

Saturday, 16th May, 1857

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

VOL. III.

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vernment of Bengal, regarding the career of a notorious Dacoit named Sreemunto Ghose by whom the professions of Lattyal and Dacoit were jointly followed, be laid upon the table and referred to the same Committee.

Agreed to.

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE moved that Mr. Grant and Mr. LeGeyt be substituted for Mr. Elliott and Mr. Allen as Members of 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 IN MADRAS.

MR. CURRIE moved that 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" be referred to a Select Committee consisting of Mr. Grant, Mr. LeGeyt, and Mr. Currie.

Agreed to.

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

MR. PEACOCK gave notice that he would, on Saturday the 16th Instant, move for a Committee of the whole Council on the Bill "to authorize the arrest and detention, within the Ports of the Settlement of Prince of Wales' Island, Singapore, and Malacca, of Junks or Native Vessels suspected to be piratical."

The Council adjourned.

Saturday, May 16, 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,	and
Hon. J. P. Grant,	Hon. Sir A. W. Bul-
Hon. B. Peacock,	ler.

CIVIL PROCEDURE (BOMBAY.)

THE CLERK presented a Petition of inhabitants of Broach, praying that the Clauses of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay" concerning suits against Officers of Government may be omitted; and that such suits may be placed on the same footing as suits against private individuals.

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

Agreed to.

LEGISLATIVE COUNCIL.

THE CLERK reported to the Council that he had received a communication from the Secretary to the Government of India in the Home Department, forwarding copies of two Circulars to the Local Governments and other authorities, with a request that, with the permission of the Council, a narrative of the course of Legislation during the official year 1856-57 may be drawn up and forwarded to that Department for publication with the other Reports.

MR. GRANT moved that the above communication be referred to the Standing Orders Committee.

Agreed to.

PATENTS FOR INVENTIONS.

THE CLERK also reported to the Council that he had received a communication from the Officiating Under-Secretary to the Government of India in the Home Department, forwarding copies of two Despatches from the Honorable Court formally disallowing and desiring the repeal of Act VI of 1856 (for granting exclusive privileges to Inventors).

MR. PEACOCK moved that the above communication be referred to the former Select Committee on the Patents Bill, consisting of the Chief Justice, Mr. Grant, and Mr. Peacock.

Agreed to.

OPIUM (BENGAL.)

MR. CURRIE presented the Report of the Select Committee on the Bill "to consolidate and amend the Law re-

lating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal."

OFFENCES AGAINST THE STATE.

MR. PEACOCK presented the Report of the Select Committee on the Bill "for the trial and punishment of offences against the State."

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill "to authorize the arrest and detention, within the ports of the Settlement of Prince of Wales Island, Singapore, and Malacca, of Junks or Native Vessels suspected to be piratical;" 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, and was reported.

COURTS MARTIAL (NATIVE ARMY.)

MR. PEACOCK moved that the Standing Orders be suspended, to enable him to bring in and pass through its several stages a Bill "to amend Act XIX of 1847" (the Articles of War for the Native Army.)

The motion was seconded by General Low, and carried.

MR. PEACOCK then moved the first reading of a Bill "to amend Act XIX of 1847." In doing so, he said he regretted to be under the necessity of having to introduce a Bill the object of which was to facilitate the trial and punishment of Native Officers and soldiers for offences against the Articles of War. It was unnecessary for him to inform the Council of the feeling which had recently manifested itself in several Regiments of the Native Army—to detail the acts to which such feeling had led—or to dwell upon the necessity which existed of taking prompt and vigorous measures to suppress it. One of the measures which appeared to be necessary was to arm Officers in command of Troops with power to assemble General or other

Courts Martial, as occasion might require, without delay, and to confirm and carry into immediate effect the sentences of such Courts. By the Articles of War for the Native Army as they now stood, the only Court Martial which could try and award the full extent of punishment for the offence of mutiny, was a General Court Martial assembled by order of the Commander-in-Chief, or by some Officer invested by him with that power; and the sentence of the Court so assembled could not be carried out until it was confirmed by the Commander-in-Chief, or by an Officer having authority from him for that purpose. In a crisis like that which existed at present, the delay attending the assembling of General Courts Martial and the confirming of the sentences passed by them, whenever the Commander-in-Chief was at a distance, must of necessity detract from the effect of the punishment. It had, therefore, been considered proper by the Governor General in Council to empower every General Officer commanding a Division, every Brigadier, and every Officer commanding a Station, being the senior Officer on the spot, to convene a General, District, or Garrison Court Martial, as occasion might require, and to confirm and give immediate effect to the sentence of such Court. It was necessary, however, that an Act should be passed for the purpose.

The first Section of the Bill which he proposed to pass, enacted as follows:—

"It shall be lawful for the Governor General of India in Council, from time to time, by Order in Council, to empower every General or other Officer having the Command of Troops in the Service of Her Majesty or of the East India Company, or any of such General or other Officers, to appoint General, or District, or Garrison Courts Martial, as occasion may require, for the trial of any of the Officers, Soldiers, or Followers in the Service of the East India Company, being Natives of the East Indies or other places within the limits of the said Company's Charter, and amenable to the Articles of War for the Native Troops, who may be charged with any offence punishable by the said Articles of War, which, in the judgment of such General or other Officer, requires to be punished without delay; and also to confirm and carry into effect, immediately or otherwise, any sentence of such Court Martial; or to commute, mitigate, or remit any such sentence; or, in case he shall deem it necessary so to do, to refer

any such sentence to the Commander-in-Chief for his orders thereon."

That was the first part of the Bill. It enabled any Commanding Officer, if authorized by the Governor-General in Council, whether he was in command of the Regiment to which the offender belonged or not, at once to convene a Court Martial, and also immediately to carry into effect the sentence of such Court; or to commute, mitigate, or remit any such sentence; or, in case he should think it necessary, to refer it to the Commander-in-Chief for his orders thereon. The great object was, to avoid delay in convening Courts Martial, and carrying sentences into effect. It had, however, been thought right that the Officer who had power to confirm, should also have power to commute or mitigate a sentence, or to refer the same to the Commander-in-Chief if he should think fit.

Article 74 of Act XIX of 1847 provided that a General Court Martial should not consist of less than thirteen Commissioned Officers, unless it should be held out of the East India Company's territories; in which case, it might consist of seven Commissioned Officers, if a greater number could not be conveniently assembled. The second Section of this Bill provided that any General Court Martial which might be appointed under the authority of the Act, should be appointed by the senior Officer on the spot, and should consist of not less than five Commissioned Officers, the number to be fixed by the General or other Officer appointing the Court Martial, having regard to the number of Officers that could conveniently be convened on the spot. The Order in Council might direct that a General Court Martial to be appointed under the Act should consist wholly of European Commissioned Officers, or wholly of Native Commissioned Officers; and in such case, the Officer appointing the Court Martial would have power to determine whether the Court should consist of European or of Native Officers. The Articles of War as they at present stood did not specify whether the Officers who were to compose a General Court Martial for the trial of Native Officers and soldiers should be European or Native Commissioned Officers. It was only provided that "A General Court

Martial shall not consist of less than thirteen Commissioned Officers." But being an Act for the trial and punishment of Officers and soldiers in the Native Army, the practice hitherto had been to appoint Native Officers. He did not know that it was necessary expressly to empower the Government to direct that a General Court Martial assembled under its provisions might consist wholly of European or of Native Commissioned Officers; but to avoid any doubt upon a subject in which the practice had been uniform, he had thought it better to insert such a provision. He hoped and believed that, although the majority of the Native Officers were perfectly loyal and willing to discharge their duty to the State faithfully, there were many who could not be trusted, and a necessity might arise in many cases that the Officer convening the Court Martial should have the power of directing that the Members should be wholly European; and this Bill gave that power.

Article 96 of the present Law enacted that "no sentence of death shall be given against any offender by a Court Martial unless two-thirds of the Members present concur therein, or four where the Court consists of five members, or five where the Court consists of seven." It appeared to him that, in cases such as those which the Bill was intended to meet, sentence of death, or other punishment to which the offender was liable under the Articles of War, ought to be given by the Court if a majority of the Members concurred in the sentence. In cases not military, sentences in criminal matters in the Mofussil were given generally by a single Judge; and in the Sudder Court, a majority of the Judges composing the Court might pass sentence of death. He did not, therefore, consider that it was going too far to allow a sentence of death to be given by a majority of the members of a Court Martial, instead of requiring the concurrence of four Members in a Court consisting of five.

These were the main provisions of the Bill. They would arm European Officers with greater power over their Native Troops than they now possessed; and he trusted that they might be productive of a beneficial result.

There was one other Clause to which

he would draw attention. An Order was issued by the Governor General in Council on this subject on Thursday last, at a time when the Legislative Council was not sitting. He proposed to confirm that Order, and to give effect to it from the date on which it was passed. To that extent, this Bill would be retrospective. He had not set out the Order in the Bill; but he held in his hand the *Gazette* in which it had been published, and would read it for the information of the Council:—

“The Right Honorable the Governor General in Council is pleased to authorize every General Officer Commanding a Division, every Brigadier, and every Officer Commanding a Station, being the Senior Officer on the spot, to appoint General or other Courts Martial, as occasion may require, for the trial of any of the Officers, or Soldiers, or Followers, in the Service of the East India Company, being Natives of the East Indies, or of other places within the limits of the said Company's Charter, who may be charged with any offence which, in his judgment, requires to be punished without delay; and to confirm and carry into effect at once, or to mitigate, or to commute, or remit, all Sentences of such Courts Martial, or, in case he shall deem it necessary, to refer any such Sentence to the Commander-in-Chief for his orders thereon.

General Courts Martial assembled under this authority shall consist of not less than five Native Commissioned Officers, and shall have the full powers of a General Court Martial as specified in the 75th Article of War.

With these remarks, he begged to move the first reading of the Bill.

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

MR. PEACOCK moved the second reading of the Bill.

THE CHIEF JUSTICE said, the Honorable and learned Member might feel perfectly sure that there could be no disposition on the part of this Council—nor, he imagined, could there have been any disposition on the part of any other Legislative Body, however popular in its form of constitution—to refuse to give the powers which, at the present crisis, the Government of India required. For if any element of social discord could be conceived more dangerous than another to the State, it was the existence of a disorganized soldiery—of bodies of armed men freed from that discipline and subordination which were essential conditions to the existence of a Standing Army in every com-

Mr. Peacock

munity whose form of polity gave it any pretensions to be called a State.

The powers which were asked of the Council, were perfectly reasonable. To meet such a state of things as he had contemplated, it was not only necessary for the safety of the State, but desirable as the best mercy to men who were likely to be deluded into mutiny themselves by the example of successful mutiny by others, that punishment should be, not only severe, but prompt and certain.

The first power asked for, seemed to him calculated to render punishment prompt—to remove those formal impediments to the speedy convening of Courts Martial, the existence of which might be expedient in ordinary times, but which, in a large Empire like this, it was extremely unadvisable to preserve during a period of difficulty and danger.

The second power asked for, seemed to him calculated to render punishment certain, where it might not be so now. Like the Honorable and learned Member opposite, he would express his hope, and indeed his belief, that, in many cases, Native Officers would be found worthy of the trust which might be committed to them as Members of Courts Martial: he believed that, hitherto, they had generally exercised such trust faithfully and well. But, on the other hand, it was impossible not to conceive that, at such a juncture as this, there might be occasions on which it would be impossible to intrust to the Native Officers of particular Regiments or Stations this important duty, with any confidence that it would be faithfully performed.

The Articles of War for the Native Army as they existed, did not seem to make it imperative that Courts Martial convened for the trial of Native soldiers should consist exclusively of Native Officers. The term used was general—it was “Commissioned Officers.” In practice, this had been construed “Native Commissioned Officers.” But in principle, there was no reason why, in military cases more than in civil cases, an offender should be tried by Judges of his own race. He could, therefore, see nothing objectionable in the proposal to empower Commanding Officers to compose these Courts Martial of European Officers, whilst he did

see the strongest reasons for giving such a power at the present time. One doubt, however, had occurred to his mind with regard to Section II, whilst he heard it read. It was this—whether the Section did not unnecessarily provide that the Courts Martial appointed under the Act should, in all cases, consist either wholly of European, or wholly of Native Officers, and whether it might not be an improvement to add the words “or partly of European and partly of Native Officers.” The Honorable and learned Member had, perhaps, good reason for framing the Section as he had done; but such reason had not suggested itself to his (the Chief Justice’s) mind, and he thought it right to mention it.

With respect to the confirmation of the Order passed by the Governor-General in Council on the 14th Instant, he apprehended that there could be but one opinion. No one could doubt that it was right in the Executive Government to take the earliest opportunity of removing anything which might tend to paralyze the arm of Justice, or impede its action, in such an emergency as this; and, in confirming the Order in question retrospectively, this Council would only be doing that which all must wish to do—namely, to indemnify the Executive for the proceedings which might be taken under the Order, and to declare that, in issuing it, the Government had acted with proper energy and judgment.

MR. PEACOCK said, he wished to make but one remark in reply to the suggestion of the Honorable and learned Chief Justice that it would have been an improvement if Section II had also provided for the appointment of mixed Courts Martial. That question had been fully considered by the Government, and it appeared to him that there might be very considerable difficulty in carrying out such a plan. If a Court Martial was to consist of five Members, and the opinion of the majority was to rule, it would be a mockery to compose the Court partly of Europeans and partly of Natives; because if there were three Europeans and two Natives, and the Europeans differed from the Natives, the Europeans would carry the question against the Natives; and, in the same way, if there were three Natives and two Europeans, and the Natives

differed from the Europeans, the Natives would carry the question against the Europeans. It had, therefore, appeared to him that, whatever might be well in other cases, in the present case it would be better to provide that Courts Martial appointed under this Act should consist either solely of European, or solely of Native Officers.

The motion for the second reading was then put and carried, and the Bill read a second time.

MR. PEACOCK said, he thought it important that this Bill should be passed at once, and he should therefore move that the Council resolve itself into a Committee upon it now. It was not his wish, however, to hurry it through the Council; and, therefore, if any Honorable Member desired to consider its provisions at greater leisure than he had had an opportunity of doing, the Council might adjourn for half an hour. The Bill was a short one, and had been framed by him with care.

The motion to go into Committee was agreed to.

The Bill passed through Committee without amendment, and was reported.

The Bill was then read a third time and passed.

MR. PEACOCK moved that Mr. Grant be requested to carry the Bill to the Governor General for his assent.

Agreed to.

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

MR. PEACOCK gave notice that he would, at the next meeting of the Council, move the third reading of the Bill “to authorize the arrest and detention, within the Ports of the Settlement of Prince of Wales’ Island, Singapore, and Malacca, of Junks or Native vessels suspected to be piratical.”

OFFENCES AGAINST THE STATE.

Also, that he would, at the next meeting of the Council, move for a Committee of the whole Council on the Bill “for the trial and punishment of Offences against the State.”

BOMBAY LAND CUSTOMS.

MR. LEGEYNT moved that a communication received by him from the Go-

vernment of Bombay be laid upon the table and referred to the Select Committee on the Bill "to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay."

Agreed to.

BOMBAY PORT-DUES.

MR. LEGEYT gave notice that he would, on Saturday the 23rd Instant, move the first reading of a Bill for the levy of Port Dues and Fees in certain Ports within the Presidency of Bombay.

COURTS MARTIAL (NATIVE ARMY.)

MR. GRANT delivered to the Vice-President the Bill "to amend Act XIX of 1847," who thereupon announced that the Governor General had signified his assent thereto.

OPIUM.

MR. CURRIE gave notice that he would, on Saturday the 23rd Instant, move for a Committee of the whole Council on the Bill "to consolidate and amend the Law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal."

The Council adjourned.

Saturday, May 23, 1857.

PRESENT:

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

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

The following Messages from the Governor-General were brought by Mr. Grant and read:—

MESSAGE NO. 102.

The Governor-General informs the Legislative Council that he has given

his assent to the Bill which was passed by them on the 9th May 1857, entitled "A Bill to repeal Act VI of 1856."

By order of the Right Honorable the Governor-General.

CECIL BEADON,

Secy. to the Govt. of India.

FORT WILLIAM, }
The 20th May 1857. }

MESSAGE NO. 103.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 2nd May 1857, entitled "A Bill to amend Act XXXVII of 1855."

By order of the Right Honorable the Governor-General.

CECIL BEADON,

Secy. to the Govt. of India.

FORT WILLIAM, }
The 20th May 1857. }

JOINT-STOCK COMPANIES.

THE CLERK presented to the Council a Petition of the British Indian Association against so much of the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the Members thereof" as excludes Banking and Insurance Companies from the operation of the principle of limited liability.

THE CHIEF JUSTICE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

PORT-DUES (MADRAS.)

THE CLERK reported to the Council that he had received a communication from the Chief Secretary to the Government of Fort St. George with two draft Bills for the levy of Port-dues and fees within the Madras Presidency.

MR. CURRIE moved that the above communication, together with a former one on the subject from the same Government, be printed.

Agreed to.