and claims standing against the Estate of the said late Nawab at the time of his death, and to make distribution of the remaining property among his family; and no act of the said Governor of Bombay in Council in respect to the administration to and distribution of such property, from the date of the death of the said late Nawab, shall be liable to be questioned in any Court of Law or Equity."

The Government of Bombay proceeded shortly afterwards to give effect to the Act. The Petitioner considered the decisions respecting his claims a great grievance to himself, and appealed against them to Her Majesty in Coun-

cil, being advised that the proceedings of the Government of Bombay in all matters connected with the Estate of the late Nawab were subject to appeal. The Privy Council, however, ruled that the decisions in question were not of a judicial character, and that no appeal from them could lie. The Petitioner stated that, upon this ruling, he sought redress in various ways in England, and, at last, resorted to his present course of petitioning the Council to amend Act XVIII of 1848. He concluded by saying—

"In consequence of the opinion so generally entertained that your Petitioner ought not to be deprived of his right to appeal, the Government of Bombay has considerably and wisely refrained from carrying into effect such of its decisions respecting the Nawab's estate as have been formally called in question by your Petitioner, and the property still remains undisposed of in their charge. The Honorable Court of Directors has now issued instructions to the Bombay Government to suspend the distribution of the property for the further period of a year, to enable your Petitioner to take what steps he may think requisite to obtain redress. As no indefeasible title to the property can have been acquired by any one whilst the proceedings of the Government have thus been kept in abeyance, your Honorable Council have the satisfaction of knowing that no injustice will now be done to others in affording to your Petitioner the redress to which he believes he is entitled, as made manifest by the facts above stated, and placed beyond question by the deliberate judgment of the House of Commons."

From the information he (Mr. Legeyt) had been able to obtain here, the fact appeared to be that the original draft of Act XVIII of 1848, which was submitted by the Sudder Dewanny Adawlut of Bombay to the Government, did place the decisions of the Government in matters connected with the estate of the Nawab of Surat on the same footing as their decisions in matters connected with the estates of the Sirdars of the Deccan; but he did not find any provision to that effect in any of the drafts forwarded by the Government of Bombay to the Legislative Council. The provision appeared to have been omitted by the Government of Bombay. Probably the Government had very good reasons for making the omission; but those reasons did not appear in any of the papers now here; and it would be satisfactory, before disposing of the Petition to which he had

referred, that the Council should make itself acquainted with them, in order that it might see whether further legislation on the subject was expedient or proper. He, therefore, moved that the Bombay Government be requested to furnish the Legislative Council with copies of all papers relating to the preparation and passing of Act XVIII of 1848.

Agreed to.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved that a communication received by him from the Government of Bombay, relative to the proposed Town-duty on Timber, 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.

PORT-DUES (MOULMEIN, &c.)

MR. CURRIE moved that Mr. Peacock be requested to take the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Kyook Phyoo, Akyab, and Chittagong" to the Governor-General for his assent.

Agreed to.

RECOVERY OF RENT (BENGAL).

MR. CURRIE moved that Mr. Harington be added to the Select Committee on the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

Agreed to.

INDIAN PENAL CODE.

MR. PEACOCK moved that Mr. Harington be substituted for Mr. Grant as a Member of the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned.

Saturday, December 12, 1857.

PRESENT:

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

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

SALE OF LANDS (BENGAL).

THE CLERK presented to the Council a Petition from Womachurn Roy relative to the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency."

MR. CURRIE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA, AND HOWRAH).

THE CLERK also presented a Petition from Native Inhabitants of the Suburbs of Calcutta against the proposed levy of a carriage and horse-tax in those Suburbs.

MR. CURRIE moved that the above Petition be referred to the Select Committee on the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah."

Agreed to.

COMPULSORY LABOR (MADRAS).

MR. ELIOTT presented the Report of the Select Committee on the Bill "to make lawful compulsory labor for the prevention of mischief by inundation, and to provide for the enforcement of customary labor to certain works of irrigation in the Presidency of Fort St. George."

OOTACAMUND SUBORDINATE CRIMINAL COURT.

MR. ELIOTT moved that a Bill "to extend Act XXV of 1855" (to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund on the Neilgherry Hills) be now read a first time.

Act XXV of 1855, he said, contemplating the establishment at Ootacamund of a Subordinate Criminal Court constituted according to Regulation VIII of 1827 of the Code of Fort St. George, that was under the presidency of a Principal Sudder Ameen, provided for the Session Judge of Coimbatore holding Sessions at Ootacamund for the trial of persons charged with offences subject to his