

Saturday, 29th March, 1856

PROCEEDINGS



OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1856.

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CONTENTS.

Proceedings of the Legislative Council from January 19, to December 27, 1856,	1
Standing Order for the admission of Reporters for the Public Press,	732a
Index,	733

Bill "to amend the 122nd Article of War for the Native Army," and on the Bill "for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company in India."

MR. CURRIE moved that the Bill "to enable Session Judges to pass sentence in trials for Rape" be referred to a Select Committee, consisting of Mr. Elliott, Mr. Allen, and the Mover.

Agreed to.

ADJOURNMENT.

SIR JAMES COLVILE said, as it was the wish of Honorable Members to adjourn over the Easter holidays, he should move that the Council adjourn until this day fortnight.

Agreed to.

The Council then adjourned.

Saturday, March 29, 1856.

PRESENT :

The Right Honorable the Governor General, *President*, in the Chair.

Hon. Sir J. W. Colville,	D. Elliott, Esq.,
H. E. the Commander-in-Chief,	C. Allen, Esq.,
Hon. J. A. Dorin,	P. W. LeGoyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq.
Hon. B. Peacock,	and
	Hon. Sir Arthur Buller.

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

MESSAGE No. 72.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 8th March 1856, entitled "a Bill for the better control of the Gaols within the Presidencies of Fort St George and Bombay."

By Order of the Right Honorable the Governor General.

CECIL BEADON,

Secretary to the Govt. of India.

FORT WILLIAM,
The 14th March 1856. }

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition from certain Inhabitants of the Lower Provinces of Bengal against the Bill "to remove all

obstacles to the Marriage of Hindoo Widows." The Petition purported to be signed by upwards of 33,000 persons.

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

Agreed to.

THE CLERK presented a Petition against the same Bill from certain Inhabitants of Rungpore.

MR. GRANT moved that this Petition be printed, and referred to the Select Committee on the Bill.

Agreed to.

POLICE AND CONSERVANCY (PRESIDENCY TOWNS, &c.)

THE CLERK presented a Petition from the Mahomedan Association; concerning some proposed alterations in the Bill "for the conservancy and improvement of the Towns of Calcutta, Madras and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore and Malacca."

Also a Petition from the same body, praying for certain amendments in the Bill "for regulating the Police of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MR. ELIOTT moved that these Petitions be printed, and referred to the Select Committee on the Bills to which they relate.

Agreed to.

CATTLE TRESPASS.

MR. CURRIE presented the Report of the Select Committee on the Projects of Law relating to Cattle Trespass.

AMEENS (BENGAL).

Also the Report of the Select Committee on the Bill "to amend the Law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William."

LAND REVENUE OF THE TOWN OF MADRAS.

MR. ELIOTT presented the Report of the Select Committee on the "Bill to amend Act XII of 1851 (for securing the Land Revenue of Madras".)

STRAITS' EXCISE ACT.

MR. ALLEN presented the Report of the Select Committee on the Project of Law

for amending Section XXXVI of Act XIV of 1851.

BOMBAY MUNICIPAL TAXES.

MR. LEGEYT presented the Report of the Select Committee on the "Bill to alter and amend the Laws relating to certain of the Municipal Taxes in the Presidency Town of Bombay, and to legalize certain proceedings connected with the collection of the Shop and Stall Tax."

LAND CUSTOMS (BOMBAY).

MR. LEGEYT postponed the first reading of the Bill to amend Act II of 1852.

SALT DUTIES (BOMBAY).

Also, of the Bill for consolidating and amending the Law relating to the Salt Duties at Bombay.

CATTLE TRESPASS.

MR. CURRIE moved the first reading of a Bill "relating to trespasses by Cattle." In doing so, he said the Bill had been prepared by the Select Committee on the Projects of Law relating to Cattle Trespass. When he moved for the appointment of that Committee, he explained the state of the Law as bearing on Cattle Trespass in the three Presidencies; and he enumerated the occasions on which the subject had attracted the attention of the Legislature. He stated the various projects of Law which had at different times been proposed, and explained the general character of those projects, and the reasons for which they had not been proceeded with. The Council, by voting for the appointment of a Committee, had recognised the importance of the subject, and the claim which it had on their attention.

On the present occasion, he thought it would be sufficient to explain briefly the nature of the measure which the Select Committee had determined to recommend.

The call for legislation had come from Bengal. It had originated in certain representations made by the Indigo Planters' Association in a letter addressed to the Lieutenant Governor of Bengal, in consequence of which the Lieutenant Governor called for reports on the subject from the local Officers. These Officers concurred almost unanimously in thinking that legislation was necessary.

It so happened that, at about the same time, the defective state of the Law with reference to Cattle Trespass had attracted the attention of the Sudder Court of the other division of this Presidency, and the Agra Court addressed some remarks to the Lieutenant Governor of the North-Western Provinces, which they described as introductory to the proposal of a project of Law for the removal of the defect. Subsequently, a communication received from the Madras Government was referred to the Select Committee, from which it appeared that the authorities at that Presidency were likewise desirous of some special legislation on this subject.

The Select Committee had, therefore, come to the conclusion that, though it was in Bengal especially that the nuisance of Cattle Trespass was felt to be an evil calling for redress, yet any measure provided for that object must be made applicable to all the three Presidencies.

Such was the Bill which he had now the honor to introduce. The principle which it adopted was one which had prevailed, though without warrant of Law, at one time or other, in almost all parts of the country. It was to allow occupiers of land to seize cattle found doing damage, and make them over to a public Officer, by whom they were detained until released by the owner, on payment of a small fine. In both the Divisions of the Bengal Presidency, cattle so seized used formerly to be taken to the Police Thannah. In the Presidencies of Madras and Bombay, they used to be, and apparently still were, made over to the head of the village. It was now proposed to legalize the practice of seizure, and to establish pounds for the reception of seized cattle, and place them in charge of pound-keepers, to be appointed by, and be responsible to, the Magistrate. In Madras and Bombay, the pound-keepers would generally be the village head-men. In Bengal, there would be pounds at Police Stations and such other places as the Magistrate, acting under the orders of the Executive Government, might determine. The Police Darogah would, of course, be the Magistrate's agent, and he would be the Officer by whom the sales of impounded cattle would be effected, when necessary, for the recovery of fines and expenses, or in consequence of the cattle not being claimed; but it would not be necessary for him ordinarily to exercise any interference with the pounds. Fines would be received and cattle released by the pound-keepers

without his intervention ; and the proceedings of the pound-keepers would be regulated and controlled by the prescription of registers and returns, and the imposition of penalties for misconduct.

The system of levying fines for cattle found trespassing, was one which was familiar to the people of the country ; and the Select Committee concurred with the great majority of the Officers who had written on the subject in thinking that it was the only feasible plan. They were satisfied that it would not be safe in this country to allow the detention of cattle for the recovery of amends, as was the case in England.

As the party seizing would derive no benefit from the seizure beyond the probable protection of his property from any future injury, the risk of any abuse of the power of seizure was not perhaps very great. Still, it was quite possible that the power might sometimes be abused from malicious motives, and for purposes of annoyance ; and it was necessary to provide an easy and speedy means of redress for unlawful seizure. With this view, the Select Committee had adopted a suggestion made by Mr. Mills, in a letter addressed to the Bengal Government, which was amongst the printed papers, that complaints of illegal seizure should be cognizable by Moonsiffs, who should have the power of awarding damages to the extent of 100 Rupees. The inquiry instituted by the Moonsiff was to be summary, and his order final.

Another point for which it had been thought necessary to make special provision was, the forcible rescue of seized cattle. This was likely to be a fruitful cause of breaches of the peace, unless attempts at such rescue were prevented, or put down whenever they were made, by heavy penalties. Such penalties were provided by the Bill ; which also provided that complaints of rescue should be taken cognizance of by the Police.

The provisions for seizing and impounding cattle were intended generally as a remedy for negligent or casual trespass. Wilful trespass—that is, trespass from malicious motives or with predatory objects—must be subjected to much heavier penalties. The Bill, accordingly, made such trespass punishable to the full extent of the powers of a Bengal Magistrate, as was now the case with regard to wilful damage to Indigo crops, by Regulation V of 1830. The powers of the Magistrate were imprisonment not exceeding six months, and fine to the extent of Rupees 200. The Bill provided that the

Mr. Currie

fine should be recoverable by sale of the cattle, whether the person convicted of the trespass is or is not the owner. This seemed to be the readiest way to make the penalty fall on the real offender. The Bill also provided that compensation might be paid out of the fine for damage proved to the satisfaction of the Magistrate.

It was proper to remark, with reference to this part of the Bill, that it followed the principle of Regulation V of 1830, and allowed complaints to be made, not only by cultivators and occupiers of land, but also by any person who had made advances for the delivery of the crop. It had been ruled by the Sudder Court at Calcutta that, under the Bengal Law, an Indigo Planter had a right to bring a civil action for damage done by the trespass of cattle to a crop for which he had made advances ; and this had seemed to the Select Committee to be a strong reason for maintaining a similar principle with regard to the criminal procedure. But though the Bill gave the maker of advances the right of complaining in cases in which wilful damage was done to the crop on which he had secured a lien, it did not give him the right of seizing and impounding cattle which were found trespassing on the land. It seemed to the Select Committee that it would be right to restrict the latter right to the person having the occupancy of the land.

The only other point, which he thought it necessary to notice, was a provision which reserved to the Executive Government a discretion of excluding from the operation of the Bill any district or tract of country to which its provisions might be considered unsuitable. In waste tracts, where the population was scanty, and the villages were widely scattered, a Law like this would not be required, and the enforcement of its provisions would be inconvenient.

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

The Bill was read a first time.

CHOWKEYDARS.

MR. ALLEN moved the second reading of the Bill "for the punishment of Chowkeydars for neglect of duty."

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

BILLS OF LADENG.

SIR JAMES COLVILLE moved that the Council resolve itself into a Committee

on the Bill "to amend the law relating to Bills of Lading."

Agreed to.

The Bill passed through Committee without amendment.

The Council resumed its sitting

ARTICLES OF WAR FOR THE NATIVE ARMY.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to amend the 122nd Article of War for the Native Army," and that the Committee be instructed to consider the Bill in the amended form in which it was recommended by the Select Committee to be passed.

Agreed to.

THE COMMANDER-IN-CHIEF said, it had been suggested at a former Meeting of the Council that it might be advisable to re-consider the whole of the Articles of War, which had not been revised since 1849, and he had communicated on the subject with the Judge Advocate General of the Bengal Army. That officer had since addressed letters to the Judge Advocate General at Madras and the Judge Advocate General at Bombay, requesting them to state whether, in their opinion, any alterations were required. If any suggestions should be offered, it would be desirable that they should be considered together. He did not see any reason, however, why this Bill, which was a very short one, should not be proceeded with in the meantime. It would not interfere with the question of the general revision of the Articles of War.

Section I being read by the Chairman—

SIR ARTHUR BULLER moved as an amendment that the words "except as to offences committed before the passing of this Act," be inserted in the 5th line of the Section. He said, the Council would observe that this Act proposed to repeal the 122nd Article of War for the Native Army, which provided certain penalties for attempts to commit murder, and therefore, unless these words were introduced, if any person, after the repeal of the Article in question, should be brought to trial for an offence committed before its repeal, no law would reach him; because the former Article, being repealed, would no longer be in force, and the new Article would not have a retrospective effect. The words which he suggested were those commonly used in Acts which repealed and re-enacted in a different shape penal provisions, and which had no intention that offenders against the

repealed enactment should altogether escape.

The amendment was agreed to, and the Section passed.

The Preamble and title were agreed to as they stood.

The Council resumed its sitting.

DESEBTION OF EUROPEAN SOLDIERS.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company in India," and that the Committee be instructed to consider the Bill in the amended form in which it was recommended by the Select Committee to be passed.

Agreed to.

Section I of the Bill was as follows:—

"If it shall appear that any officer or soldier, being a deserter from the said Forces, has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred Rupees. Provided always, that no conviction for such minor offence as is lastly hereinbefore described, shall be lawful, unless the same shall be stated in the charge which the party is called upon to answer; and in such charge, it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by neglect of duty, or by reason of a want of proper discipline on board the vessel, allowed such deserter to be so concealed."

MR. ALLEN said, he thought this Section was very stringent, and exceptional in its character; and that, consequently, the Council, before passing it, ought to be satisfied whether sufficient grounds had been shown for its adoption. He thought the provision stringent and exceptional, because, although the Bill was for the better prevention of desertion by European soldiers from the land forces of Her Majesty and of the East India Company, yet this Section did not in reality provide any penalty for assisting desertion and concealing a deserter. It particularly said that the Master or person in charge of a vessel, *though ignorant of the fact of concealment*, would be liable to a fine not exceeding 500 Rupees. As the Section stood, he would be liable to that fine even if he were ignorant that the person on board was a deserter. The real offence under the Section appeared to him to be neglect of

duty, or want of proper discipline on board, such neglect of duty or want of proper discipline allowing a deserter to be concealed in the vessel. But how was a Magistrate clearly to find out what was neglect of duty or want of proper discipline on board a Merchant vessel? The want of proper discipline on board a ship of war belonging to Her Majesty or the East India Company's Navy, persons could understand. Persons could understand it in a Regiment. But what was it on board a Merchant vessel? Would the Magistrate take for his guidance the discipline known to the vessels of the Peninsular and Oriental Company, or that known to Mr. Green's ships from Blackwall? Would such discipline be that which was known to colliers from Hull?—or was such the discipline practised on board American vessels coming here from California? Was there any such discipline now existing on board all the vessels of these classes as would give to Commanders a knowledge of every deserter who happened to go on board and be concealed there? He apprehended that there was not; and yet, the Section as it stood specifically provided that ignorance of the fact on the part of Commanders, even though proved, should be no justification.

When the Bill was first brought in, it was said that it followed very closely the Bill which the Council had passed last year for the better prevention of desertion from the Indian Navy. But because the Council had passed that Bill last year, was it not to exercise its judgment now as to whether it would be right to retain this Section in a Bill for the better prevention of desertion from the Army? If that were to be the effect of the Council's decision upon the former Bill, might it not be asked to enact a similar Law for the case of criminals other than deserters? Might it not be asked to enact that if felons or murderers were found concealed on board a merchant vessel, the Commander, though ignorant of their being on board, or of their being felons or murderers, should yet be liable to a penalty of 500 Rupees?

For his own part, when the Bill for the better prevention of desertion from the Indian Navy was passed by the Council, he opposed the Section which made Commanders liable to punishment for the concealment of deserters on board their vessels, though they might be ignorant of the fact; and, therefore, no want of consistency could be imputed to him in voting against the corresponding

Mr. Allen

Section in the present Bill. He thought, however, that even those Honorable Members who had approved of the Section in the Bill relating to the Indian Navy, might fairly object to a similar Section in a Bill relating to the Army. The master of a merchantman had considerable temptation for harboring or concealing a deserter from the Indian Navy. A deserter from that Service would, most probably, be a good sailor—a good seaman. A deserter from the Army would, most probably, be the very reverse. It was almost proverbial that the Captain of a vessel would rather have for one of his crew any man than a soldier. Of all trades in the world, that of a soldier was thought to be the least compatible with seamanship. Consequently, there was much less temptation for the master of a merchantman to conceal or harbor a deserter from the Indian Army than a deserter from the Indian Navy.

Again, it was to be remembered that there was much greater facility for escape into Merchant vessels for deserters from the Navy than for deserters from the Army. A ship belonging to the Indian Navy might be lying alongside a merchantman, and a seaman of the former might get into a bumboat, and immediately transfer himself into the latter. But a deserting soldier had no more facility for getting on board a merchantman than any other class of criminals ashore; and no one had thought of asking for such a provision as this as to any other class of criminals ashore. The Honorable Member for Bombay had said, on the motion for the first reading, that this measure had been asked for from the extreme East to the extreme West of the Empire. But the gallant General commanding at Pegu, who had asked for a Bill, had asked for no such Bill as this. He had only asked for an enactment to punish *connivance* at the desertion or concealment of soldiers. It was true that the Bombay Government had asked for a Bill like the one passed for the Indian Navy, but it appeared to him that the reasons which they gave for its introduction were but scant. All that they said was, that desertion from the Army was frequent.

These objections he felt to the Section generally. But he would also draw attention to what appeared to him to be an error in the Section itself. The concluding part ran thus:—

“Provided always, that no conviction for such minor offence as is lastly hereinbefore

described shall be lawful, unless the same shall be stated in the charge which the party is called upon to answer; and in such charge, it shall be lawful to state in the alternative that the party has either knowingly harbored or concealed a deserter on board his vessel, or has, by neglect of duty, or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed."

He was not aware that any existing Act made concealing or harboring a deserter from the Army on board a vessel, an offence; and he could not see that this Bill did so. The Section had been copied literally from Section III of Act III of 1855; but Section II of that Act had been altogether left out; and he could not see by what clause in this Bill the omission was supplied.

On the whole, then, he should vote against the Section altogether.

THE COMMANDER IN-CHIEF said, not having been a Member of this Council when the Bill relating to desertion from the Indian Navy was under consideration, he was not quite prepared for the opposition which the Honorable Member for the North-Western Provinces had made to the first Section of this Bill.

He was perfectly ready to acknowledge that the provisions of the Bill were extremely stringent—so much so that, if they were proposed in England, they might very fairly be objected to. But we had to deal with a different state of things in this country, and were obliged to adopt measures to support our authority which might elsewhere appear arbitrary or uncalled for. The Honorable Member said that, before passing such a Bill, the Council should be satisfied that there were sufficient reasons for its necessity. He (the Commander-in-Chief) certainly agreed in this; but similar enactments had been fully considered last year, in the Bill relating to desertion from the Indian Navy; and as that Bill had been eventually passed, he concluded that a majority of the Council had then decided that the necessity for enacting stringent provisions for the prevention of desertion did exist. The Honorable Member said he had also opposed the Section in the former Bill which corresponded with the first Section in this, and that, therefore, he could not be blamed for inconsistency. His objection was that, in the power asked for to punish Commanders conniving at desertion, the Section made them also punishable when deserters were found concealed on board their ships, even though they should have been ignorant of the fact of the concealment. He further argued

that, as the temptation to Commanders of vessels to harbor deserters from the Navy was greater than that of harboring deserters from the Army, there might be stronger grounds for subjecting them to severe penalties. He (the Commander-in-Chief) could not agree with the Honorable Member in these objections. A proper system of discipline ought to be, and he believed was, maintained on board merchant vessels. No Captain would venture to navigate his vessel without being able to enforce a discipline among his crew not much inferior to that on board ships of war. This, he believed, was the case; and such a state of discipline would certainly enable the Commander of a merchant vessel to know what was occurring on board his own ship. The only question seemed to him to be, whether the extent of fine provided by this Section was too severe a penalty for the offence of being ignorant that a deserter was concealed on board his vessel. If the harboring or concealment on board took place with the knowledge of the Commander, the Honorable Member would not object to it; but he thought the penalty of Rs. 500, if he should be ignorant of the fact of the concealment, excessive. He (the Commander-in-Chief), however, thought that to make the conviction of the Commander depend upon proof of his knowledge of the harboring or concealment, would be to allow too great a latitude for the commission of the offence which the Bill was designed to repress. There would be very great difficulty in proving whether he was ignorant or not.

This Section of the Bill was a verbatim copy of that in the Bill of 1855 to prevent desertion from the Navy, and he did not believe that the Council would make any difference in the provisions that were required to effect the same object for the Army.

On the whole, therefore, while he was willing to acknowledge that the provision was a very stringent one, he considered that, under the circumstances with which the Legislature had to deal, it was necessary; and he should therefore vote for the Section as it stood.

SIR JAMES COLVILE said, it was quite clear that, whether the substance of this Section was enacted or not, it was impossible that the Section should be passed as it stood. The blot which the Honorable Member for the North-Western Provinces had pointed out, seemed to him a conclusive argument against passing the Section in its

present form. It had been taken verbatim from the third Section of the Act relating to desertion from the Indian Navy, but that Act also contained the following Section (Section 2nd) :—

“Whoever, directly or indirectly, instigates or procures any Officer, Seaman, or other person belonging to the Indian Navy to desert, or knowing that any Officer, Seaman, or other person belonging to the Indian Navy is about to desert, assists him in deserting; or knowing any Officer, Seaman, or other person belonging to the Indian Navy to be a deserter, harbours, conceals, or assists in concealing such deserter, shall, for every such offence, be liable to a fine not exceeding one thousand Rupees.”

That Section, therefore, created a major offence, and made it punishable with a major punishment. It had been omitted from this Bill; but the subsequent provision, creating a minor offence, and providing a minor punishment, had been inserted.

MR. LEGEYT remarked, that the offence created by Section II of Act III of 1855, was provided for in the Act of Parliament relating to the Indian Army, and it was, therefore, thought unnecessary to import that Section into this Bill. The Act of Parliament relating to the Indian Navy contained no such provision, and that was the reason why the Section referred to was inserted in Act III of 1855.

SIR JAMES COLVILLE said, that, in that case, the Section in this Bill ought to be amended by leaving out the word “minor” before the word “offence” in the Proviso. As it now stood, it seemed to imply that the Act had previously specified some major offence, and then proceeded to create and deal with a minor offence.

The real question, in considering the substance of the Section, appeared to him to be whether the evil which it was designed to remove existed in a degree which called for the application of so stringent a remedy. If it was the case that, when desertions from the Army took place, the deserters were frequently concealed and carried away in merchants ships, he really saw no reason why the Legislature should not give the same protection to the land forces of Her Majesty and the East India Company which it had already given to the Indian Navy. Those forces were, certainly, not less important to the protection of the country than the Indian Navy; and every act of desertion from the Army caused at least as serious a loss and expense to the State as could be caused by an act of desertion from the Indian Navy.

Sir James Colville

If, therefore, the Military Authorities considered—and they appeared to consider—this Section necessary, he should support it, on the same grounds that he had supported the corresponding Section in the Bill relating to the Indian Navy—which was, that the Master of a merchantman was bound to exercise that degree of vigilance and to have that degree of knowledge of what takes place in his own vessel which should enable him to prevent persons from being smuggled on board and taken to sea.

MR. LEGEYT said, the Honorable Member opposite (Mr. Allen) had said he did not see that sufficient reasons had been shown for the adoption of this stringent provision. But the Council would find it stated in the Letter from the Secretary to the Government of Bombay, which formed one of the annexures to the Bill, that

“desertion from the European troops of the Bombay Garrison has become very frequent, and that it is mainly attributable to the facilities afforded by the ships in the harbor.”

The Letter proceeded to say that the Government of Bombay submitted for the “consideration of the Government of India, the expediency of passing an Act giving the same powers for the apprehension of deserters from the Army, and for punishing persons who aid and encourage them, as those given with reference to deserters from the Indian Navy by Act III of 1855.”

The Honorable Member had also said, that, although the Government of Bombay had solicited an Act of this kind, he did not see that the General Officer Commanding at Pegu had asked for any such measure. But he (Mr. LeGeyt) found in the last paragraph of General Steel’s letter the following words :—

“I request that it may be submitted for the consideration of the Supreme Government whether these cases may not be met by a legislative enactment to punish Masters of ships, and others, for concealing, or conniving at the concealment, and carrying away of deserters from the Armies, (or Navies) of the Queen or the East India Company. It seems probable that it would be sufficient if a subsidiary Clause, to the effect proposed, were added to the Act XIV of 1849, published in G. O. G. G., No. 385, dated 20th October 1849.”

It was probable that General Steel was not aware, at the date of this letter, that the Act for the better prevention of desertion from the Indian Navy had been passed, or it might safely be inferred, from what the gallant officer said in his letter, that he would have asked for just such a Bill as the Bombay Government had applied for.

As to the point of discipline, he thought that there was no vessel that went to sea in which the Commander had not ample means at his command to prevent a deserter from the Army being received on board; and if he did not exercise that power, he should be responsible for the neglect. It was the commonest thing in the world for the Commander of a merchant vessel to put up in the gangway a board intimating that no person would be admitted except upon business. It was unreasonable to suppose that any Commander would maintain such lax discipline among his crew as to leave his vessel open to all the world to come and take up their quarters on board, and eat and drink the ship's provisions, which they would necessarily do while they remained there.

The Honorable Member for the North-Western Provinces had also observed that the temptation to Masters of vessels to harbor or conceal deserters from the Indian Navy was great, while there was no temptation to harbor or conceal deserters from the Indian Army, the former being good sailors, and the latter ignorant of seamanship. But if that were so, and it was found that Commanders of Merchant vessels did encourage desertion from the Indian Army nevertheless, surely those who committed a public mischief without a motive ought not to be less liable to punishment than those who offended with a view to their own benefit, or the benefit of the owners of their vessels. It appeared that Commanders of Merchant vessels did connive at the escape of deserters from the Army. The Commanding Officer of the Madras Artillery in Pegu, in a letter to the Assistant Adjutant General of the Pegu Division, which was among the printed papers, gave the case of three Artillerymen who had deserted, and gone on board the "Lancashire Witch;"—

"but the Pilot having discovered them, would not allow the vessel to proceed beyond the Light Ship, at the mouth of the river, until they were given up, which was done, and he brought them back to Rangoon, where he put them ashore, and allowed them to return to their barracks."

It thus appeared that Masters of merchantmen, at Rangoon at least, did take European soldiers on board their vessels, although, according to the Honorable Member for the North-Western Provinces, there was no inducement whatever for Commanders of merchantmen to do so. The General Officer commanding at Rangoon had suggested a legislative enactment to punish Masters of

vessels for concealing, or conniving at the concealment and carrying away of deserters; and there was a direct requisition from the Government of Bombay, asking for a provision as stringent as the one which the Council had passed last year in the Bill relating to desertion from the Indian Navy.

Looking, therefore, both at the facts adduced by the General Officer commanding at Pegu and the Government of Bombay, and at the general belief entertained by those authorities, he thought that such a measure as this was necessary, and he therefore hoped that the Section would be allowed to stand.

SIR ARTHUR BULLER said, he had also come prepared with an amendment for the purpose of omitting the word "minor," which had obviously been inserted by accident.

With regard to the general objection raised, he confessed he did not feel quite sure whether the Council would not be going too far if it retained the words "or for the want of proper discipline on board his vessel." If a deserter came to be concealed on board a ship in consequence of the Master's own neglect of duty, then by all means let him be responsible; but if the deserter were there by no neglect of duty on the Master's part, it would seem hard to make him still responsible.

The words of the Act would seem to imply that want of proper discipline might exist on board a ship and be attributable to some other cause than neglect of duty on the part of the Master; and possibly it might happen, though he should think very rarely, that a deserter might find his way on board a ship in which the Master had done his best to establish discipline, but in which nevertheless a disorderly crew had defeated his best attempts. In such a case, to render the Master responsible, appeared to him, as at present advised, unjust.

He should have thought that, in most cases, the want of discipline might fairly be attributable to the neglect of duty of the Master or person in charge of the vessel; and where that was the case, such Master or person would be liable for his neglect of duty: but to make him liable for a want of proper discipline when he had not neglected any duty, he (Sir Arthur Buller) must repeat, appeared to him unnecessary and unjust.

Not having been present at any discussion of the Act relating to the Indian Navy which was invoked as a precedent for this provision, and being willing to suppose that there must

be some answer to his objection, he would not go the length of proposing, by way of amendment, the omission of the words under consideration; but he would put it to those who had the management of the Bill, and were better acquainted with the circumstances in which it had its origin, whether it was really necessary to retain so very stringent a provision.

MR. LE GEYT said, he did not agree with the Honorable and Learned Member who spoke last, in thinking that the words were redundant. It frequently happened that Masters of ships in port had duties on shore quite as important and pressing as on board; and the Master of a ship, when placed on his defence on a charge of neglect of duty in allowing a deserter to be on board the ship, might plead that he was not on board, and did not neglect any duty, he not being there, as his duty called him to another place. But if he were also called on to shew that there was no want of due discipline on board his vessel, he would have to show that he had provided against the contingency by issuing stringent orders to the Officer in command that no one of the description of a deserter should be admitted; and by holding that Officer responsible for the neglect of such order, he (Mr. LeGeyt) apprehended the offence would not be committed, and the discipline indicated by the Bill would be maintained. He, therefore, felt unwilling to leave out the words in question.

MR. GRANT said, the general question raised by the Honorable Member for the North Western Provinces would be disposed of on the question being put that the Section stand part of the Bill. In the meantime, it was necessary to make any verbal amendments which the Section might require. He now moved that the word "minor" in the 15th line of the Section, be left out.

The amendment was put and agreed to.

SIR JAMES COLVILLE moved that the word "lastly" in the 16th line of the Section be left out.

Agreed to.

THE CHAIRMAN then put the Section as amended, and it was passed.

Sections II, III, and IV were passed without alteration.

Section V empowered the Commanding Officer of any Fort, Garrison, Station, Regiment, or Detachment, or any Justice of the Peace, Magistrate, Joint Magistrate, or person exercising the powers of a Magis-

Sir Arthur Buller

trate, to issue a warrant to enter into and search any vessel, or any house or place on shore, and apprehend any European Officer or Soldier who might be found concealed there.

MR. ELIOTT said, he had considerable objection to this Section. It enabled the Commanding Officer of any Fort, Garrison, Station, Regiment, or Detachment, himself to issue a warrant for the apprehension of persons on board a ship. He was aware that, in the Act relating to the Indian Navy, it was provided that, on information given upon oath or solemn affirmation, the Commander-in-Chief of the Indian Navy, or any person acting under his orders, might issue a warrant for the apprehension of deserters from the Navy; but the reason assigned for giving the Naval authorities this power was that, from the circumstance of merchant vessels lying near ships of war, it was absolutely necessary that a prompt process should be used to recover deserters who escaped to those vessels. But the same necessity did not appear to him to exist with regard to troops. They were always on shore, and could not escape to a vessel so readily as to render necessary any very prompt process to recover them. He thought that, in their case, very little time would be lost in going to a Magistrate for a warrant.

He observed that the power of issuing search warrants might, under the proposed provision, be exercised by an Ensign in command of a detachment—which he thought highly objectionable.

The part of the Section which proposed to authorize Justices of the Peace, Magistrates, and Joint Magistrates to issue warrants for the apprehension of deserters, seemed to him quite unnecessary, because that power was already given to Magistrates by the Mutiny Act.

It was his intention, therefore, to vote against the Section altogether.

THE COMMANDER-IN-CHIEF said, he did not think that the Honorable Member's argument for making a distinction between the Indian Navy and the Indian Army in this respect, was a good one. On the contrary, he thought that it was more necessary to give the means of prompt remedy to the Military Authorities, because there were many Stations on or near the sea-coasts in this country from which soldiers might escape upon vessels, and there might be no Civil Authority at hand to issue process for their search and

recovery. It was true that detachments might sometimes happen to be under the command of Ensigns : that was a contingency which, unfortunately, could not always be guarded against : but if desertions took place from such detachments either on the march, or when stationed for 6 or 12 months in some isolated part of the country, distant from any Civil Power, what was to be done ? He admitted that the provision was a stringent one ; but he thought that the peculiar state of things with which the authorities had to deal in this country fully justified it.

MR. LEGEYT said, he should be sorry to see this Section struck out, because he thought its omission would defeat the object of the Bill. He would call the attention of the Honorable Member to his left (Mr. Elliott) to circumstances other than those to which His Excellency the Commander-in-Chief had alluded, in which the power given by the Section to the Military Authorities would be exceedingly necessary. The word "place" in the Section would allow the Commanding Officer of a Regiment on its march to issue a warrant for the apprehension of any deserter concealed in a native village or town near which the Regiment might be halting. That place might be miles and miles away from a Justice of the Peace. There might, indeed, be a Native Officer of Police on the spot, but he (Mr. LeGeyt) much doubted whether such an Officer would have the power of issuing a warrant. He, therefore, thought that this Section was very likely to be rather extensively acted upon. He knew of a place in the Bombay Presidency where it might be frequently called into action—Vingolah, on the sea-coast, at which almost all European Regiments proceeding to Belgaum disembarked and halted. There was no Justice of the Peace in that place, or within many miles of it. A large portion of foreign territory intervened, which it would be necessary to traverse before getting to a Justice of the Peace. In such a case as that, the provision made by this Section would be extremely useful.

He believed, also, that the objection as to the probability of the power of issuing warrants falling into the hands of Ensigns, was without much weight, because this Act would apply only to European Soldiers ; and in no instance were European Soldiers sent under the command of very young Officers.

In his opinion, it would be very unadvisable to weaken this Act by striking out of it

the Section in question ; and he should, therefore, vote for it as it stood.

MR. GRANT said, he should be very sorry to do anything that would take away from the power which the Executive Government ought to have of preventing desertion from the Army ; but he agreed in the objection which the Honorable Member to his right (Mr. Elliott) had taken to that part of the Section which empowered Military Officers in command to issue search warrants. His objection was not founded on the circumstance that detachments might often be under the command of young Officers. He had not the least distrust of Officers in command of detachments, and his objection applied to cases in which even a General Officer might be in command. His objection was, that these Officers must be considered, as it were, parties in the case. When a Magistrate is the authority issuing the search warrant, he must be considered an impartial Judge in the matter. But the Officer in military command, whose object it must be to recover his deserters by all means, should not, in his opinion, be made Judge in the case, if that course could possibly be avoided.

The Honorable mover of the Bill had said that the power of issuing these warrants ought to be given to the Military authorities because Justices of the Peace were only to be found at great distances in many parts of India. Had the Section proposed to restrict the power of issuing these search warrants to Justices of the Peace, there would have been much in that argument. But if proposed to give this power to all Magistrates, Joint Magistrates, and persons exercising the powers of a Magistrate ; and if it was the case that there really was any sea-coast or other part of this great Empire 50 miles, or any thing like 50 miles, away from an officer exercising the ordinary powers of a Magistrate, it was the fault of the Executive Government, and the remedy was in the hands of the Executive Government.

He did not agree, however, with the Honorable Member (Mr. Elliott) in objecting to the whole Section. The latter part of it he considered to be necessary. He was prepared to support the objection of the Honorable Member, in so far as it applied to the part of the Section which proposed to confer the power of issuing search warrants on the Military Authorities, but not in so far as it applied to the rest of the Section.

MR. LEGEYT said, he begged to observe that he had not stated that there was any

portion of territory in Bombay which lay at a distance of 50 miles from any Officer of Police. He had stated that there were places 50 miles away from a Justice of the Peace. No doubt, there were district village Police Officers not far off; but these Officers had no magisterial power with respect to Europeans, and the existing Act of Parliament gave the power of issuing warrants of search for deserters to Justices of the Peace only.

SIR JAMES COLVILLE said, he was about to suggest a *tertium quid*, in which he hoped those who opposed and those who supported this provision might agree. After the words "at any Port or place within the territories of the East India Company" in the 9th line of the Section, he should move that the words "in which there shall be no Justice of the Peace or person lawfully exercising the powers of a Magistrate" be inserted. His opinion was this. He certainly thought that any confusion of Civil and Military functions should be avoided, except in cases of paramount necessity. But he also felt, and he thought His Excellency the Commander-in-Chief had shown, that there might be circumstances in which it would be necessary to give the Military Authorities the power of issuing these warrants. It was to be observed, too, that this Section, though it allowed the Military Authorities to issue these, which were in the nature of Search Warrants, did not allow them to issue process for enforcing the earlier provisions of the Act. It only allowed them, where Soldiers had deserted, to authorize persons to commit that which would otherwise be a trespass—namely, to go on board any ship or enter any house in which, upon information given on oath or solemn affirmation, there might be reason to suspect that the deserters were concealed; and if they found the deserter there, to apprehend him, as they lawfully might have apprehended him if they had found him elsewhere. Nor was it correctly said that the effect of the clause would be to constitute the Commanding Officer of a Regiment Judge in his own case; because the last Section of the Bill provided expressly that every person apprehended under a Warrant issued under Section V should be taken without delay before the nearest Civil Magistrate, who should be the authority to say whether he was a deserter or not. It, therefore, seemed to him that, if the power of the Military Authorities to issue these warrants were limited to those cases—

Mr. LeGeyt

which, notwithstanding all his Honorable friend on his right (Mr. Grant) had said as to what ought to be, he could not but think were possible cases—in which no Civil authority was at hand, the Council would be justified by the necessity of the case in giving that limited power. If the Civil Officer should be on the spot, they would, by the amendment which he proposed, be bound to have recourse to him. By Civil Officer, he meant one ordinarily exercising Magisterial powers. He did not think it desirable to refer the Military authorities to a mere Darogah of Police for authority to search for a deserter.

MR. PEACOCK said, he wished to point out that this Section did not give more stringent powers than existed in England. By the 18 and 19 Victoria c. 11 s. 46, it was provided that—

"Upon reasonable suspicion that a person is a deserter, it shall be lawful for any Constable, or, if no Constable can be immediately met with, then it shall be lawful for any Officer or Soldier in Her Majesty's Service, to apprehend, or cause such person to be apprehended, &c."

In order to make such arrest, it would be lawful for a Constable, or if no Constable could be immediately met with, for an Officer or Soldier, to enter a dwelling-house or other place in which the person suspected might be concealed. The Select Committee had considered whether they should adopt similar words in this Bill, and enact that a Commanding Officer might issue a warrant if a Magistrate or Justice of the Peace could not immediately be met with; but they had determined to leave them out, inasmuch as their insertion would, in every case in which the validity of a warrant issued by a Commanding Officer might be disputed, render it necessary to enter into the question of fact whether a Magistrate or Justice of the Peace could have been immediately met with. If, however, the Council desired it, he saw no great objection to the insertion of words to that effect.

On a careful consideration of the Section in question, he did not think that the objection taken to it by the Honorable Member for Madras was tenable. It authorized Commanding Officers and Justices of the Peace to issue warrants for the search and apprehension of deserters, upon information given on oath. The Section to which he had referred did not extend to the East Indies. It extended only to the United

Kingdom and the Colonies. It authorized the apprehension of deserters without a warrant by an Officer or Soldier, if a Constable could not be immediately met with. The Section under consideration authorized a Commanding Officer, upon information upon oath, to issue a warrant for the apprehension of a deserter, and to search any place in which there shall appear reason to suspect that he is concealed. The Act of Parliament conferred almost the same power upon any Officer or Soldier in the United Kingdom and the Colonies, without warrant, if a Constable could not be met with, which this Act conferred upon the person to whom the Commanding Officer might direct his warrant.

SIR JAMES COLVILLE said, he thought it would be better to alter his amendment by adopting the words which the Honorable and Learned Member had in view, since there might be a Magistrate or Justice of the Peace established in the place where the desertion might happen, but he might be away from the station and in some distant part of his district at the time. He should, therefore, with the leave of the Council, alter his amendment by wording it thus:—"in which no person lawfully exercising Magisterial powers can be found."

The amendment was then put and agreed to.

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

The Council having resumed its sitting, the three Bills settled in Committee were reported.

BILLS OF LADING.

SIR JAMES COLVILLE gave notice that, on Saturday next, he should move that the Bill "to amend the Law relating to Bills of Lading" be read a third time and passed.

MARRIAGE OF HINDOO WIDOWS.

MR. ELIOTT moved that a communication which he had received from the Chief Secretary to the Government of Madras, relative to the Bill "to remove all legal obstacles to the marriage of Hindoo Widows" be laid on the table and referred to the Select Committee on the Bill.

Agreed to.

NOTICES OF MOTION.

MR. LEGEYT gave notice that, on Saturday next, he would move that the Bill "to

repeal the 122nd Article of War for the Native Army, and to substitute a new Article in lieu thereof, and the Bill "for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company in India," be severally read a third time and passed.

MR. ELIOTT gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee on the Bill "to amend Act XII of 1851 (for securing the Land Revenue of Madras.)"

CHOWKEYDARS.

MR. ALLEN moved that the Bill "for the punishment of Chowkeydars for neglect of duty" be referred to a Select Committee consisting of Mr. Elliott, Mr. LeGeyt, Mr. Currie, and the Mover.

Agreed to.

AMEENS (BENGAL.)

MR. CURRIE gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee on the Bill "to amend the Law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William."

The Council adjourned.

Saturday, April 5, 1856.

PRESENT :

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

Hon. Sir J. W. Colville, D. Elliott, Esq.,
H. E. the Commander-in-Chief, C. Allen, Esq.,
P. W. LeGeyt, Esq.,
Hon. Major G. J. Low, E. Currie, Esq.,
Hon. J. P. Grant, and
Hon. B. Peacock, Hon. Sir A. W. Buller.

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition from residents of Midnapore in favor of the Bill "to remove all legal obstacles to the marriage of Hindoo Widows."

Also a Petition from Hindoo Inhabitants of Tipperah against the same Bill.

MR. GRANT moved that these Petitions be printed, and referred to the Select Committee on the Bill.

Agreed to.

EMIGRATION.

THE CLERK reported that he had received a communication from the Secretary