

Saturday, 20th June, 1857

PROCEEDINGS  
OF THE  
LEGISLATIVE COUNCIL OF INDIA,

FROM

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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-

merce relative to the Bill "for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the Members thereof." The Petitioners prayed that Clause '3 of the Rules for the management of Companies in the Bill might be so amended as to provide that the Auditors should be appointed by the Government, and not by the shareholders.

MR. PEACOCK said, it was his intention to ask the Council, when the Order of the Day for the committal of the Bill was called on, for leave to postpone its consideration. The Mail had been delayed, and the Council would have considerable other business to go through to-day. Meanwhile, he should move that the Petition presented be printed.

Agreed to.

#### POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA, &c.)

MR. CURRIE presented the Report of the Select Committee on the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah."

#### BOMBAY UNIVERSITY.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to establish and incorporate an University at Bombay."

#### RECOVERY OF RENTS (BENGAL.)

MR. CURRIE postponed the Motion (which stood in the Orders of the Day) for the first reading of a Bill to amend the Law relating to the recovery of rent in the Presidency of Fort William in Bengal. The Motion had been inserted in the Orders of the Day by mistake.

#### PORT-DUES AND FEES (MADRAS PRESIDENCY.)

MR. CURRIE moved the second reading of the Bill "for the levy of Port-dues and fees in Ports within the Presidency of Fort St. George, and to provide against the discharge of ballast in

certain Ports within the said Presidency." He had mentioned in introducing the Bill that, in all probability, it would not be considered advisable to pass the Bill as submitted. But he thought that it would be as well to read it a second time, and refer it to a Select Committee. The Select Committee would take the subject into consideration, and determine whether an entirely new Bill should be framed, or whether the present one should be so altered as to be accepted by the Council.

THE CHIEF JUSTICE said, he did not very much object to the second reading, but he thought that the Bill required to be divided into two. It provided—as other Bills had done—a rate of fees for certain Ports which were to be subjected to the general Harbor Act. It also proposed to continue in certain other Ports, which were not to be subjected to the general Act, the existing rate of fees, and extended to them particular provisions of the general Act. The Government of Madras might possibly have good reasons for keeping some of their Ports out of the scope of the general Act; but assuming that it was right and necessary to do so, it appeared to him that it would be very much better to carry out those two objects by two separate Bills—that the Act which should define the Port-dues to be taken at the Ports subject to the general Act should be a separate Act, and should form part of that body of Acts which had recently been proposed for Bombay, Kurrachee, and other Ports, as supplementary to the general Act.

MR. GRANT said, he should feel much obliged if the Honorable Member for Bengal would consent to postpone the second reading of this measure for one week. He had doubts of the expediency of the Bill, but he had not had time to consider it fully.

MR. CURRIE said, he had not the slightest objection to postpone the second reading. He might mention, at the same time, that he quite concurred in the observations which had fallen from the Honorable and learned Chief Justice.

It seemed to him that there were two courses open to the Council—either to read the Bill a second time now, and

refer it to a Select Committee, who would probably cut out of it that part upon which the Honorable and learned Chief Justice had remarked as being not properly supplemental to the Harbor Act, and which might form a separate Bill; or to refer the Bill to a Select Committee without reading it a second time, for the purpose of reporting upon it before it was published. He should have preferred that the Bill were read a second time and referred to a Select Committee, in the usual course; but he was quite ready to accede to the request of the Honorable Member who had spoken last, and should defer his Motion until next Saturday.

The Motion was, by leave, withdrawn, and the second reading of the Bill postponed until Saturday next.

#### JOINT-STOCK COMPANIES.

MR. PEACOCK postponed his Motion (which stood in the Orders of the 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."

#### MUTINY AND DESERTION (NATIVE ARMY).

MR. PEACOCK moved that the Standing Orders be suspended, in order that he might bring in and carry through its several stages a Bill to provide "for the apprehension and trial of Native Officers and Soldiers for mutiny and desertion."

He said, it was very necessary that some new provision should be made for the trial of Officers and Soldiers belonging to the Native Army who were guilty of mutiny or desertion. At present, persons amenable to the Articles of War could not be tried for military offences except by Courts Martial. Sentence of death or of transportation could not be passed except by General Courts Martial convened according to the Articles of War, consisting of not less than thirteen Commissioned Officers, or, according to Act No. VIII of 1857, consisting of not less than five European, or five Native Commissioned Officers. Many of the mutineers and deserters were going

about the country committing acts of depredation and violence, and rendering themselves a terror to the people around them. Under existing circumstances, Courts Martial composed of Native Officers for the trial of such offenders would, in most cases, be out of the question. European Officers, on the other hand, were fully engaged in the performance of other duties; and, in many cases, it would be impossible to send the offenders to a Military station for trial by Court Martial. He therefore proposed to give to every Sessions Judge, and to every person exercising the powers of a Sessions Judge, and to every person whom the Governor-General in Council, or the Executive Government of any Presidency or place, or the Chief Commissioners of the Punjab and Oude respectively, or the Commissioner of Nagpore, might invest with the power, authority to try such offenders, and to pass upon them the sentences to which they were now liable under the Articles of War—that was to say, in the case of Officers, sentence of death, or of transportation for life; and in the case of Soldiers, sentence of death, or of transportation for life, or of imprisonment with or without hard labor. He had thought it necessary to define the punishment to be awarded, because the Articles of War might not be well known to Civilians. But there was one punishment to which the Articles of War subjected mutineers and deserters, which he thought it would not be right to authorize Civil Officers in the Mofussil to inflict—namely, dismissal from the Service. It appeared to him that, under existing circumstances, that punishment was wholly inadequate to the offence; and the offender might as well go unpunished as have such a sentence passed upon him. If there should be an exceptional case requiring only that punishment, it was not necessary to provide for it by the present Bill: and it would be better that the offender in such a case should be left to a Court Martial, and be sent to a Military station for trial. According to the Articles of War for the Native Army, any Officer or Soldier guilty of mutiny or desertion, was liable—if an Officer, to suffer death, or transportation for life, or dismissal from the Service; and if a Soldier, to suffer death, or transportation for life, or im-

prisonment with or without hard labor, and with or without solitary confinement, or dismissal from the Service. For the reasons which he had already stated, he had omitted from this Bill the power of sentencing to dismissal from the Service, and he had not considered it necessary to introduce those provisions of the Articles of War which related to solitary confinement. He thought that there would be no means of carrying out such a sentence in those stations where mutineers or deserters were likely to be tried under the Act.

The Bill also provided that all sentences should be final and conclusive, and that sentence of death might be carried into execution immediately.

As the Bill empowered only Sessions Judges, and persons exercising the powers of Sessions Judges, and such others as might be invested with authority for that purpose by the Governor-General in Council or the Executive Government, to try for mutiny or desertion, it might be necessary that the Governor-General in Council, or the Executive Government of a Presidency, should have power to authorize any person to issue Commissions for the trial of such offences; and, accordingly, the Bill contained a provision to that effect.

There was no provision in the Articles of War for Native troops expressly authorizing Police Officers or others to arrest persons guilty of mutiny or desertion. He thought there could be no doubt that Police Officers would have that power without any such express provision in this Act. He observed, however, that by the Mutiny Act for the Queen's troops, power was expressly given to Police Officers to arrest persons suspected of mutiny or desertion. Therefore, to prevent any doubt in the matter, he had inserted in this Bill a Section enacting that, upon reasonable suspicion that any person is a mutineer or deserter, and subject to the Articles of War for the Native Army, a Police Officer or any other individual might apprehend him without warrant.

By a subsequent Section, he had provided that a person apprehended as a mutineer or deserter under the Act, should be conveyed without delay before a Magistrate, or an Officer exercis-

ing any of the powers of a Magistrate; and that, in the meantime, he should be detained in custody. If the Magistrate or other Officer should be satisfied that the prisoner was a mutineer or deserter, and subject to the Articles of War for the Native Army, he would have power either to send him to the Commanding Officer of some Military station, to be dealt with according to Law; or, if he should see good and sufficient reason for so doing, to commit him for trial before any Officer or other person having jurisdiction under the Act; or, if he should be authorized under the provisions of the Act to try for mutiny or desertion, he might, if he thought fit, himself proceed to try the offender forthwith.

He had also thought it right to introduce into the Act the provisions of Sections V and VI of Act XI of 1856. Those Sections authorized warrants to be issued for searching houses and other places in which there might be reasonable grounds for supposing that any deserter from the European troops was concealed. When that Act was passed, there was no idea that any such provision would be necessary for our Native troops. But there could be little doubt now that that power should be extended to deserters from the Native Army. He had, accordingly, extended by this Bill the provisions of Sections V and VI of Act XI of 1856 to all Officers, Soldiers, and others amenable to the Articles of War for the Native troops.

Further, he had inserted a Section by which all Zemindars, Talookdars, and other persons who were declared by Regulation VI of 1810 of the Bengal Code to be accountable for the early communication of intelligence respecting the resort to their estate of the classes of offenders therein specified, would be accountable for the early communication of intelligence of the resort to any place within the limits of their estates of any person against whom there should be reasonable suspicion of his having been guilty of mutiny or desertion; and all the provisions of the Regulation would have the same force and effect as if persons guilty of mutiny and desertion had been specially included in the classes of offenders specified therein. The classes of offenders specified in the Regulation he referred to, were dacoits, and robbers,

and others. It was important that Zemindars and other landholders in the Mofussil should be bound to give information of the resort to their estates of mutineers and deserters, in order that they might be apprehended, and might not be allowed to escape the punishment they deserved.

It appeared to him that the provisions contained in this Bill were not at all too severe, and that they were absolutely required for the purpose of making a severe example, and for the safety of the country. His own opinion was, that, in the present state of affairs, the severest punishment should be inflicted upon all mutineers and deserters from the Native Army, unless they could prove circumstances in mitigation. Others might possibly entertain a different opinion. This Act, however, would not compel the Civil Authorities to pass the severest sentence. In this respect, the question as to the amount of punishment to be inflicted must be left, as in other cases, to the discretion of the Judge, after taking all the circumstances of each particular case into consideration. The Act would allow him to pass sentence of death, or of transportation for life, in the case of Officers; and in the case of Soldiers, either sentence of death, or of transportation for life, or of imprisonment with or without hard labor for any term of years.

The Act was one designed for the exigency of the times, and need be only of a temporary nature. He had, therefore, provided that it should have effect for one year.

GENERAL LOW seconded the Motion that the Standing Orders be suspended.

Agreed to.

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

THE CLERK read the Bill.

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

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

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

Agreed to.

Section I being read—

MR. CURRIE said, he was doubtful about making the offence of simple desertion punishable with death or

transportation for life. Hitherto, simple desertion from the Native Army had scarcely been treated as any offence at all, and he imagined that several of the persons who had recently left their Regiments could hardly be considered fit subjects for the punishment of death or transportation.

MR. LE GEYT said, the same objection had occurred to him when the Section was being read; but, on consideration, he thought that the discretion which the Bill gave to Magistrates to send up the offender to a Military Station to be tried by Court Martial which might award the punishment of dismissal from the Service, did away with the objection. The Magistrate would take that course if it should appear to him that there were extenuating circumstances in the case.

MR. PEACOCK said, the punishment under the Articles of War for desertion by Native Officers was death, or transportation for life, or dismissal from the Service. It had appeared to him that it would not be right, in these times, to allow Sessions Judges or Magistrates, or others exercising the powers of such officers, to pass sentence of simple dismissal from the Service upon a native Officer or Soldier who was guilty of mutiny or desertion. As the Honorable Member for Bombay had observed, if the Magistrate or other Officer before whom a prisoner should be brought upon a charge of mutiny or desertion, should think that the punishment of death, or of transportation for life, was too severe to be inflicted under the particular circumstances of the case, he might send the prisoner to some military station, and there the prisoner would be tried by a Court Martial, which might award sentence of dismissal from the Service if it thought fit. Or if any Sessions Judge or other person who might pass sentence of death or transportation for life upon any Officer for mutiny or desertion should see grounds for recommending him to mercy, he might send up a report of the case, together with any remarks or recommendation to mercy, to the Governor-General in Council. The Governor-General in Council might, in his (Mr. Peacock's) opinion, without any express provision in the Bill, commute the sentence to any less punishment, or

pardon the offender, if he should deem the case a proper one for the extension of mercy. This he could do under the general powers now vested in him by Law. By the Articles of War, the Commander-in-Chief had the power of commuting sentences of death or transportation; and if the Honorable Member wished it, he (Mr. Peacock) had no objection to insert in this Bill a Clause conferring a similar power on the Governor-General in Council and the Executive Governments of Madras and Bombay. But he thought it objectionable to give Sessions Judges and Magistrates in the Mofussil the power of sentencing to mere dismissal from the Service. If mutineers and deserters from the Native Army were to be subjected to no greater punishment than that, they would go about the country committing every kind of enormity, making themselves the terror of the peaceful population, and inducing others to follow their example. Indeed, dismissal from the Service would place the offenders in the same position precisely as if they were allowed to remain at large without any trial at all. In short, he thought it would be better not to try them than to pass such a sentence upon conviction.

GENERAL LOW said, he thought it very desirable that such a provision as that which the Honorable and learned Member had just suggested should be inserted in the Bill.

THE CHIEF JUSTICE said, he thought that it ought to be made perfectly clear that the Civil Officer exercising the new jurisdiction given by this Bill might suspend the execution of a sentence until the pleasure of the Government as to the remission or execution of that sentence should be known. But he also thought that that should be done in this Act without any reference to the Articles of War, or to any analogous power of the Commander-in-Chief; because Courts Martial were bound in every case, before their proceedings could become final, to send them up for revision. If it were simply expressed in the Section that it should be in the discretion of the Civil Officer to send up a case for the exercise of the prerogative of mercy, or for commutation of the sentence, that would be all that was required. He thought with the Honorable and learned Member op-

posite that it was idle to give to those who were to receive the jurisdiction the power of dismissing from the Service. The only justification for the Act was the necessity which existed of enforcing stringently the provisions of the Law against mutiny and desertion. It was to be presumed that dismissal from the Service was precisely what a deserter was seeking by his own act; and that, therefore, it would be no punishment to him at all.

MR. PEACOCK moved that the following words be added to the Section:—

“The Sessions Judge or other Officer by whom the sentence shall be passed, may, if he think proper, report the case to the Governor-General in Council, or to the Executive Government of the Presidency, together with any remarks or recommendation which he may think fit to make thereon; and the Governor-General in Council, or the Executive Government of the Presidency, may either pardon the offender, or commute the sentence to any less punishment.”

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

Sections II to V were passed as they stood.

Section VI being read—

THE CHIEF JUSTICE said, it appeared to him that, as the Act, which would be passed without the usual publication, was to take effect immediately, and this Section imposed a new liability on landholders, some time should be fixed as that from which they should first become subject to that liability. He should therefore move that the following Proviso be added to the Section:—

“Provided that no proceeding shall be taken against any Zemmdar, Talookdar, or other person by virtue of this Section for anything done or omitted to be done by him within fourteen days after the passing of this Act.”

He did not know whether it was intended that the Act should apply to any Presidency other than Bengal. He presumed that it was not, for the Regulation referred to in the Section was limited to Bengal; and in fourteen days, the passing of this Act would be known all over Bengal.

The Motion was agreed to.

MR. LEGEYNT said, the Section, as it now stood, was, no doubt, very desirable for that part of the country to

which it was intended to apply, and to which, he hoped, all necessity for its application would be restricted. But it might be that this, which was a general Act, might be extended beyond the territories subject to Bengal; and in that case, it would be found that some of the classes of persons defined in the Bengal Regulation did not exist in the other Presidencies. Looking at the spirit of this provision, he would ask the Council what objection there could be to making it general, and rendering it incumbent upon every person to give information of the concealment of a deserter or mutineer. All knew that, by the Law of England, misprision of felony was a highly penal offence. Then, why not make concealment of mutineers or deserters punishable in the persons concealing, whatever their class might be, instead of making it punishable only in the particular class specified in the Section? He should, therefore, propose that all the words at the commencement of the Section before the words "hereby declared to be accountable" be left out, in order that the words "every person is" might be substituted for them.

MR. GRANT said the Section as it stood would not apply out of Bengal at all. Those only who are bound by the Bengal Regulations to give notice of dacoits, robbers, and other offenders of that class, would be bound by this Act to give notice of mutineers and deserters—and none others. He thought it better that this should be so. The Council was legislating now with great rapidity. They knew that in Bengal certain classes holding certain tenures of land are bound, and have always been bound since the commencement of our rule, as an incident of their tenure, to assist the Police in the apprehension of criminals of a particular order. But he was not prepared, on the moment, to extend this liability to Presidencies in which it does not now exist. As to them, the Council would, in fact, be legislating very much in the dark; and even if he were satisfied that it would be right to impose the same obligation upon certain classes in the other Presidencies—of which he could not feel sure—he did not think the Council was in a position to frame off-hand proper wording for the purpose.

He, therefore, thought that the Section should be left as it stood, inapplicable to Madras and Bombay.

The Section was passed as amended on the Motion of the Chief Justice.

The remaining Sections were passed as they stood.

The Preamble was passed after the insertion of the word "temporary" between the words "to make" and "provision" in the first line.

The Title was passed after the insertion of the word "temporarily" between the words "to provide" and "for the apprehension" in the first line.

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

On the Motion of Mr. Peacock, the Bill was then read a third time, and General Low was requested to take it to the Governor-General for his assent.

GENERAL LOW having returned to the Council Chamber with the Bill, the Vice-President announced that the Governor-General had given his assent thereto.

#### MADRAS UNIVERSITY.

MR. LEGEYNT moved that the Bill "to establish and incorporate an University at Madras" be referred to a Select Committee consisting of the Chief Justice, Sir Arthur Buller, and the Mover.

Agreed to.

MR. LEGEYNT moved that the Standing Orders be suspended to enable the Select Committee to report on the above Bill within eight days.

THE CHIEF JUSTICE seconded the Motion.

Agreed to.

#### THE INDIAN PENAL CODE.

MR. CURRIE moved that a communication received by him from the Government of Bengal relating to the exposure and desertion of children in the Soonderbuns, be laid upon the table and referred to the Select Committee on the Indian Penal Code.

Agreed to.

The Council adjourned.