

Saturday, 14th March, 1857

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

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that by punchayet, which is analogous to Juries. This was the sole ancient inquisition of the country in all matters of Civil dispute. In criminal cases, the Native Governments did not generally favor trials; but so far from the Natives of the present day regarding it with indifference, he believed that it would be preferred in every case by a man who wished for a searching and honest investigation. He had had considerable experience of it practically when sitting in a Court of justice, and, except in very few cases, had always received the greatest assistance both from Jurors and Assessors.

He would not detain the Council further, and should vote for the second reading of the Bill.

MR. PEACOCK'S Motion was carried, and the Bill read a second time.

CRIMINAL PROCEDURE (BENGAL).

MR. PEACOCK moved that the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction" be referred to a Select Committee consisting of the Chief Justice, Mr. Grant, Mr. Currie, and the Mover.

Agreed to.

CRIMINAL PROCEDURE (NORTH WESTERN PROVINCES.)

MR. PEACOCK moved that the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in the North-Western Provinces, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction" be referred to a Select Committee consisting of Mr. Elliott, Mr. Allen, and the Mover.

Agreed to.

CRIMINAL PROCEDURE (MADRAS).

MR. PEACOCK moved that the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Madras, for simplifying the Procedure thereof, and for investing other Courts with Criminal

jurisdiction" be referred to a Select Committee consisting of Mr. Elliott, Sir Arthur Buller, and the Mover.

Agreed to.

CRIMINAL PROCEDURE (BOMBAY).

MR. PEACOCK moved that the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bombay, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction" be referred to a Select Committee consisting of Mr. Elliott, Mr. LeGeyt, and the Mover.

Agreed to.

SUBSISTENCE OF SMALL CAUSE COURT PRISONERS.

MR. LEGEYT moved that the Bill "to amend Act IX of 1850" be referred to a Select Committee consisting of the Chief Justice, Mr. Elliott, Mr. Currie, and the Mover.

Agreed to.

The Council adjourned.

Saturday, March 14, 1857.

PRESENT:

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

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

LAND FOR PUBLIC PURPOSES.

THE CLERK presented a Petition from the British Indian Association against the Bill "for the acquisition of land for public purposes."

MR. ALLEN moved that it be printed. As the Report of the Select Committee had already been presented, he would not move that the Petition be referred to them.

The Motion was agreed to.

CRIMINAL PROCEDURE (BENGAL.)

THE CLERK presented and read a Petition signed by about 1,100 British

subjects resident in Bengal, and not in the service of the East India Company, against the Bill "for extending the jurisdiction of the Courts of Criminal Jurisdiction of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with Criminal Jurisdiction." The Petitioners prayed to be heard before the Council in support of their Memorial.

MR. PEACOCK moved that, as the Petitioners prayed to be heard before the Council, the Petition be referred to the Standing Orders Committee.

Agreed to.

BOMBAY UNIVERSITY.

THE CLERK reported that he had received by transfer from the Home Department of the Government of India a communication from the Government of Bombay, together with a list containing the names of the gentlemen appointed Vice-Chancellor and Fellows of the Bombay University, for insertion in the Act of Incorporation of that University.

PORT-DUES AND FEES (CALCUTTA.)

MR. CURRIE moved the first reading of a Bill "for the levy of Port-dues and Fees in the Port of Calcutta."

He said, the Council would probably remember that, when the Ports Bill was before it in Committee, the Schedule, which authorized the Executive Government to fix the rates of dues and fees to be levied in the different ports within a certain specified maximum, was struck out, and a provision inserted that the dues and fees then usually collected at the several ports should continue to be levied for one year after the passing of the Act, or until an Act should be passed to fix their amount. By an Act passed last year, the period limited by this provision was extended for a further term of twelve months. This term would expire on the 13th of August next.

It did not seem very clear whether the intention was that there should be a separate Act for each port, or that all the ports should be included in one Act, with a Schedule specifying the different rates determined on for the several ports. Considering how very different-

ly some ports were circumstanced as compared with others, he thought that it would be better to have a separate Act for each. Take, for example, Singapore and Calcutta. The one was almost exclusively a port of call; whereas no ship ever entered the other except for the purpose of discharging or taking in cargo. This, and other important points of difference would probably render it expedient to enact provisions connected with the levy of Port-dues for the port of Calcutta which would not be suitable to Singapore.

But even if it was clear that it was intended to include all the ports in one Act, there would be this difficulty in the way—that, notwithstanding the length of time that had elapsed since the Ports Act was passed, the Council was not yet possessed of the information necessary to frame such a Bill. Then, after the Bill was framed and read a first and second time, it would be necessary to publish it for at least three months before it could be reported on and brought forward in Committee. The whole period now available for preparing a Bill and carrying it through its several stages was not quite five months. He thought it could scarcely be hoped that a general Ports Bill could be passed through the Council within the allotted period.

For these reasons, he had thought it incumbent on him, with reference to his special connexion with this Presidency, to take timely measures for carrying out the intentions of the Ports Act with respect to the Ports in Bengal; and, accordingly, he now introduced a Bill for the levy of Port-dues and Fees in the Port of Calcutta. There were two other Ports under the Bengal Government, Akyab and Chittagong, to which the provisions of the Ports Act had been extended; but he had not yet received the information necessary for preparing Bills for them.

With respect to the provisions of the Bill for Calcutta, Section I provided that a port-due at a rate not exceeding four annas for every ton of burden should be chargeable in respect of every vessel which should enter the port. The Light and Buoy Duties, with the duty of the Moyapore Magazine, amounted together to three annas a ton. Until the last two years, the proceeds

of these duties had not been sufficient to pay for the maintenance of the Lights and Buoys; but the large increase in the shipping during those years had raised the receipts to an amount exceeding the expenses. If the arrivals of ships should continue at the same rate, no increase of duty would be necessary, so far as the expenses of the Lights and Buoys were concerned. But if they should fall off—which was not improbable, for he understood the number of vessels now in the river was much less than the number this time last year—and any considerable improvements should be determined on—as the employment of dredging vessels for keeping the Channels clear—it would be necessary to increase the duty; and there would be the less objection to this if the one anna tonnage duty, which was now levied under the Merchant Seamen's Registry Act on all ships entering the port, should be abandoned. In that case, a consolidated Port-due of four annas a ton would impose upon ships entering the port no heavier burthen than the aggregate amount of the several duties to which they were now liable.

He had spoken of this Port-due only with reference to the expense of Lights and Buoys, and of the possible improvement of the channels leading to the Port. The expenses connected with the Conservancy of the Port itself—the pay of the Harbor Master's Department, and other charges—were defrayed from the hire of the Government moorings, and fees charged for services performed by the Harbor Officers. He did not think it desirable to interfere with this arrangement. Some of the fees were, perhaps, unnecessarily high; but as the receipts of the harbor were at present somewhat in excess of the expenditure, they would admit of reduction.

Section III provided that the Port-due chargeable in respect of Dhoonies and country vessels employed in the coasting trade should be at a rate equal to one-half the rate chargeable in respect of other vessels; and that such due should not be paid oftener than once in sixty days by the same vessel. At present, these vessels, when they paid at all, paid more than double the rate charged to other vessels. This was contrary to all principle; for on account

of their light draught of water, they made much less use of the Lights and Buoys than large ships. The duty of 1 Rupee for every 100 maunds of burthen was chargeable under the Regulation upon country vessels taking cargo from the Port, and was, he believed, in practice seldom levied, except on such of them as cleared out at the Custom House.

The Bill then provided that vessels entering the Port in ballast, should be charged with three-fourths of the Port-due which would otherwise be chargeable. This was on the principle that vessels in ballast should be charged at half rates. Ships very often came in from the Mauritius and other ports in ballast, but it never happened that they left without a cargo; and, therefore, the consolidated due for entering and leaving which such vessels would pay should be three-fourths of the usual rate.

Section VI provided that, on Tug Steamers and River Steamers belonging to the Port, the Port-due chargeable under Section I should be charged only once each half-year. This was in accordance with a provision in the Schedule which had been originally inserted in the Ports Act, and was afterwards struck out. At present, neither description of steamers paid anything. The River Steamers made little use of the Buoys, and none at all of the Lights; but it was right that they should contribute to some extent towards the expenses of the Port, since they benefited, in common with other vessels, from its arrangements. The Tug Steamers probably made more use of the Lights and Buoys than any other class of vessels, but it was perhaps only when they passed up or down without a ship in tow that they could properly be called on to contribute to the expense of maintaining them; and he thought it would be sufficient to charge them, like the River Steamers, twice a year. It would be very inadvisable to make the charge so heavy as to afford a pretext for increasing their rates of towing.

Section VII contained a table of fees to be charged by the Harbor Master's Department, which he had received from the Marine Superintendent's Office. It made no difference with respect to the size of ships; because the trouble of

performing the services for which the fees were to be charged, was as great in the case of large, as in that of small vessels. He had mentioned before that some of the fees now taken were unnecessarily high; and this table shewed a considerable reduction of them.

The Bill was read a first time.

LAND REVENUE OF THE TOWN OF MADRAS.

MR. ELIOTT moved that the Council resolve itself into a Committee on the Bill "to amend Act XII of 1851 (for securing the Land Revenue of the Town of Madras,") 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.

MR. PEACOCK said, he did not object going into Committee upon this Bill; but he must say for himself that he was not prepared to discuss it to-day. He was not aware, until Thursday evening, that the Honorable Member for Madras intended to bring it forward at this Meeting, and he had not since had time fully to consider the question involved in it. The Bill had stood over for a considerable time, and it might probably be said that that was partly owing to him. After the second reading, his Honorable friend went to Madras, and, on his return, handed to him a Paper drawn up by the Collector showing the amount of rent or revenue payable in respect of the tenures which would be affected by this Bill. About the middle of last week, the Honorable Member wrote asking for the return of the Paper, and he (Mr. Peacock) returned it, stating that he had not altered his opinion with respect to the Bill. He did not then know that the Honorable Member intended to move for a Committee of the whole Council on the Bill to-day; and, as he had said before, it was only on Thursday evening that he first became aware of his intention so to do. Unless, therefore, the Honorable Member was disposed to press his motion, he should be glad if the consideration of the Bill in Committee could be postponed.

If the Bill was to pass at all, several amendments would be required. Should his Honorable friend determine to proceed with it to-day, he should endeavor, as far as he could, to make the necessary

amendments, without, however, pledging himself to vote for the third reading even if those amendments should be adopted.

There were three classes of cases embraced by the Bill. First, cases in which, between the years 1800 and 1828, the Government had granted to persons claiming to have purchased lands from the Meerasdars, leases which reserved a power of re-entry for non-payment of rent or revenue: secondly, cases in which, from the year 1828 to the present time, the Government had issued grants or certificates in the nature of leases, but which did not reserve the right of re-entry or sale. The certificates were not precisely in the form of a lease, but they confirmed the grants made by the Meerasdars, the holders covenanting that a certain sum should be paid annually to the Government, and that, in case of default, the Government might levy the same by distress. They appeared to him, as at present advised, to amount substantially to contracts that the lessees should hold the lands subject to the right of distress. In 1851, an Act was passed giving the power of distress, but not of re-entry or sale. In 1850, an Act was passed for securing the land revenue of Calcutta. As originally framed, that Act contained a Section giving the same power of sale which this Bill proposed to give with respect to Madras. The Government, however, objected to give that power, under the advice of the Honorable and learned the Chief Justice, who was then Advocate General. Before discussing the provisions of this Bill, he should like to read the papers relating to the Calcutta Act in order to ascertain precisely the circumstances under which the Section had been rejected, but he had not had time to obtain them.

He thought, however, that, even if passed as it stood, this Bill would not effect the object for which it was designed. It appeared that, in some cases, owners of lands were not known; and that, in others, occupiers prevented distress by keeping their doors shut up. This Bill would not remove the present difficulties in cases of unoccupied land of which the owners were unknown, because it provided that it should be lawful to the Collector of Madras to sell land.

only when the owner or occupier should have refused or neglected to pay the revenue assessed upon it, on a written demand. If a piece of land was unoccupied, and the owner unknown, how would a written demand for revenue be served upon him?

It also appeared to him, as far as he could judge at present, that the Bill went much farther than the necessity of the case required. It included *all* lands in Madras—as well those which were held under the form of lease which obtained from 1800 to 1828, as those which were held under the form introduced since that period, or under any lease whatever reserving a rent to the East India Company. For it said—

“If any owner of assessed land, or any person holding land subject to a rent payable to the East India Company within the limits of the Town of Madras, shall, upon the written demand of the Collector of Madras, refuse or neglect to pay any sum at which the land is assessed, or with which it is charged as rent, and if the said Collector shall not be able to levy the same by distress and sale of any goods and chattels of the owner or lessee, or of any goods and chattels found upon the land, under the provisions of Section VII of Act XII of 1851, it shall be lawful for the Collector to cause the land to be sold for the arrear of revenue or rent which has accrued due thereon.”

According to this it appeared to him that not only persons holding lands under the form brought into use since 1828, but persons holding lands under any form of lease whatever, and all their under-tenants, should be liable to have their holdings sold for arrears of revenue or rent.

He did not think that this was a Bill which the Council ought to pass without full consideration. Certainly, it was not a Bill which the Council ought to pass in its present form. If it was pressed into Committee to-day, he should propose to insert certain amendments in it, imperfect as his opportunity had been for studying the subject, and determining the precise form of those amendments; but though he should take that course, he would still reserve to himself the right of resisting the motion for the third reading, if, upon mature consideration, he should consider it right to do so.

MR. ELIOTT said, he had not the least desire to press the consideration of the Bill in Committee to-day, if the

Honorable and learned Member was not prepared.

THE CHIEF JUSTICE said, he also felt obliged to the Honorable Member for Madras for postponing his motion to go into Committee, for he had not had even the notice which his Honorable and learned friend opposite (Mr. Peacock) had had. It was only yesterday that he became aware of the intention to bring forward to-day this Bill, to which, on a former occasion, he had objected on various grounds.

MR. ELIOTT begged to observe that he thought the Honorable and learned Member opposite (Mr. Peacock) was aware that the object for which he had applied to him to return the Paper on the subject which he had communicated to him in the hope of removing his doubts, was that he might bring forward the Bill again to-day.

In explanation of the short notice to which the Honorable and learned Member had referred, he might mention that he had thought the discussion would turn upon the construction of only one Paper, namely, the form which had been brought into use since 1828.

The motion was, by leave, withdrawn.

SINGAPORE PORT-DUES.

MR. ALLEN moved that the Petition of Merchants, traders, and other inhabitants of Singapore against the levy of Port-dues in the Port of Singapore, which had been reported at the last Meeting, be printed.

Agreed to.

NOTICES OF MOTIONS.

MR. LEGEYTT gave notice that, on Saturday next, he would move the first reading of a Bill to establish and incorporate an University at Bombay.

Also that he would, on the same day, move that the Council resolve itself into a Committee on the Bill “to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay.”

MR. ALLEN gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee

on the Bill "for the acquisition of land for public purposes."

MR. ELLIOTT gave notice that he would, on the same day, make the motion, which he had this day postponed, for a Committee of the whole Council on the Bill "to amend Act XII of 1851."

The Council adjourned.

Saturday, March 21, 1857.

PRESENT :

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

Hon. the Chief Justice.	P. W. LeGeyt, Esq.
Hon. J. P. Grant.	E. Currie, Esq.
Hon. B. Peacock.	and
D. Elliott, Esq.	Hon. Sir A. W. Buller.
C. Allen, Esq.	

CRIMINAL PROCEDURE (BENGAL.)

THE CHIEF JUSTICE presented the Report of the Standing Orders Committee on the Petition of British Subjects in Bengal against the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with criminal jurisdiction," and moved that it be printed. He also gave notice that, on Saturday next, he should move that the Report be adopted.

The Motion was agreed to.

BOMBAY UNIVERSITY.

MR. LEGEYT postponed his Motion (which stood in the Orders of the Day) for the first reading of a Bill "to establish and incorporate an University at Bombay."

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA, AND HOWRAH).

MR. CURRIE moved the first reading of a Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the station of Howrah."

In doing so, he said this was the same Bill which had been read a third

time and passed by the Council on the 21st of last month. The reasons which had influenced the Governor-General in withholding his assent to it, had been communicated to the Council. They did not imply any disapproval of the provisions of the Bill. The Governor-General had withheld his assent, because, at the Meeting in which the Bill was recommitted previous to the third reading, a Clause was added which, in his Lordship's opinion, ought, in the spirit of the Standing Orders, to have occasioned its republication. It would not be becoming in him (Mr. Currie), after the expression of that opinion, to make any remarks upon the added Clause. It was sufficient to observe that all that was required was that the Bill should be published for general information in its altered form; and that requirement could be fully met by carrying it anew through the several stages.

The Bill was read a first time.

CALCUTTA PORT-DUES AND FEES.

MR. CURRIE moved the second reading of the Bill "for the levy of Port-dues and Fees in the Port of Calcutta."

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

LAND REVENUE OF THE TOWN OF MADRAS.

The Order of the Day being read for a Committee of the whole Council on the Bill "to amend Act XII of 1851 (for securing the land Revenue of the Town of Madras)"

MR. ELLIOTT said, before moving the Council to go into Committee upon this Bill, he wished to say a few words in explanation of the objects and reasons for it, and with reference to the objections made to it as infringing the covenant under which some of the lands at Madras were held. He would first beg leave to remind the Council of the purpose of the Bill by reading a part of the Statement of objects and reasons annexed to it:—

"The object of this Bill is to supply a defect in the Act (XII of 1851) for securing the land revenue of Madras.

"That Act sets out with a declaration in the Preamble that it is expedient that the land