

Saturday, 23 May, 1857

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL OF INDIA,

FROM

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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.

PORT-DUES AND FEES (BOMBAY.)

MR. LEGEYT moved the first reading of a Bill "for the levy of Port-dues and fees in the Port of Bombay."

The charges now in force at Bombay, which could properly be carried to the credit of Port-dues, were levied under the head of Light-house dues, Buoy and Anchorage fees, and Harbor services. All ships and vessels down to the burden of 20 tons, paid at the rate of 15 Rs. per 100 tons: all boats and vessels down to the burden of 10 tons, paid 2 Rs. per annum as Light dues: and all vessels not receiving Pilots paid for Buoy and Anchorage fees 3 Rs. per annum when the burden was from 10 to 20 tons, 6 Rs. per annum when the burden was from 20 to 30 tons, and so on, increasing in the same ratio as the tonnage increased.

The Government of Bombay had proposed that the Light-house dues should be levied on each arrival of a vessel in the harbor from seaward at the following rates —

	Rs.	As.	P.
Below 10 tons,	0	0	0
From 10 to 20 tons,	0	8	0
„ 20 to 100 tons,	1	0	0
„ 100 to 200 tons,	2	0	0
„ 200 to 300 tons,	3	0	0

—and so on, at the rate of 1 Rupee additional for every 100 tons.

The Government went on to propose that the Anchorage fees should be levied on each arrival, and not annually as hitherto, with a proviso that no vessel should be held liable to pay any fees in Bombay more than once in the same calendar month.

They had further proposed that Anchorage fees should be levied only from those vessels which did not take Pilots on board, and that rates should be fixed nearly on the scale at which such fees were now levied at the Ports in that Presidency under Act I of 1852.

In framing this Bill, he had thought it preferable to follow the course adopted in the Bills now before the Council for the levy of Port-dues in the Ports under the Presidency of Fort William, and to provide for one consolidated rate instead of the various fees proposed by the Government of Bombay; which consolidated rate should include all the Port-dues now levied under the head of Light-

dues, Buoy and Anchorage fees, and Harbor services. He had excluded Pilotage fees altogether. He found, by the provisions of Section XLIV of Act XXII of 1855, that the receipts and expenses on account of Pilotage were expressly excluded from the account of the Port Fund therein directed to be kept.

As he had observed before, the Government of Bombay would exempt vessels taking Pilots from any Anchorage fees; but it appeared to him that there was no sufficient reason for such exemption, and that it would be inconsistent with Section XLIV of Act XXII of 1855, since some part of the Pilotage fees would, in that case, be carried to the credit of the Port-dues Fund. He, therefore, proposed to charge all vessels, whether taking Pilots or not, Port-dues under this Bill.

He found from the papers before him that about 45,000 Rupees was required for the annual expenditure from the Port Fund. The present income derived from the dues levied in the harbor of Bombay was about 72,000 Rs.; and the expenditure, exclusive of Pilotage dues, did not exceed 45,000 Rs. These charges were obviously higher than were required for the purposes of the Port; and he found that a consolidated charge of two annas per ton on the 400,000 tons of shipping, which was the average amount of tonnage that had entered the Port of Bombay during the years 1852-53-54, to be levied on each arrival, with a provision against any levy more than once in the same calendar month, would give an income of about 50,000 Rs., which, with the present fees for Harbor services—such as transporting vessels, hauling in or out of dock, and the like—would be found sufficient for the present requirements of the Port.

He had, accordingly, provided in the Bill that a Port-due at a rate not exceeding the rate of two annas per ton should be chargeable on every sea-going vessel of the burden of ten tons and upwards which should enter the Port of Bombay.

He had excluded from the operation of the Act fishing boats and harbor craft.

Tug Steamers (of which there were none in Bombay at present,) and Steamers employed in the Coasting trade,

were made chargeable by the Bill with these Port-dues once only between the 1st of January and the 30th of June, and once only between the 1st of July and the 31st of December in each year; and they were exempted from the operation of Section XLVI of Act XXII of 1855.

The Bill was read a first time.

PORT-DUES AND FEES (KURRACHEE.)

MR. LEGEYT moved the first reading of a Bill "for the levy of Port-dues and fees in the Port of Kurrachee."

The Port-dues now levied there, as shewn in a communication received from Colonel Jacob, the Officiating Commissioner in Scinde, were on account of Anchorage and Light dues only, and amounted, according to an average for the years 1852-53-54, to 7,000 Rs. per annum; and the current expenditure for the same period was set down at an average of 12,513 Rs., exclusive of the cost of Pilot boats. Besides, there had been a large expenditure, amounting to 92,865 Rs., on works connected with the harbor. Colonel Jacob was strongly opposed to the levy of any heavy Port-dues with the object of paying these expenses out of them. He said—

"Considering that Kurrachee is a new Port, working its way under difficulties, and with prejudices to contend with, its Port-dues cannot, I am of opinion, be too light; and I should be sorry indeed to see the trade very much more heavily assessed in respect of them than it is at present.

"It occurs to me that, for Anchorage, Buoy, and Light-house fees, a consolidated charge of four annas a ton, levied quarterly on all vessels above ten tons, fishing boats and harbor craft excepted, would be a fair and equitable assessment upon our shipping.

"The income which such an assessment would realize at Kurrachee, it is estimated, would amount to between 15,000 Rs. and 20,000 Rs.; add to this, the probable amount of fees for piloting vessels on Captain Ethersey's scale, say 1,000 Rs. We may reasonably calculate, I think, on an income, from the sources indicated, of about 20,000 Rs. a year, beyond which I conceive it would be impolitic to burden the trade. Rather should we look to an increasing commerce augmenting these resources, than at once raise them to the level of present and contemplated outlay."

He (Mr. LeGeyt) thought that, with the charges made for Harbor services, the rate proposed by Colonel Jacob of four annas per ton for Anchorage and

Mr. LeGeyt

Light dues on all vessels above ten tons burden, fishing-boats and harbor craft excepted, would about produce the income necessary for the wants of the Port of Kurrachee. The Government of Bombay, however, did not quite agree with Colonel Jacob's proposal. They rather preferred separate rates for Buoy and Anchorage fees and Light-house dues, exempting vessels taking Pilots from the former. He (Mr. LeGeyt) confessed that, upon reflection, he could not see the advantage of this plan over that recommended by Colonel Jacob, which chimed in with the plan proposed for the Ports under the Presidency of Fort William. He had, accordingly, proposed a consolidated charge for Port-dues, at the rate of four annas per ton for every sea-going vessel of the burden of ten tons and upwards, with the exception of fishing-boats and harbor craft. Colonel Jacob had suggested that this rate should be levied quarterly: the Government of Bombay was of opinion that the fees it proposed ought to be levied monthly; and he thought that, as he had excluded from Colonel Jacob's estimate all income from Pilotage charges, it would be as well that four annas per ton should be levied at Kurrachee, as at Bombay, on each arrival, provided that such levy did not take place from the same vessel oftener than once in the same calendar month.

The charges for Harbor services, he proposed, should be the same at Kurrachee as at Bombay.

The Bill was read a first time.

PORT-DUES AT TUNKARIA AND BROACH.

MR. LEGEYT moved the first reading of a Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach." These Ports were situated in the province of Guzerat, and were approached from the sea out of the Gulf of Cambay, and were thirty miles distant from each other. He had, therefore, taken them together, and placed them in one Bill.

The sums received at both Ports for Light-dues were levied under Regulation VI of 1831 and Act I of 1836.

With respect to Tunkaria, he found that the income now derived at the Port, exclusive of Light-dues, was about

1,100 Rs. per annum, and arose from Anchorage fees levied on each arrival. The aggregate tonnage resorting to the Port was stated at 10,504 a year. Improvements were proposed to be made in the Port to the amount of 16,000 Rs.; and the cost of the maintenance of these new works was estimated at 150 Rs. per annum. To meet this outlay, the Commissioner of Customs proposed to increase the Anchorage fees by 50 per cent. The Bombay Government, however, was of opinion that the scale should not be so high as this. It concurred with the Commissioner in considering this enhanced rate desirable; but it would substitute a scale of duties calculated on the ton, for the duty per Candy recommended by that officer. He (Mr. LeGeyt) himself thought that a tonnage due of three annas per ton on every sea-going vessel entering the port, not being a fishing-boat, of a burden of ten tons and upwards, and payable only once in the same calendar month, would be sufficient to raise the income required for the exigencies of the Port.

For Broach, which was a much larger Port—Tunkaria being a mere bunder, and the other an extensive commercial town—the income required was stated to be 5,000 Rs. per annum. The Commissioner of Customs had suggested that part of this sum should be set aside for certain projected improvements in the Port, the cost of which he estimated at 48,000 Rs. A Port-due at Broach at the same rate as at Tunkaria, would give an income of probably about 5,700 Rs. per annum, which would be sufficient to meet all expenses which the local authorities might require for the purposes of the Port.

Act I of 1836 allowed the Government to apply the funds derived from Light-dues to purposes other than the maintenance of the Light-house, provided such purposes would be conducive to the good of the Ports, and to the commerce of the neighbourhood. In some of the letters addressed to the Government of Bombay, it was proposed that the whole of these Light-dues should be devoted to the improvement of Tunkaria and Broach. But it appeared to him that the Act hardly intended to go so far as to empower the

Government to provide piers, wharfs, and such like works out of these funds. It rather appeared to him that the real intention was that the funds should be appropriated to the improvement of the navigation of the Gulf of Cambay; and it seemed desirable not to divert them to the benefit of any particular Port within it.

The Bill was read a first time.

PORT-DUES AT MADRAS.

MR. CURRIE moved the first reading of a Bill "for the levy of Port-dues and fees at Ports within the Presidency of Fort St. George, and to provide against the discharge of ballast in certain Ports within the said Presidency."

He said, the Bill had been sent up by the Madras Government, and in the absence of his Honorable friend the Member for Madras, he had taken it upon himself to bring it before the Council, in accordance with the wish expressed by the Governor-in-Council at Madras. In deference to the Government of that Presidency, he thought it right to present the Bill precisely in the form in which it had been sent up; but he was not prepared to say that it ought to pass in that form. The Bill provided that a Port-due not exceeding four annas per ton should be levied at certain Ports to which it was intended to extend the provisions of Act XXII of 1855; but no particulars were given of the expenses incurred at the several Ports. It also proposed that, at certain other Ports, to which it was not intended to extend the provisions of Act XXII of 1855, the Port-dues now levied should continue to be levied, and that provisions should be enacted for the purpose of protecting those Ports and the channels leading to them from being injured by the discharge of ballast and rubbish. For his own part, he was inclined to think that, wherever Port-dues were levied, the Harbor Act ought also to be extended. If there were an agency to collect Port-dues, there might also be an agency to carry out the provisions of the Harbor Act. That, however, would be a question for the consideration of the Select Committee in case the Bill should be permitted to be read a second time.

The Bill was read a first time.

PORT-DUES (MOULMEIN, RANGOON,
&c.)

MR. CURRIE moved the second reading of the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Dalhousie, Akyab, and Chittagong."

MR. PEACOCK said, it was not his intention to offer any objection to the second reading of the Bill; but he wished it to be understood that, in voting for the Honorable Member's motion, he did not pledge himself to the rates which the Bill proposed. Indeed, the Honorable Member himself admitted, in his Statement of objects and reasons, that some of them might be open to revision. He (Mr. Peacock) thought that to levy, as the Bill did, a rate of six annas per ton in Dalhousie, when the rate for Akyab was to be only two-and-a-half annas per ton, might be very hard upon that new and rising Port. He mentioned this at the present stage merely to inform the Council that, though he should vote for the second reading, he reserved to himself the right of moving such amendments in the Schedule of rates as might appear to him to be necessary when the Bill came before a Committee of the whole Council.

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

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

MR. PEACOCK moved that 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" be read a third time and passed.

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

OFFENCES AGAINST THE STATE.

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill "for the trial and punishment of offences against the State;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

The Bill passed through Committee after some verbal amendments, and was reported.

OPIUM (BENGAL PRESIDENCY.)

MR. CURRIE moved that the Council resolve itself into a Committee 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;" 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.

Sections I to XXVI were passed as they stood.

Section XXVII provided that, when any person was sentenced to pay any fine under the Act, he might, in default of payment, be imprisoned by order of the Magistrate for any time not exceeding six months, or until the fine is paid.

MR. PEACOCK said, as this Bill transferred the power of fining from the Collector to the Magistrate, it was desirable that it should conform to the general Law which now existed for the levy of fines in all cases punishable by Magistrates. Act II of 1839 was that Law, and it provided that—

"in all cases of fines by which offenders are or may be punishable by any Magistrate, according to the provisions of any Act heretofore passed, or which shall hereafter be passed, by the Governor-General of India in Council, it shall be lawful, in case of non-payment, if no other means for enforcing the payment are or shall be provided by such Act or otherwise, for the Magistrate, by warrant under his hand, to levy the amount of such fine by distress and sale of any goods and chattels of the offender which may be found within the jurisdiction of such Magistrate; and if no such property shall be found within such jurisdiction, then it shall be lawful for every such Magistrate, by warrant under his hand, to commit the offender to prison,"

with or without hard labor,

"for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months where the amount shall not exceed one hundred Rupees; and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid upon payment of the amount."

That Act, therefore, proportioned the term of imprisonment to the amount of fine. This Bill allowed six months' imprisonment without reference to any amount of fine. Where a Magistrate could not imprison for more than two months under Act II of 1839, he would be able to imprison for six months under this Bill. It appeared to him (Mr. Peacock) that the provision in the general Law for the mode in which fines awarded by Magistrates should be commuted, ought to be applicable to cases arising under this Bill.

He saw it stated in one of the annexures to the Bill that great inconvenience had been experienced from the confused and uncertain state of the Abkaree Laws. If any inconvenience had arisen with respect to the Abkaree Laws, the same inconvenience would arise with respect to cases of all other descriptions in which a Magistrate had to impose a fine, and there was no specific mode provided for recovering it. If the Abkaree Laws gave rise to any inconvenience, they ought to be amended. For his own part, he thought that the inconvenience complained of was owing to the fact that the offender could not be subjected to imprisonment except upon failure of levying the fine from his goods and chattels.

Then, Section XXVIII said that the provisions of Section XXVII should be applicable also to persons sentenced to pay any forfeitures and penalties under Act XXI of 1856, which was an Act to consolidate and amend the Law relating to the Abkaree Revenue in Bengal. If it was necessary to provide that a fine or forfeiture awarded under Act XXI of 1856 might, in default of payment, be commuted to imprisonment for any term not exceeding six months, a separate enactment should be passed for the purpose, so that persons referring to the Laws relating to the Abkaree Revenue might see from them alone the remedy allowed in case of default. But no one would ever think of looking for a provision on that subject in an Act to consolidate and amend the Law relating to the cultivation of the Poppy and the manufacture of Opium.

He should, therefore, propose, for the present, that Section XXVII be omitted.

MR. CURRIE said, he did not think that the remarks of the Honorable and

learned Member with regard to the term of imprisonment being proportioned to the amount of fine, were properly applicable to a Law of this kind. By this Law, the smallest maximum penalty prescribed was five hundred Rupees; and in commutation for that amount, six months' imprisonment was not too much. Every person offending against the Act would be liable to a fine of five hundred Rupees. If less than five hundred Rupees should be imposed, it would be probably in consideration of the circumstances of the offender. If he was a poor man, the fine awarded would generally be less than five hundred Rupees; but the circumstances which would influence a Magistrate in fixing the amount of fine, would not necessarily affect the term of imprisonment in default of payment.

One reason which he had for inserting Section XXVII was, that it was desirable to have a Law on such a subject as this complete in itself, so that every person offending against it should see from it the penalty to which he was subject. Another reason was that, when the Penal Code passed, Act II of 1839 would probably be abrogated; for the Penal Code would itself contain provisions for the punishment of all the offences to which it referred—namely, punishment of all offences except Revenue offences. It, therefore, appeared to him that in every Revenue Law which might be passed, there should be a distinct provision for the mode of commuting fine to imprisonment. The provision made for this point in the Penal Code would not be applicable to the offences against which this Bill was directed.

In the remarks of the Honorable and learned Member with respect to Section XXVIII of the Bill, he entirely concurred. He admitted that the Section was out of place in the Bill, and he should assent to its omission, undertaking to introduce shortly a separate Bill to amend the Abkaree Law. But he thought that Section XXVII ought to be retained.

Section XXVII was put and agreed to.

Section XXVIII was negatived.

The remaining Sections, with the Title and Preamble, were passed as they stood, and the Bill was reported.

PORT-DUES AND FEES (BOMBAY.)

MR. LEGEYT moved that a communication which he had received from the Government of Bombay, relative to the levy of Port-dues in certain Ports within the Presidency of Bombay, other than the Ports for which Bills had been this day read a first time, be laid upon the table and printed.

Agreed to.

PORT-DUES (MOULMEIN,
RANGOON, &c.)

MR. CURRIE moved that the Bill "for the levy of Port-dues in the Ports of Moulmein, Rangoon, Dalhousie, Akyab, and Chittagong" be referred to a Select Committee consisting of Mr. Grant, Mr. LeGeyt, and the Mover.

Agreed to.

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

MR. PEACOCK moved that Mr. Grant be requested to take 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," to the Governor-General for his assent.

Agreed to.

OFFENCES AGAINST THE STATE.

MR. PEACOCK gave notice that he would, on Saturday the 30th Instant, move the third reading of the Bill "for the prevention, trial, and punishment of offences against the State."

The Council adjourned.

Saturday, May 30, 1857.

PRESENT:

The Honorable J. A. Dorin, <i>Vice-President</i> , 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.

SALES OF LAND FOR ARREARS OF
REVENUE (BENGAL).

THE CLERK presented a Petition from the British Indian Association concerning the Bill "to improve the law

relating to sales of land for arrears of revenue in the Bengal Presidency."

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

Agreed to.

THE PENAL CODE.

(Offences against Religion.)

THE CLERK presented a Petition from Protestant Missionaries resident in and near Calcutta against certain provisions of Chapter XV of "The Indian Penal Code," treating of offences against Religion.

MR. PEACOCK moved that the Petition be referred to the Select Committee on the Code.

Agreed to.

JOINT-STOCK COMPANIES.

MR. PEACOCK presented the Report of the Select Committee on the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof."

OFFENCES AGAINST THE STATE.

On the Order of the Day for the third reading of the Bill "for the prevention, trial, and punishment of offences against the State" being read—

MR. PEACOCK moved that the Bill be recommitted, in order that certain amendments might be introduced into it.

Agreed to.

Section I provided as follows:—

"All persons who, after the promulgation of this Act, shall be guilty of treason or rebellion within any part of the Territories in the possession and under the Government of the East India Company, shall be liable, upon conviction, to the punishment of death, or to the punishment of transportation, or of imprisonment with hard labour for any term not exceeding fourteen years; and shall also forfeit all their property and effects of every description. Provided that nothing contained in this Section shall extend to any place subject to Reg. XIV of 1827 of the Bombay Code."

SIR ARTHUR BULLER said, he had to suggest an amendment in this Section, the object of which was to get rid of any technical difficulties which the word "Treason" might possibly suggest; and, accordingly, he moved that, in lieu of the first five lines of the