

Saturday, 13th June, 1857

PROCEEDINGS  
OF THE  
LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

VOL. III.

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1857.

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.

Again, opportunities have been taken to parade before the eyes of the inhabitants of the Capital, and of our soldiery and subjects elsewhere, a traitorous Proclamation put forth by those who are in arms against the Government in the North-Western Provinces, crying for the blood of Europeans, offering rewards for rebellion, and denouncing all who shall continue faithful to the Government.

I am speaking to a Body whose Members have more experience of the native character, and of the working of the native mind, than I possess. But it needs little of this to see that it is impossible that all this mischief can be a-foot and unrestrained without producing wide-spread disaffection, lamentable outbreaks, and permanent injury to the authority of Government.

Against such poisoned weapons, I now ask the Legislative Council to give to the Executive Government the means of protecting itself, its Army, and its subjects; and I know no means by which this can be effectually accomplished other than a Law which shall give to the Executive Government a more absolute and summary control over the Press than it now has in its hands. With this view, I propose to introduce a Bill this day; and, as a preliminary step, I move that the Standing Orders be suspended, in order that the Bill may be carried through its several stages, and passed forthwith.

The several provisions of the Bill will be read *in extenso* by the Clerk of the Council. The measure is framed upon the principle that no Press shall exist without a license from the Government; that the license shall be granted by the Governor-General in Council under such conditions as he may think fit; that, on the infraction of any of these conditions, it shall be in the power of the Governor-General in Council, and, in distant parts of the Empire, of local Governments to whom he may delegate the authority, to withhold such license, or, if one has been already granted, to recall it.

One of the Sections provides that the Bill shall have effect for one year, and for one year only. At the end of that period, the subject will again be before the Legislative Council, and the Legislative Council will know how to deal

with it according to the circumstances of the moment.

It is also provided that the Bill shall be applicable, not only to Bengal, but to all India. The question involved is one which, in my opinion, deserves not only at the present juncture, but at all times, to be treated as an imperial one. It is a question in regard to which India should be ruled by one authority.

I also propose that the Act shall extend to all periodical and other publications, European as well as Native, whatever their condition or character.

The remarks which I have taken occasion to make with reference to the Native Press, I do not direct to the European Press. But I see no solid standing ground upon which a line can be drawn marking off one from the other when the question is to prevent the publication of matter calculated to work mischief at a crisis like this. For whilst I am glad to give credit to the conductors of the European Press for the loyalty and intelligence which mark their labours, I am bound by sincerity to say that I have seen passages in some of the papers under their management which, though perfectly innocuous, so far as European readers are concerned, may, in times like the present, be turned to the most mischievous purposes in the hands of persons capable of dressing them up for the Native ear. I am glad, then, I say, to admit that the Bill is not specially levelled at the European Press; but I do not see any reason, nor do I consider it possible in justice, to draw a line of demarcation between European and Native publications. The Bill, accordingly, applies to every kind of publication, whatever the language in which it may be printed, or the nation of the persons who are responsible for what is put forth in it.

I cannot conceal from the Council that I have proposed this measure with extreme reluctance. It is one which no man bred in the atmosphere of English public life can propose to those who are vested with the high authority of legislating for English dominions, without some feelings of compunction and hesitation. But there are times in the existence of every State in which something of the liberties and rights which it jealously cherishes and scrupulously guards in ordinary seasons, must be sacrificed for the public welfare. Such

is the state of India at this moment. Such a time has come upon us. The liberty of the Press is no exception. And now, upon my responsibility as the Head of the Government of India, and with the unanimous support of the colleagues with whom I have the honor and satisfaction to act, I ask the Legislative Council to strengthen the hands of the Executive Government by investing it with the powers which will be given by the Bill which I here lay on the table.

His Lordship then moved that the Standing Orders be suspended, in order that he might carry the Bill through its several stages forthwith.

The motion was seconded by Mr. Dorin, and agreed to.

THE PRESIDENT moved that the Bill be read a first time.

THE CLERK read the Bill.

THE PRESIDENT moved that the Bill be read a second time.

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

THE PRESIDENT moved that the Council resolve itself into a Committee on the Bill.

THE CHIEF JUSTICE said, he should venture to offer a few observations—which, perhaps, he ought rather to have made on the motion for the second reading—on the subject of this Bill. The gravity of the step which the Council was about to take could not be denied. It was called upon suddenly to suspend a privilege which had now been enjoyed for nearly a quarter of a century by the population of this country—a privilege to which all Englishmen were naturally and strongly attached. Having heard the statement of His Lordship to-day, he thought it right emphatically to declare that he was ready to take his share of the responsibility involved in the adoption of the measure. The freedom of the Press, like any other privilege, was to be prized only in so far as it conduced to the public good. That it did answer that end in ordinary times, he fully believed; and there was no privilege against the arbitrary abrogation of which he would more earnestly contend. But it was obvious from the statement made by His Lordship to the Council that, owing to circumstances unhappily within the knowledge of us

all, we were now in no ordinary times. The Executive Government of this country then—those upon whom lay the burdensome duty of protecting the Empire against the dangers which beset it; a duty which, so far as one not connected with them might offer an opinion on the point, he should say they had faithfully and ably discharged—told the Council that, effectually to meet the exigency of the times, it required the extraordinary powers to be conferred by this Act. It seemed to him that this Council would be taking upon themselves a far greater responsibility than that which they would incur by passing this Bill, if they should refuse those powers to the Government of the country in this momentous crisis. He believed that all of those who had hitherto enjoyed the privilege, and were well affected to Government, whether European or Native—for he would make no distinction between Europeans and that great body of Natives which was well affected towards the Government, and which, he believed, included all who had any thing to lose, or had the wit and knowledge to see that nothing like order or good Government could proceed from any Power set up by a faithless and turbulent soldiery—he believed, he said, that all who were well affected to Government, whatever value they might set on the freedom of the Press, would as readily submit to the temporary loss of that privilege as he hoped they would submit to any other sacrifice either of purse or person which, at a moment like this, the necessities of the country might require. At all events, he would repeat his readiness to share in the responsibility of granting the extraordinary powers for which Government asked; of the necessity for which, however much he regretted it, he could not, after what they had heard, entertain any doubt.

The Motion to go into Committee on the Bill was then agreed to.

Section I being read—

MR. LEGEYNT asked if the words of the Section would include a lithographic press.

THE CHAIRMAN said, the intention was to include lithographic presses, and the words “or other materials for printing” would have that effect.

After some conversation, it was

agreed that, to prevent any doubt on the question, words should be inserted in the Interpretation Clause defining the word "printing" to include lithographing.

The Section was then passed as it stood.

Sections II to VI were passed as they stood.

Section VII being read—

MR. LEGEYNT moved that the words "or the Executive Government of any Presidency" be added to the words "the Governor-General of India in Council" in the first line. That would extend the power of checking the evil against which the Section was levelled. In the neighborhood of Madras, for instance, there was Pondicherry, a large French town, and in Bombay there was Goa, a large Portuguese city, in the latter of which, to his knowledge, newspapers were published in which, unless the local Governments were invested with the power of restraining them contained in this Section, objectionable publications might be circulated.

He would take this opportunity of mentioning that it was only that morning that he had read in a Bombay newspaper an extract from a leading native journal which had struck him as a most inflammatory production. He quite believed that the Editor himself had acted from no disloyal motives, for he was one extremely well affected towards the British Government; but he had evidently lent his paper, in this instance, to an attempt to vilify the Mahomedans, and excite hatred towards them in the eyes of the Government and the Public.

THE CHAIRMAN said, there could be no objection whatever to investing the Executive Government of each Presidency with the power of prohibiting seditious matter from being published in the local prints. The Section as it stood had been framed under the impression that it was more likely that such publications would be put forth in this part of India than in Madras or Bombay. But the Honorable Member for Bombay had shewn that there was the same opportunity in that Presidency and in Madras for the establishment of a Press upon foreign soil, and he (the Chairman) could see no objection to extending to the local Governments the

power given by this Section to the Governor-General of India in Council.

MR. LEGEYNT'S Motion was then agreed to.

MR. LEGEYNT moved that the words "or the territories subject to the said Government," be inserted after the words "within the said territories" in the 6th line of the Section.

Agreed to.

MR. PEACOCK said, there existed some doubt whether the penalty attached to the offence created by the Section, was sufficiently large. The Section provided that whoever should knowingly import, publish, or circulate, or cause to be imported, published, or circulated, books or papers prohibited by the Government, should be liable for every such offence to a fine not exceeding one thousand Rupees or, in default of payment, to imprisonment for a term not exceeding one calendar month. It had been suggested to him, and he agreed in thinking, that such a punishment was too small. The punishment for importing into this country books prohibited by the Government ought to be at least as much as the punishment awarded in England for a misdemeanor—namely, fine and imprisonment. By Act XI of 1835, a much higher penalty was provided for a much smaller offence than that which would be committed by a violation of the prohibition under consideration—namely, a fine of five thousand Rupees, and imprisonment for a term not exceeding two years, for publishing a book or newspaper without the name of the Printer legibly printed upon it. He should accordingly move that the words "one thousand Rupees, and, in default of payment, to imprisonment for a term not exceeding one calendar month" be omitted from the Section, in order that the words "five thousand Rupees, or to imprisonment not exceeding two years, or to both" might be substituted for them.

The Motion was agreed to, and the Section then passed.

Section VIII being read—

MR. LEGEYNT moved that the following words be inserted at the commencement of the Section:—

"The word 'printing' shall include lithographing."

Agreed to.

With reference to the definition in the Section that the word "Magistrate" should "include a person exercising the powers of a Magistrate, and also a Justice of the Peace," and the provision that "every person hereby made punishable by a Justice of the Peace may be punished upon summary conviction"—

MR. LEGEYT asked if it would not give Magistrates in the Mofussil power over Europeans.

THE CHAIRMAN replied, he thought that it would.

MR. LEGEYT observed that, ordinarily, Mofussil Magistrates sitting as Magistrates had no jurisdiction over Europeans.

THE CHIEF JUSTICE said, the Honorable Member had fallen into an error which was not uncommon, in supposing that it was as Justices of the Peace that the Mofussil Magistrates acted in those cases in which they had a power of summary conviction over British subjects. He apprehended that, as Justices of the Peace, they could only enquire and commit for trial; but that whenever any Statute or Act gave them power of summary conviction over British subjects—as, for instance, the Statute of George III, which gave them such a power in cases of assault upon Natives—it gave it to them in their ordinary character of Magistrate. He doubted whether, if this power was intended to be given, it ought not to be given by express words.

MR. GRANT said, the Council had passed a great number of Acts giving Magistrates power in the same way over all classes of persons within their geographical jurisdiction; and he could see no reason why this Act should give it in express words.

MR. PEACOCK said, there could be no doubt that the words "any person" in the Section included European British subjects. Where Acts had said that any person committing an offence should be liable to punishment, but did not point out the Authority which was to punish, the ordinary Courts had no power to punish an offender who was a European British subject. But where, as in this case, an Act said that any person offending against its provisions might be punished by a Magistrate, and that the word "Magistrate" should include

a Justice of the Peace, and that every person thereby made punishable by a Justice of the Peace, might be punished upon summary conviction, it clearly gave Magistrates and Justices of the Peace a jurisdiction over European British subjects.

MR. CURRIE said, he thought that, in the Post Office Act, there was a provision that the words "any person" should include "a British subject." But the question had been considered in connection with the Suburbs of Calcutta Police Bill in Select Committee, and it was there determined that the words were unnecessary.

MR. GRANT said, his only objection to the insertion of the words in this Act was that it would throw a doubt on other Acts in which no such words were used.

The Section was passed as amended on the Motion of Mr. LeGeyt.

Section IX was passed after an amendment.

Before Section X was proposed—

THE CHIEF JUSTICE said, he wished to introduce a new Clause, which, he believed, had the concurrence of the Honorable and learned Member opposite (Mr. Peacock). This Act would take effect the moment it received the assent of the Governor-General. It might be necessary that there should not be, in this instance, that interval of time which it might be expected should elapse in ordinary cases between the passing of an Act effecting a great change in the Law and the period at which persons should become subject to the penalties of the new Law. But unless this Act contained such a Section as that which he was about to propose, it would be open to any person to lay an information before a Magistrate against any person publishing a newspaper without a license (which he might have had no time to obtain), and the Magistrate might feel bound to act on that information. He, therefore, moved that the following Section be inserted after Section IX:—

"No person shall be prosecuted for any offence against the provisions of this Act, without an order of the Governor-General in Council, or the Executive Government of the Presidency in which the offence shall be committed, or the person authorized under the provisions of this Act to grant licenses."

MR. PEACOCK said, he thought that the amendment was too general,

and he should suggest that the words "within fourteen days after the passing of the Act" be inserted after the words "against the provisions of the Act." Of course, it was not intended that persons should be subject to the penalties of the Act until they should have had time to become acquainted with its provisions—unless, indeed, they should use the Press for seditious purposes; in which case the Government would have the power to punish them forthwith.

THE CHIEF JUSTICE adopted the suggestion, and the Section, so amended, was agreed to.

Section X was agreed to.

MR. GRANT said, he had an amendment to move in Section I, which, as the Standing Orders had been suspended, it was open to him to do without recommitting the Bill. His object was to make the punishment provided by that Section for keeping an unlicensed printing press correspond with the punishment provided by Section VII, as it now stood, for the importation or circulation of prohibited books or newspapers. At present, the penalty under the first Section was a fine not exceeding one thousand Rupees, or, in default of payment, imprisonment for a term not exceeding six months; whereas the penalty under Section VII, which was directed against what was perhaps a minor offence, was a fine not exceeding five thousand Rupees, or imprisonment for a term not exceeding two years, or both. He therefore moved that the words "one thousand Rupees, and, in default of payment, to imprisonment for a term not exceeding six calendar months" be left out of Section I, in order that the words "five thousand Rupees, or to imprisonment not exceeding two years, or to both" might be substituted for them.

Agreed to.

The Preamble and Title were passed as they stood.

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

THE PRESIDENT moved that the Bill be read a third time and passed.

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

THE PRESIDENT then gave his assent to the Bill, and left the Council Chamber.

*Mr. Peacock*

THE VICE-PRESIDENT took the Chair.

#### HEINOUS OFFENCES AGAINST PERSON OR PROPERTY.

MR. PEACOCK said, it was with great regret that he felt bound to ask the Council to add the punishment of death to a class of crimes in addition to those for which they had lately provided that punishment. He had hoped until lately that, as soon as the Penal Code should be passed, there would be only two offences punishable with death—namely, waging war against the Government, and murder. But it was well known that, in some districts, a very large number of evil-disposed persons, taking advantage of the present disturbed state of the country, were going about and committing crimes of the greatest atrocity against person and property openly, and, he might almost say, in defiance of Government. This was the case especially, as the Honorable Member on his right (General Low) reminded him, in the district of Benares. To such an extent were these enormities carried that he believed it to be absolutely necessary that extraordinary measures should be adopted, and that the Authorities should be armed with the power of speedy and exemplary punishment. Indeed, it appeared to him that they must either allow these offences to be committed with impunity, or they must subject the offenders to the punishment of death. For his own part, he felt no hesitation in selecting the latter alternative. He had, therefore, prepared an Act which provided that, in any district where Martial Law was proclaimed, or to which the Governor-General in Council might extend the provisions of the Act, any person guilty of robbery, arson, or other heinous offence against person or property, should be punishable with death. Extraordinary times required extraordinary measures. He did not propose that these offences should be punishable with death in every district; but that they should be so punishable only in those districts in which Martial Law should have been or should be proclaimed, or to which the Governor-General in Council might extend the Act. Nor did he propose



that the Act should be permanent. He proposed that the present Act, like that which was passed by the Council on Saturday last, should have effect for only one year.

The first Section provided that—

“Whoever shall commit or attempt to commit the crime of arson, robbery, or other heinous crime against person or property, in any district or place in which Martial Law hath been or shall be established, or in any district or place to which this Act shall be extended by Order of the Governor-General of India in Council, shall be liable, on 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.”

The crime of murder was already punishable with death. But robbery, unless attended with murder, was punishable only with transportation for life or imprisonment with hard labor.

He also proposed that every person who should be guilty of murder, or of any of the other offences mentioned in Section I, might be tried by a Court Martial, or by a Special Commissioner appointed under the Act passed last week, or by the ordinary Courts of Justice. At present, Courts Martial could only try persons taken in the commission of offences against the State. But, in these times, it was essentially necessary that individuals guilty of heinous crimes against person or property should be liable to be tried either by Courts Martial or under a Special Commission. The second Section of the Bill, accordingly, contained a provision to that effect.

The third Section exempted British-born subjects and their children from the operation of the Act.

He should conclude by moving that the Standing Orders be suspended, in order that he might bring in and pass the Bill through its several stages.

The Motion was seconded by General Low, and agreed to.

On the Motion of Mr. Peacock, the Bill was read a first and a second time, and committed.

Section I was passed after an amendment.

MR. PEACOCK moved that a Section defining what the words “heinous offence” should be deemed to mean

under the Act, be placed after Section I. Agreed to.

The remaining Sections were agreed to as they stood.

The Preamble and Title were severally passed after a verbal amendment.

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 Mr. Grant be requested to take the Bill to the Governor-General for his assent.

Agreed to.

MR. GRANT returned to the Council Chamber with the above Bill, and the Vice-President announced that the Governor-General had signified his assent thereto.

#### JOINT-STOCK COMPANIES.

MR. PEACOCK postponed the Motion (of which he had given notice for this day) 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.”

#### SMALL CAUSE COURTS.

MR. LEGEYT presented the Report of the Select Committee on the Bill “to amend Act IX of 1850.” The Council adjourned.

Saturday, June 20, 1857.

#### PRESENT:

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

#### JOINT-STOCK COMPANIES.

THE CLERK presented a Petition from the Bombay Chamber of Com-