

Saturday, 26th January, 1856

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL
OF INDIA

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any other person, given on oath or solemn affirmation. For his own part, he saw no great objection to allowing Assistants to Magistrates and Deputy Magistrates to act on their own personal knowledge under the provisions of the Section. It appeared to him that the whole Section might be fairly and safely extended to Assistants to Magistrates and to deputy Magistrates; and he should, therefore, move that the words "or an Assistant to a Magistrate, or a Deputy Magistrate, having jurisdiction over the offence," be added to the word "Magistrate" in the 2nd line of the Section.

After some discussion, the Honorable Member substituted the words "or of an Assistant to a Magistrate with special powers" in his amendment, remarking that his object was merely that any judicial officer who could now deal with an offence affecting the public interests on a complaint being preferred to him on stamped paper, by the party injured, should have the power to deal with it on the information upon oath of a Police officer, or on his own personal knowledge.

The amendment was then put, and agreed to.

MR. PEACOCK next moved that the words "such offence" be substituted for the words "any of the said offences" in the Section, in consequence of the amendment introduced in Section I.

The motion was carried, and the Section, so amended, was passed.

Section III provided that

"All proceedings under this Act of Magistrates and Officers exercising the powers of a Magistrate, shall be subject to the like appeal as other proceedings of such Magistrate and Officers."

MR. PEACOCK moved that the words "of Magistrates and officers exercising the powers of a Magistrate" be left out.

Agreed to.

The Preamble and Title were severally amended so as to correspond with the Sections in their altered form.

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

The Council adjourned.

Saturday, January 26, 1856.

PRESENT.

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

Hon. Sir J. W. Colvile,	D. Elliott, Esq.,
H. E. the Commander-in-Chief.	C. Allea, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq., and
	Hon. Sir Arthur Buller.

The following Message from the Most Noble the Governor General was brought by MR. PEACOCK, and read:—

MESSAGE No. 65.

The Governor General informs the Legislative Council, that he has given his assent to the Bill which was passed by them on the 22nd December 1855, entitled "A Bill to prevent the sale or exposure of obscene Books and Pictures."

By Order of the Most Noble the Governor General.

CECIL BEADON,

Secy. to the Govt. of India.

FORT WILLIAM,
The 21st January 1856. }

SALES OF LAND FOR ARREARS OF
REVENUE (BENGAL).

MR. GRANT moved the second reading of the Bill "to improve the law relating to sales of Land for arrears of Revenue in the Bengal Presidency."

MR. CURRIE said, he had no intention of opposing the second reading of this Bill. On the contrary, he greatly desired, not only that it should be read a second time and published for general information, but also that the greater part of its provisions should be eventually adopted by the Council. But he wished to take this opportunity of saying that he did not give his adherence to those provisions of the Bill which related to the treatment of under-tenures. So far as he could see at present, he much preferred the original suggestion of the Bengal Government. That suggestion, as described in the Statement of Objects and Reasons, was to the following effect:—

"That all under-tenures, though created since the settlement, and at whatsoever rents, should hold good so long as the parent estate should prove to be saleable at public auction, for an amount equal to any arrear of revenue that might accrue upon it; and that, whenever this should cease to be the case, the parent estate should be forfeited to Government, who would thereupon make a re-settlement of the whole of it."

He (Mr. Currie) said, he preferred this to the plan proposed in the Bill, by which, after survey and registration, the tenures would stand with the jumma, or rent, fixed in perpetuity, even though the parent estate should fall into the hands of Government for want of a sufficient bid at a sale for arrears

of revenue. The Bengal proposition—which, he believed, conceded all that had been asked on behalf of the under-tenants—was not only more simple and easy of operation (that alone would not be a sufficient reason for its adoption), but it was also more consistent with the spirit of our Revenue Law, and with that principle of Indian finance which holds the State to be entitled to a certain portion of the rent of every acre of land, except in so far as that right might have been compounded for by a settlement made with the Zemindar. He questioned also whether the Bengal plan would not be more acceptable to the under-tenants themselves. But it was not his intention to enter into a discussion of the question now. Even if he should succeed in persuading the Council to adopt his views, that would be no reason why the Bill should not be read a second time. The proper time for discussion would be when the several parts of the Bill came to be considered in Committee, and when the Council would have the benefit of the observations which would have been made on it by Revenue Officers and others interested. His object at present was only to withhold his assent to an important and, as he thought, a questionable principle which was involved in certain provisions of the Bill, while, at the same time, he gave his cordial support to the measure generally.

MR. ALLEN said, he also had a few remarks to make upon that particular provision of the Bill to which the Honorable Member for Bengal had referred. He most cordially assented to the second reading of the Bill; and he thought that every credit, and the thanks of all planters and other under-tenants, were due to the Honorable framer of the measure for what he had done. But he (Mr. Allen) must say, with the Honorable Member for Bengal, that he preferred the plan which had been proposed by the Bengal Government for the treatment of under-tenures to the plan which was proposed by the Honorable Member (Mr. Grant) in his Bill. This was scarcely opposing the Honorable Member; for it was but saying that second thoughts were not always best. He (Mr. Allen) merely preferred the course the Honorable Gentleman formerly approved of, to the course now approved of by him. It appeared to him that almost the same objection applied to the proposed measure, which precluded the rent of an under-tenure from being raised after it had been proved to the satisfaction of the Collector to be a fair rent, that applied to the protection now

Mr. Currie

given by the law to *bonâ fide* leases at fair rents for twenty years, which had obtained the sanction of the Collector. At present, such leases could not be touched by a sale of the parent estate for arrears of revenue. Upon that point, Mr. H. T. Prinsep, in a Minute dated the 8th July 1841, remarked as follows:—

“The Collector must, as a matter of course, either pass all without objection, or object to all without assigning a reason; whichever he does, he equally defeats the purpose of the Law.”

He (Mr. Allen) was afraid that, when the Legislature required the Collector and other Revenue Authorities to be satisfied of the fairness of the rents, it might afford an opportunity for raising an obstacle to the registration of these under-tenures. By the plan of the Bengal Government, the Collector and other Revenue Authorities had no option in the matter. The two parties interested, the grantor and the grantee, came before the Collector, the lease was given, and thenceforth it was to be binding, and to be held good under all circumstances, except on the purchase of the parent estate by the Government at a sale for arrears of revenue. The provision of the Law protecting *bonâ fide* leases at fair rents for twenty years, was stated by Mr. C. B. Trevor, in a letter to the Sudder Board of Revenue, dated the 18th April 1850, to have been, in most districts, a dead letter; and he (Mr. Allen) was half afraid that the proposed plan of requiring the Collector and other Revenue authorities to be satisfied that the rents fixed on the under-tenures were fair, might also be a dead letter, and that talookdars would consequently be in no better position under the operation of the Bill than they were at present. Mr. Ricketts, in a Minute dated the 10th May 1850, seemed to him to hint at a better system. He suggested that the Legislature should adopt the plan which had been recommended by the Bengal Government, and also the plan which was now proposed in this Bill. He (Mr. Allen) should like to give talookdars the option of registering their under-tenures without being subject to prove the fairness of the rents, when they desired that their tenures should stand good against all comers, except the Government on the sale of the parent estate for arrears of revenue; or to register them subject to the revision of the Commissioner and the Board of Revenue, when they desired to protect them against the Government as well as against all other parties whatsoever. If

these two plans were adopted in the Bill, we should gain the advantages desired by the Honorable Member who had introduced the measure, and also those proposed by the Bengal Government. The passage in Mr. Ricketts' Minute to which he referred, was to be found at page 123 of the Papers regarding the subject of this Bill, which were published by the Government in 1853; and he would read it, with the permission of the Council:—

"We might have two classes of engagements, one protecting the capitalist against other auction purchasers only, the other protecting him against the Government as auction purchasers. The first class of engagements the Collector would have merely to register in the book of encumbrances. No precautions on his part would be necessary, save to see that the nature and extent of the interest conveyed was *clearly described*. I cannot imagine any cause whatever for interference. So long as the assessed *jumma* is paid, and provision be made to prevent any diminution of that *jumma* in the event of the estate lapsing to Government, the only interest the Government can have is, that all parties should have every facility of making arrangements suited to their own wants and wishes. If such arrangements conduce to the outlay of capital, and the improvement of the property, so much the better. It cannot be necessary for the Government to consider what may be advantageous and convenient to some future auction purchaser.

"The second class of engagements should be subject to the revision of the Commissioner and the Board. It would behove these authorities to sanction freely all engagements not calculated to decrease existing resources. Few cases of difficulty would present themselves. Doubts remaining, sanction might be withheld."

If both these plans were adopted, instead only of the first, which was the proposal of the Bengal Government, or of the second, which was the proposal of the Honorable Mover of the Bill, he thought the Bill would be improved.

SIR JAMES COLVILE said, it was with great diffidence that he offered any observations upon a measure of this nature in opposition to the views expressed by the two Honorable Members opposite, one of whom certainly, and he believed both, had had large experience in the working of the revenue system of this country. As at present advised, he certainly inclined to the plan proposed by the Honorable Mover of the Bill rather than to that proposed by the Bengal Government. Mr. Ricketts' plan seemed to be something between the two, or to embrace both. There, certainly, would be great force in the argument of the Honorable Member for the North-Western Provinces, if

it were founded on fact—namely, that Collectors and Revenue Authorities, in dealing with questions that might arise under the Bill as it was framed, would not exercise a sound and fair judicial discretion, but would be apt to reject the registration of under-tenures on the ground that they were not satisfied that the rent reserved was so fairly assessed in proportion to the value and extent of the talook as to afford sufficient protection to Government in the collection of the land revenue. He (Sir James Colvile) could not assume that this would be the case; and he thought the appeal against the Collector's decision, which was provided by the Bill, afforded ample security against any arbitrary exercise of the discretion given to that officer.

As he understood the plan proposed by the Bengal Government in the first instance, the Zemindarry right was to be first sold; but if that did not realise enough to pay off the arrears of revenue, the whole estate was to fall into the hands of Government, and be re-settled. That might, or might not, occasion a forfeiture of the under-tenures: but until the result of the first sale, or, in some cases, of the re-settlement, was known, the under-tenures would be exposed to the risk of forfeiture. Under the plan proposed by his Honorable friend, when once admitted to registration, they would be safe for all time, so long as the holders discharged the obligations which they imposed upon them.

He might change his opinion if it appeared, after the publication of this Bill, that the talookdars and others whom it was designed to benefit, for the reasons suggested by the Honorable Member for the North-Western Provinces, or otherwise, thought that the other plan afforded them more efficient protection, and if it were shown by the Revenue Officers that the difficulties in the way of working the plan of his Honorable friend were insuperable. But, until one or other of these things was shown, he should continue to support his Honorable friend's plan, believing that it was the duty of the Council to legislate on this subject in the mode that would afford the largest measure of protection to the landholder; because, by so doing, it would best encourage the investment of capital in land, and the development of the resources of the country.

MR. GRANT said, as he understood that the second reading of this Bill was not opposed, it was necessary for him to say but a very few words in reply to the observations of the Honorable Members who had re-

marked upon one point—perhaps, indeed, it was hardly necessary for him to say one word, after the observations of the Honorable and learned the Chief Justice. He was quite open to conviction upon every provision of the Bill, and he was prepared to assent to all alterations in Committee which might be shown to be improvements; but his conviction, as he was at present informed, was that, in the point to which particular allusion had been made, the Bill was best as it stood.

In regard to the objection felt by the Honorable Member for Bengal, to the provision relating to under-tenures, if he rightly understood the Honorable Member, there was, at the bottom of his mind, an indisposition to allowing permanent property in land at all. His (Mr. Grant's) own principle was entirely opposed to this. His own opinion was that, in every part of India, the first thing to be done in order to promote improvement and progress, was to give holders a permanent assurance in their tenures. In his own opinion, this should be done, not only in Bengal, but in every part of India. But this was a question which, he maintained, it was unnecessary to discuss now. It was no longer an open question in regard to Bengal. It had been long ago determined that, in Bengal, there should be permanent property in land. The case being so, he would ask the Honorable Member for Bengal to consider what the position of a Talookdar is? In truth, the dominion over the land is, not in the Zemindar, but in the Talookdar. The Zemindar, after he has granted a talookdaree tenure, retains nothing but the superiority. The property is in the Talookdar; and, therefore, it appeared to him that it was the plain duty of the Legislature, if possible, to give the tenure of the Talookdar the same security that the permanent Settlement had given to the original tenure of the Zemindar.

The Honorable Member for the North-Western Provinces had not objected, upon principle, to the provision for a survey and for a permanent assurance of the talookdaree tenure. He had proposed that the Council should adopt a double plan for the protection of under-tenures;—the plan which had been proposed by the Bengal Government for protection only against auction purchasers, and also, as an alternative for the plan which was proposed by the Bill, for protection against the Government as well as against all other parties whatsoever. When he (Mr. Grant) had moved the first reading of the Bill, he had stated some of the arguments which had

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weighed with him against the plan proposed by the Bengal Government. He had said that it would open a door to fraud, which would probably so frequently be taken advantage of, that the market value of Zemindarees, including Zemindarees in which no such fraud had been really committed, would be materially diminished. He still believed that this was a valid objection. He knew that, on this ground, the plan in question would be objected to by the Zemindars. This was his chief reason for framing the Bill as he had framed it.

He had no more to say than to thank the Honorable Members who had remarked upon one of the provisions of the Bill, for the favorable terms in which they had spoken of his Bill generally.

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

COGNIZANCE OF OFFENCES.

Upon the Order of the Day for the third reading of the Bill "to enable Magistrates and certain other officers to take cognizance of certain offences without requiring a written complaint," being read—Mr. Allen moved to re-commit the Bill, in order that he might move an amendment in the second Section. It would be in the recollection of Honorable Members that, at the last Meeting, certain words were introduced into that Section which would enable Assistants to Magistrates with special powers to exercise the authority given by the Bill. He (Mr. Allen) thought that these words were very good so far as Bengal was concerned; but the Bill also applied to Madras; and he thought it would be better to make a trifling alteration in the language of the Section, so as to give all officers of competent jurisdiction, both in Bengal and Madras, power to proceed under the provisions of the Bill. He should therefore move that the Bill be re-committed.

Agreed to.

MR. ALLEN then moved that the words "exercising the powers of a Magistrate, or of an Assistant to a Magistrate with special powers" after the words "or other officer," be left out of the Section, in order that the words "having jurisdiction over such offence" might be substituted for them.

The Amendment was agreed to, and the Section passed.

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

MR. ALLEN then moved the third reading of the Bill.

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

MR. ALLEN moved that Mr. Peacock be requested to carry the Bill to the Most Noble the Governor General for his assent.

Agreed to.

DESTRUCTION OF CATTLE.

MR. ALLEN moved that the Council resolve itself into a Committee on the Bill "to prevent the malicious or wanton destruction of Cattle;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment.

ABKAREE REVENUE (CALCUTTA AND MADRAS).

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to amend Act No. XI of 1849 and Act No. XIX of 1852;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

The Bill passed through the Committee without amendment.

The Council having resumed its sitting, the Bills were reported.

POLICE AND CONSERVANCY (PRESIDENCY TOWNS, &c.)

MR. ELIOTT moved that a communication received by him from the Chief Secretary to the Government of Fort St. George, relative to the Bill "for regulating the Police of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales' Island, Singapore, and Malacca," and 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," be laid upon the table, and referred to the Select Committees on those Bills.

Agreed to.

GUARDIANSHIP OF MINORS AND COURT OF WARDS (BENGAL.)

MR. CURRIE moved that Mr. Elliott be added to the Select Committees on the Bill "for making better provision for the care of the persons and property of Minors, Lau-

natics, and other disqualified persons, in the Presidency of Fort William in Bengal;"—and the Bill "to explain and amend Regulation X of 1793 and Regulation LII of 1803."

Agreed to.

SALES OF LAND FOR ARREARS OF REVENUE (BENGAL).

MR. GRANT moved that the Bill "to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency" be referred to a Select Committee, consisting of Sir James Colvile, Mr. Allen, Mr. Currie, and the Mover.

Agreed to.

PENAL CODE.

MR. GRANT said, the Select Committee on the Penal Code consisted of five Members, which was the full number prescribed for Select Committees. Mr. LeGeyt, who was one of the Members serving on this Committee, was very anxious that Sir Arthur Buller should be placed upon it; and, at his request, and with the consent of Sir Arthur Buller, he (Mr. Grant) now moved that Mr. LeGeyt be released from serving as a Member of the Select Committee upon the Penal Code, and that Sir Arthur Buller be appointed a Member of that Committee.

Agreed to.

CONSERVANCY (PRESIDENCY TOWNS, &c.)

MR. LEGEYT moved that a communication received by him from the Secretary to the Government of Bombay, relative to the proposed regulation of burial grounds, and the disposal of the bodies of the dead within the Island of Bombay, be laid upon the table, and referred to the Select Committee on 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."

Agreed to.

ARTICLES OF WAR FOR THE NATIVE ARMY.

MR. LEGEYT moved that His Excellency the Commander-in-Chief be added to the Select Committee on the Bill "to amend the 122nd Article of War for the Native Army."

Agreed to.

DESERTION OF EUROPEAN SOLDIERS.

MR. LEGEYT moved that His Excellency the Commander-in-Chief be added to the Select 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."

Agreed to.

NOTICE OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday next, move the second reading of the Bill "to amend the articles of War for the Native Army relating to the forfeiture of pay and service in certain cases."

The Council adjourned.

Saturday, February 2, 1856.

PRESENT :

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

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

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition signed by the Mahratta Chief of Vinchoor and other persons, praying for the removal of all legal obstacles to the marriage of Hindoo widows.

MR. LEGEYT moved that the Petition be printed. He said, it was a document of a very satisfactory nature. It emanated from the Chief of Vinchoor, who was now almost the sole remaining Mahratta Sirdar of any note or consideration in the vicinity of Poonah. His father had been a staunch supporter of the Peishwa, and had continued a faithful adherent to his cause until the latest period of his power; and, although the family had suffered very considerably by that adhesion in the loss of jaghirs, the present Chief had, very much to his credit, always shown himself an enlightened and loyal subject to the British Government, supporting every measure calculated to promote the happiness and well-being of the people. The Petition presented to-day, showed that he was pursuing that course in a very admirable manner; and he (Mr. LeGeyt) had great pleasure in moving that it be printed.

Agreed to.

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

Agreed to.

PATENTS FOR INVENTIONS.

MR. PEACOCK presented the Report of the Select Committee on the Bill "for granting exclusive privileges to Inventors."

EXECUTION OF CRIMINAL PROCESS.

MR. CURRIE moved the first reading of a Bill "to provide for the execution of criminal process in places out of the jurisdiction of the authority issuing the same." He said, this Bill had its origin in repeated representations by the Magistrate of the 24-Pergunnahs respecting the difficulties experienced in the execution of Mofussil process within the town of Calcutta. Act XXIII of 1840 required that any writ, warrant, or other process issued by a Mofussil Court, and designed for execution within the local limits of the Supreme Court, should be endorsed by a Judge of the latter Court. The course prescribed for obtaining the endorsement was to send the process, with a letter, to the Company's Attorney, who procured the Judge's endorsement, and then transferred the process for execution to the Police Office. This procedure was necessarily attended with considerable delay. It was said that it usually occupied two days, whereas, in almost all cases of the pursuit of criminals, despatch and secrecy were essentially necessary to success. Mr. Fergusson, the Magistrate of the 24-Pergunnahs, wrote on the subject as follows:—

"The system has been found productive of considerable inconvenience, causing great delay and publicity in cases where secrecy would have been success; and thus, to a considerable extent, thwarting and paralyzing the efforts of the Suburban Police."

And again, he said—

"Many cases have occurred in which, if I could have searched houses immediately, or authorized the Police to do so, stolen property would certainly have been recovered; but before the tedious process of obtaining the endorsement of Her Majesty's Judge on the search warrant could be gone through, the receivers had of course heard of the enquiry, and either melted down or disposed of the articles. Until this be remedied, Calcutta will continue to be the receptacle for the stolen goods of all the adjacent districts; and we shall continue to experience the difficulty we have hitherto felt in checking crime."

There had been a good deal of correspondence on the subject. As the Magis-