

Saturday, 30 May, 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.

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

Section as it stood, (that is, as far as the words "East India Company") the following words be substituted:—

"All persons owing allegiance to the British Government who, after the passing of this Act, shall rebel or wage war against the Queen or the Government of the East India Company, or shall attempt to wage such war, or shall instigate or abet any such rebellion or the waging of such war, or shall conspire so to rebel or wage war"—

and then, the Section would go on as it did at present.

THE CHIEF JUSTICE asked if there was any particular object in the words "after the promulgation of this Act" in the Section as it now stood.

MR. PEACOCK replied that there was no necessity for the words, because the Act would take effect from the time it was passed.

With reference to the amendment proposed by the Honorable and learned Member opposite (Sir Arthur Buller), he would explain briefly how the word "Treason" had come to be inserted in the Section. Regulation X of 1804 empowered the Governor General in Council to proclaim Martial Law within the Presidency of Bengal, and declared that any person taken in open hostility to the British Government, or in the actual commission of any overt act of rebellion against the State, should be punishable with death. A similar Regulation was passed, some time afterwards, for the Presidency of Madras by the Government of that Presidency. But, under both Regulations, it was necessary that Martial Law should be proclaimed in the first instance, and that the offenders should be taken in the commission of the crime, and should be convicted by a Court Martial. The Regulation for Madras was found to be insufficient; and Regulation I of 1834 was passed in amendment of it. The Bill now before the Council was similar to Section II of that Regulation, which enacted that all persons who should be convicted of treason, or rebellion, or other crime against the State, committed after the promulgation of this Regulation, either by the ordinary Courts of Judicature, or before a Special Commission appointed under Regulation XX of 1820, should be liable to sentence of death; and it then went on to provide that the

Sudder Court might pass such other mitigated sentence as might appear to them necessary and just; but that no sentence passed under its provisions should be carried into effect without the previous sanction of the local Government. At the time when this Bill was prepared, the Penal Code had been referred to a Select Committee; but that Committee had not then fully determined how the Code should stand: and he thought that, pending the consideration of that measure, it would be better to introduce a Law for Bengal to the same effect as the Law in force in Madras, differing from it only in this respect—that it should not be necessary to refer sentences passed by Courts Martial held under its provisions, to the Sudder Court for approval. The word "Treason" was used in Regulation I of 1834 of the Madras Code, and also in Act V of 1841; and he had adopted it in this Bill. But he had no objection whatever to the amendment proposed by the Honorable and learned Member opposite. On the contrary, he thought it would be an improvement.

SIR ARTHUR BULLER'S motion was put and carried.

SIR ARTHUR BULLER said, before the Committee proceeded to Section II, he had a new Section to propose, with the view of providing for the case of accessories after the fact to the offences mentioned in the preceding Section. He need not point out how very grave was the offence of harboring persons who had been guilty of treasonable practices, nor how important it was to provide for such offenders adequate punishment. At the same time, he felt sure that the Council would agree with him that the same punishment should not be extended to accessories after the fact as to principals and accessories before the fact; and that, therefore, they could not well be dealt with in the same Section. He, therefore, moved that the following be inserted as a new Section after Section I:—

"All persons who shall knowingly harbour or conceal any person who shall have been guilty of any of the offences mentioned in the preceding Section, shall be liable to imprisonment with or without hard labor for any term not exceeding seven years, and shall also be liable to fine."

The Section was agreed to.

MR. PEACOCK said, in consequence of the alterations made in Section I, certain amendments would be necessary in Clause 1 of Section II.

There was also a technical objection to the wording of the Clause, which he observed had been pointed out. The Clause said—

“Whenever the Executive Government of any Presidency or place within the said territories shall think it necessary to proclaim that any District subject to its Government is in a state of rebellion, it shall be lawful for such Government to issue a Commission, &c.”

The objection suggested was that this wording might mean that it should be lawful for the Government to issue a Commission when they simply thought it necessary to proclaim that a district was in a state of rebellion, without actually making the proclamation. To obviate any such misconstruction, he should move that the words “think it necessary to” be omitted.

The Section, as he proposed to amend it, would run as follows:—

“Whenever the Executive Government of any Presidency or place within the said territories shall proclaim that any District subject to its Government is or has been in a state of rebellion, it shall be lawful for such Government to issue a Commission for the trial of all persons who shall be charged with having committed, within such District, after a day to be specified in the Commission, any of the crimes mentioned in the preceding Sections; or any other crime against the State; or murder, arson, robbery, or other heinous crime against person or property.”

The amendments were severally agreed to, and the Clause then passed.

Clause 2 of the Section was passed as it stood.

Section III was passed as it stood.

Section IV Clause 1 provided that no sentence passed by a Court held under the provisions of the Act, should be carried into effect without the sanction of the Executive Government.

MR. PEACOCK said, in this Section, also, he had followed Regulation I of 1834 of the Madras Code, which provided that no sentence should be carried into effect without the previous sanction of the Governor-in-Council. In cases of this nature, the great advantage of having Special Commissions was, that there should be no delay, and that the sentences passed should be carried into effect as soon as possible after the

commission of the crime. The Council had very recently passed an Act empowering the Governor-General in Council to authorize Officers in command of troops to appoint, in case of necessity, General or other Courts Martial for the trial of persons amenable to the Articles of War for the Native Army, and to carry into immediate effect any sentence of such Courts, the object being to make the punishment prompt in order that it might be as effectual as possible. Whenever a district was in a state of rebellion, and the Executive Government considered it necessary to issue a Special Commission for the trial of the offenders, it appeared to him that the sentences of the Commissioners should be enforced at once. If the Commissioners entertained a doubt as to whether sentence of death in any particular case should be carried out, the sentence might be referred to the local Government; but it was to be observed that Section I would not make it obligatory on any Commission to pass sentence of death where it felt any such doubt. At present, a sentence passed by Special Commissioners in England, could be carried into effect without the sanction of the Executive Government; and it appeared to him that it was no more necessary to have such sanction in this country than in England when Her Majesty issued a Special Commission for the trial of offences against the State. The very object of taking these cases out of the jurisdiction of the ordinary tribunals was to ensure speedy and exemplary punishment upon offenders, with the view of deterring others from following their example. It, therefore, appeared to him that it would be frustrating the main object of this Bill to retain Clause 1 of Section IV; and he should move that the Clause be omitted.

Agreed to.

The 2nd Clause of the Section, and the remaining Sections, with the Preamble and Title, were passed as they stood.

MR. LEGEYNT said, it appeared to him that the Proviso annexed to Section I, excluding Bombay from the operation of the Section, might, after the amendment introduced on the motion of the Honorable and learned Member opposite (Sir Arthur Buller), be advantageously

omitted, and the whole Bill made applicable to Bombay. The Law at Bombay said:—

“Any person subject to the criminal jurisdiction established by Regulation XI of 1827, Sections I and III, who shall raise or employ armed men for the purpose of making war against any of the British Governments in India, or the adjacent countries, for the purpose of open depredation; or who shall join men so raised or employed, or shall attempt the fidelity of the troops of any of the said Governments, or shall assist its foreign enemies or rebels; or who shall be guilty of any act for the subversion of any of the said Governments, or the forcible dismemberment of its territories, shall be liable to the punishment of treason.”

And the punishment of treason was declared to be “death, and confiscation of property.” The Regulation then proceeded to provide that—

“Persons exceeding twelve in number assembling for riotous or rebellious purposes not amounting to treason, shall be liable to the punishment of rebellion.”

And it declared the punishment of rebellion to be “ordinary imprisonment, for a period not exceeding ten years, or fine, or both combined.” He knew that considerable difficulty had arisen in the Presidency of Bombay from the word “Treason” in the Act, and he thought that this Bill as amended might be extended with advantage to that Presidency. He should, therefore, move that the Proviso in the Section be omitted.

THE CHIEF JUSTICE said, he agreed with the Honorable Member for Bombay in thinking that, on so important and general a question as punishment for offences against the State, it was desirable to have one Law for all the Presidencies. But he would ask if the Honorable Member did not think that the omission of the Proviso in Section I at the present stage might give rise to objection and difficulty. The Proviso excluded all the inhabitants of the Presidency of Bombay from the operation of the Section. If the Council struck it out now, might not the inhabitants of that Presidency complain that it subjected them at the very last moment to a provision regarding which they had had no opportunity of expressing their views?

After some conversation, MR. LE-GEYT, with the leave of the Council, withdrew his motion.

The Council having resumed its sitting, the Bill was reported.

MR. PEACOCK moved that the Bill be now read a third time and passed.

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

OPIUM (BENGAL PRESIDENCY).

MR. CURRIE moved that 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” be now read a third time and passed.

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

BOMBAY UNIVERSITY.

MR. LEGEYT moved that a communication received by him from the Government of Bombay be laid upon the table and referred to the Select Committee on the Bill “to establish and incorporate an University at Bombay.”

Agreed to.

RECOVERY OF RENT (BENGAL.)

MR. CURRIE gave notice that he would, on Saturday the 6th of June, move the first reading of a Bill to amend the Law relating to the recovery of rent in the Presidency of Fort William in Bengal.

OFFENCES AGAINST THE STATE.

MR. PEACOCK moved that General Low be requested to take the Bill “for the prevention, trial, and punishment of Offences against the State” to the Governor-General for his assent.

Agreed to.

OPIUM (BENGAL PRESIDENCY.)

MR. CURRIE moved that General Low be requested to take 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” to the Governor-General for his assent.

Agreed to.

THE PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Government of Bombay on the subject of Slavery be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

NOTICES OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 6th of June, move the second reading of the following Bills;—namely,

The Bill "for the levy of Port-dues and fees in the Port of Bombay."

The Bill "for the levy of Port-dues and fees in the Port of Kurrachee."

And the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach."

MR. PEACOCK gave notice that he would, on Saturday the 13th June, move for a Committee of the whole Council 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.

GENERAL LOW having returned to the Council Chamber with the Bill "for the prevention, trial, and punishment of Offences against the State," the Vice-President announced that the Governor-General had signified his assent thereto.

The Council adjourned.

Saturday, June 6, 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.
Hon. B. Peacock,	Buller.

The following Message from the Governor-General was brought by General Low, and read:—

MESSAGE NO. 105.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 30th May 1857, entitled "A 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."

By order of the Right Honorable the Governor-General.

CECIL BEADON,

Secy. to the Govt. of India.

FORT WILLIAM, }
The 6th June 1857. }

RECOVERY OF RENT (BENGAL).

MR. CURRIE postponed the motion (of which he had given notice for this day) for the first reading of a Bill to amend the Law relating to the recovery of rent in the Presidency of Fort William in Bengal.

PORT-DUES (BOMBAY.)

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

MR. CURRIE said, there was one point to which he desired to draw the attention of the Honorable Member. Section V provided that Tug steamers and steamers employed only in the coasting trade should be liable to pay the Port-due only twice a year. But, under Section III, other vessels employed in the coasting trade would be liable to pay once every calendar month. He did not see why this should be. The matter, however, was one of detail, and would doubtless be considered by the Select Committee to whom the Bill might be referred.

MR. LEGEYT said, a good deal of this Bill, which had been framed by himself, was not quite in accordance with the suggestions which had come from Bombay, and he believed that the provisions would undergo discussion in that Presidency. If the Government should object to any of them, it would send up its objections, and they would be taken into consideration. He might mention that Section V he had taken from the Bill which had been brought in for the levy of Port-dues and fees in