

Saturday, 6th June, 1857

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

VOL. III.

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1857.

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

the Port of Calcutta. Steamers employed in the coasting-trade went in and out of the Port of Bombay quite as often as such steamers did in the Port of Calcutta.

The Honorable Member's motion was carried, and the Bill read a second time.

PORT-DUES (KURRACHEE.)

MR. LEGEYT moved that the Bill "for the levy of Port-dues and fees in the Port of Kurrachee" be read a second time.

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

PORT-DUES (TUNKARIA AND BROACH.)

MR. LEGEYT moved the second reading of the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach."

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

OFFENCES RELATING TO THE ARMY AND AGAINST THE STATE.

MR. PEACOCK moved that the Standing Orders be suspended, in order that he might bring in and pass through the several stages a Bill "to make further provision for the trial and punishment of offences relating to the Army, and of offences against the State."

GENERAL LOW seconded the motion, which was carried.

MR. PEACOCK then moved the first reading of the Bill. He said that, by Act XIV of 1849, every person who maliciously and advisedly endeavors to seduce any person serving or engaged to serve in the Military Forces of the East India Company from his allegiance to Her Majesty or duty to the said Company, or who endeavors to stir up any person belonging to the said Service to commit any act of mutiny, is liable, on conviction, to suffer transportation for life, or imprisonment, with or without hard labor, for any term not longer than seven years. One object of the present Bill was to increase the punishment provided for those offences. He thought it would be admitted on all hands that, in the present state of this country, it would not be too severe to make such offences punishable with death.

The first Section, then, of this Bill rendered all persons guilty of any of these offences liable to the punishment of death, or to transportation for life, or to imprisonment, with or without hard labor, for a period not exceeding fourteen years; and to forfeiture of all their property and effects. This was the punishment to which, by the Act passed by the Council last Saturday, persons committing offences against the State were made liable. In the present aspect of affairs, he thought it could scarcely be doubted that any person who seduced or attempted to seduce any officer or soldier in the service or pay of the East India Company from his allegiance to the British Government or his duty to the East India Company, or excited or attempted to excite any such officer or soldier to commit any act of mutiny or sedition, was quite as deserving of the punishment of death as a person guilty of any other offence against the State. It was well known that evil-disposed persons were going about the country spreading false reports among the Native troops for the purpose of exciting them to mutiny and rebellion. By Section I of this Bill, offenders of this class would be liable to the punishment of death. But there were offenders of another class who, in his opinion, were more guilty than the former, and upon whom the punishment of death might be inflicted with even greater justice—he alluded to persons in the back ground who employed their agents or emissaries to stir up the native soldiery; and, therefore, he had provided by the Bill that any person who intentionally caused or endeavored to cause any other person to commit such offence, should be liable, upon conviction, to the punishment of death.

By Regulation X of 1804, when Martial Law was proclaimed in any district, persons owing allegiance to the British Government, and guilty of certain offences against the State, might be tried by Courts Martial. In the present emergency, he had thought it right to provide that any person who should be guilty of any of the offences punishable by Sections I and II of Act XI of 1857, or by this Act, should be liable to be tried by Courts Martial; and that it should be lawful for the Governor-General in Council, by Order in Council,

to empower every General or other Officer in command of troops to appoint such Courts Martial as occasion might require; and also to confirm and carry into effect, immediately or otherwise, any sentence passed by the Courts so appointed. This provision corresponded with Section I of the Act VIII of 1857, which was passed by the Council on the 16th of May last, to amend Act XIX of 1847. That Act was applicable only to the case of offenders who were amenable to the Articles of War for the Native Army. This Bill would render persons who were not amenable to the Articles of War, liable to be tried by Courts Martial for offences against the Act in the same manner as if they were amenable to them.

He had also provided that Courts Martial appointed under the Act should be composed in the same way as Courts Martial appointed under the Act VIII of 1857—namely, either wholly of European, or wholly of Native Commissioned Officers.

By the Act relating to offences against the State, which the Council passed last Saturday, it was provided, that, whenever any district of a Presidency was proclaimed by the Executive Government to be or to have been in a state of rebellion, it should be lawful for the Government to issue a Commission for the trial of persons charged with the commission of any offence against the State, or any heinous crime against person or property. But although an entire district might not be in a state of rebellion, it might happen that there might be many individuals within it guilty of offences against the State, or of exciting or endeavoring to excite, or of causing or endeavoring to cause others to excite mutiny and sedition; and, therefore, in this Bill he had provided, as a temporary measure, that the Governor-General in Council, or the Executive Government of any Presidency, or any person whom the Governor General in Council might authorize so to do, might issue a Commission for the trial of persons charged with having committed within any district named therein, whether such district shall or shall not have been proclaimed to be in a state of rebellion, any offence punishable by Sections I and II of Act XI of 1857, or by this Act; or any other

crime against the State; or murder, arson, robbery, or any other heinous crime against person or property. By this provision, not only the Governor-General in Council and the Executive Governments, but any other person whom the Governor-General in Council might invest with the power, would be able, if necessary, to issue a Special Commission. He thought that there could be no objection that the Chief Commissioner of the Punjaub, for instance, or the Chief Commissioner of Oude, as well as the Governor of a Presidency or the Lieutenant Governor of a Lieutenant Governorship should have such a power entrusted to him, if it should become necessary.

The term "soldier" in this Bill was defined to mean, not only officers and soldiers in the service of the East India Company, but every person subject to any Articles of War. This definition would bring within the Act the case of persons exciting or attempting to excite any of the troops of those Native Princes who had loyally sent their Forces to serve in aid of the British Government.

In making this Statement, he thought it would be as well to read the provisions of the Bill *in extenso*.

Section I provided as follows:—

"Whoever intentionally seduces, or endeavours to seduce, any Officer or Soldier in the service or pay of the East India Company from his allegiance to the British Government or his duty to the East India Company, or intentionally excites or stirs up, or endeavours to excite or stir up, any such Officer or Soldier, or any Officer or Soldier serving in any part of the British Territories in India, in aid of the Troops of the British Government, to commit any act of mutiny or sedition; and whoever intentionally causes, or endeavours to cause, any other person to commit any such offence—shall be liable, upon conviction, to the punishment of death, or to the punishment of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years; and shall forfeit all his property and effects of every description."

Section II was a provision similar to that which had been inserted in the Act for the prevention, trial, and punishment of offences against the State on the Motion of the Honorable and learned Member opposite (Sir Arthur Buller) on Saturday last:—

"Whoever shall knowingly harbour or conceal any person who shall have been guilty of any offence mentioned in the preceding Sec-

tion, shall be liable to imprisonment, with or without hard labor, for any term not exceeding seven years, and shall also be liable to a fine."

These were the Sections which provided for the punishment of the offences dealt with by the Bill.

Section III provided that—

"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 Courts Martial for the trial of any person or persons charged with having committed an offence punishable by this Act or by Section I or Section II of Act No. XI of 1857, and also to confirm and carry into effect any sentence of such Court Martial."

Section IV corresponded with Section II of Act VIII of 1857, which related to persons amenable to the Articles of War for the Native Army. It said:—

"Any General Court Martial, which may be appointed under the authority of this Act, shall be appointed by the Senior Officer on the spot, and shall consist of not less than five Commissioned Officers, the number to be fixed by the General or other Officer appointing the Court Martial. The Order in Council may direct that a General Court Martial to be appointed under the provisions of this Act shall consist wholly of European Commissioned Officers or wholly of Native Commissioned Officers, and in such case the Officer appointing the Court Martial shall determine whether the same shall consist wholly of European Officers or wholly of Native Officers."

The following were the remaining Sections of the Bill:—

"V. Sentence of death or other punishment, to which the offender is liable by Law, may be given by such Court Martial, if a majority of the Members present concur in the sentence; and any such sentence may be confirmed by, and carried into effect immediately or otherwise by order of the Officer by whom the Court Martial shall have been appointed, or, in case of his absence, by the Senior Officer on the spot."

"VI. It shall be lawful for the Governor-General in Council to countermand or alter any Order in Council which may be issued under the authority of this Act."

"VII. It shall be lawful for the Governor-General in Council, or for the Executive Government of any Presidency or place, or for any person or persons whom the Governor-General in Council may authorize so to do, from time to time, to issue a Commission for the trial of all or any persons or person charged with having committed within any District described in the Commission, whether such District

shall or shall not have been proclaimed to be in a state of rebellion, any offence punishable by Sections I and II of Act XI of 1857, or by this Act; or any other crime against the State; or murder, arson, robbery, or other heinous crime against person or property.

"VIII. The Commissioner or Commissioners authorized by any such Commission, may hold a Court in any part of the District mentioned in the Commission, and may there try any person for any of the said crimes committed within any part thereof, it being the intention of this Act that the District mentioned in the Commission shall, for the purpose of trial and punishment of any of the said offences, be deemed one District.

"IX. Any Court held under the Commission shall have power, without the attendance or futwa of a Law Officer, or the assistance of Assessors, to pass upon every person convicted before the Court of any of the aforesaid crimes any sentence warranted by Law for such crime; and the judgment of such Court shall be final and conclusive; and the said Court shall not be subordinate to the Sudder or other Court.

"X. If a Commission be issued under the authority of this Act, any Magistrate or other Officer having power to commit for trial within the District described in the Commission, may commit persons charged with any of the aforesaid crimes within such District for trial before a Court to be held under this Act.

"XI. Nothing in this Act shall extend to the trial or punishment of any of Her Majesty's natural born subjects born in Europe, or of the children of such subjects.

"XII. This Act shall not extend to the trial or punishment of any person for any offence for which he is liable to be tried by the Articles of War.

"XIII. The word "Soldier" shall include every person subject to any Articles of War.

"XIV. This Act shall continue in force for one year."

With reference to Section XI, Mr. Peacock explained that he had inserted it in consequence of a Clause in the Charter Act which provides that it shall not be lawful for the Governor-General in Council, without the previous sanction of the Court of Directors, to pass any Law empowering any Courts of Justice, except those constituted by Royal Charter, to sentence to the punishment of death any of Her Majesty's natural-born subjects born in Europe, or the children of such subjects.

In conclusion, he observed it might be said that this Bill was a very stringent measure. He admitted that it was so; but the circumstances under which the country was placed at this moment required that very rigorous measures should be passed.

He proposed the Bill as a temporary measure only; and he had limited its

operation to one year. If any Honorable Member desired that that period should be reduced, he would have no objection to make the necessary alteration.

With these observations, he moved the first reading of the Bill.

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

MR. PEACOCK moved that the Bill be read a second time.

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

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Sections I to III were passed as they stood.

Section IV being read—

GENERAL LOW said, the Section enacted that a Court Martial appointed under the Act should consist of not less than five Members; and that the Order in Council might direct that it should consist wholly of European, or wholly of Native Commissioned Officers. But it appeared to him it was quite possible that crimes of this nature might be committed at a Station so small that there might not be five European Officers or five Native Officers in it. To meet such cases, he should propose that it should be left open to the Governor-General in Council to direct in his Order in Council that the Court might consist partly of European and partly of Native Commissioned Officers, so as to secure the important object of bringing offenders to immediate trial and punishment.

MR. PEACOCK said he had no objection to the amendment proposed by the Honorable Member. The Section as it now stood, had been taken from Act VIII of 1857. At that time, it was considered that there were serious objections to forming Courts Martial for the trial of Native Troops partly of European and partly of Native Officers. This, however, was a Bill for the trial, not of persons amenable to the Articles of War for the Native Army, but of any person seducing or attempting to seduce Officers and Soldiers from their allegiance, or exciting or attempting to excite them to mutiny or rebellion, and he did not see any objection to a Court Martial assembled under the authority of the Act being composed either wholly of Europeans or wholly of Natives, or

Mr. Peacock

partly of Europeans and partly of Natives.

MR. PEACOCK then amended the Section by inserting in it the words "or partly of European Commissioned Officers and partly of Native Commissioned Officers," and it was then passed.

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

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.

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

Agreed to.

PORT-DUES (BOMBAY.)

MR. LEGEYT moved that the Bill "for the levy of Port-dues and fees in the Port of Bombay" be referred to a Select Committee consisting of Mr. Grant, Mr. Currie, and the Mover.

Agreed to.

PORT-DUES (KURRACHEE.)

MR. LEGEYT moved that the Bill "for the levy of Port-dues and fees in the Port of Kurrachee" be referred to a Select Committee consisting of Mr. Grant, Mr. Currie, and the Mover.

Agreed to.

PORT-DUES (TUNKARIA AND BROACH.)

MR. LEGEYT moved that the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach" be referred to a Select Committee consisting of Mr. Grant, Mr. Currie, and the Mover.

Agreed to.

PIRATICAL VESSELS (STRAITS SETTLEMENT.)

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

MESSAGE No. 104.

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

his assent to the Bill which was passed by them on the 23rd May 1857, entitled "A 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."

By order of the Right Honorable the Governor-General.

CECIL BEADON.

Secy. to the Govt. of India.

FORT WILLIAM, }
The 30th May 1857. }

OFFENCES RELATING TO THE ARMY
AND AGAINST THE STATE.

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

MESSAGE No. 106.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was this day passed by them entitled "A Bill to make further provision for the trial and punishment of certain offences relating to the Army, and of offences against the State."

By order of the Right Honorable the Governor-General.

CECIL BEADON.

Secy. to the Govt. of India.

FORT WILLIAM, }
The 6th June 1857. }

PORT-DUES (CALCUTTA.)

MR. CURRIE moved that a communication received by him from the Government of Bengal be laid upon the table and referred to the Select Committee on the Bill "for the levy of Port-dues and fees in the Port of Calcutta."

Agreed to.

The Council adjourned.

Saturday, June 13, 1857.

PRESENT :

The Governor-General, *President*, in the Chair,

Hon. J. A. Dorin,	Hon. B. Peacock,
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. Buller.

THE PRESS.

THE PRESIDENT said—Before the Council proceeds to the Orders of the Day, I ask permission to bring before it a subject of pressing and paramount importance. Those whom I have the honor to address are well acquainted with the present aspect of public affairs in the Northern parts of India. The general disaffection of the Bengal Army in the North Western Provinces; the lawlessness and violence of the evil-minded part of the population to which this disaffection has given opportunity and encouragement; the pillage, the heart-rending loss of life, and the up-rooting of all order in that part of the country, are painfully notorious. I will not dwell upon them. Neither will I trace the causes which have led to these calamitous results, or describe the means by which the Government is meeting and repressing them. But there is one quarter to which I desire to direct the attention of the Council—a quarter from which the evil influences which now pervade so many minds have been industriously put in motion, and to which a large portion of the discontent instilled into our troops and our ordinarily harmless and peaceable community, is attributable. I doubt whether it is fully understood or known to what an audacious extent sedition has been poured into the hearts of the Native population of India within the last few weeks under the guise of intelligence supplied to them by the Native Newspapers. It has been done sedulously, cleverly, artfully. Facts have been grossly misrepresented—so grossly, that, with educated and informed minds, the very extravagance of the misrepresentations must compel discredit. But to Native readers of all classes scattered through the country, imperfectly acquainted with the proceedings of the Government, and not well instructed as to what is passing even immediately around them, these misrepresentations come uncontradicted, and are readily credited.

In addition to perversion of facts, there are constant vilifications of the Government, false assertions of its purposes, and unceasing attempts to sow discontent and hatred between it and its subjects.