

Saturday, January 2, 1858

**LEGISLATIVE COUNCIL
OF
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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858

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1858.

PROCEEDINGS

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LEGISLATIVE COUNCIL OF INDIA.

Saturday, January 2, 1858.

PRESENT:

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

Hon. Major Genl. J. Low,	E. Currie, Esq.,
Hon. B. Peacock,	Hon. Sir A. W. Butler
D. Elliott, Esq.,	and
P. W. LeGuyt, Esq.,	H. B. Harrington, Esq.

DELHI AND MEERUT.

MR. PEACOCK moved the first reading of a Bill "to remove from the operation of the General Laws and Regulations the Delhi territory and the Meerut Division, or such parts thereof as the Governor-General in Council shall place under the administration of the Chief Commissioner of the Punjab." He said, it was the intention of the Governor-General in Council to place the Delhi territory and the Meerut Division, or some portions thereof, under the administration of the Chief Commissioner of the Punjab. It was therefore necessary that those districts should be placed on the same footing as other districts of the Punjab; and, accordingly, he proposed, by the present Bill, to make them non-Regulation Provinces. Strictly speaking, the Delhi territory was not a Regulation Province, though it was subject to the jurisdiction of the Sudder Court and Board of Revenue. By Regulation V. 1832, the Office of Resident and Chief Commissioner having been abolished, the administration of the Revenue, of the Police, and of Civil and Criminal Justice was vested in the Board of

Revenue and Sudder Court respectively. By a provision in that Regulation, the Governor-General in Council was authorized to extend to the Delhi territory, by an order in Council, the whole or a part of the general Regulations. He believed that they had never been extended to that territory in so many words, though they had been generally acted upon. The present Bill declared that the Delhi territory and the Meerut Division, or such portions of them as should be placed by the Governor-General in Council under the administration of the Chief Commissioner of the Punjab, should not be subject to the general Regulations. As yet, it had not been finally determined by the Governor-General in Council whether the whole of the Meerut Division should be placed under such administration; and the Bill therefore proposed to take out of the general Regulations such portions only as might be annexed to the Punjab. If only a part of the Division should be transferred, the remainder would continue subject to the Regulations.

The Bill provided that all suits and proceedings which should be pending within these districts at the time the Act should come into operation, should be transferred to the Courts and Officers which might be established or appointed for the administration of Civil and Criminal justice, and the collection of the revenues therein, according to their respective jurisdictions.

Finally, the Bill provided that the Act should come into operation from such day as should be fixed by the Go-

governor-General in Council by notice, to be published in the Gazette.

The Bill was read a first time.

CORPORAL PUNISHMENT.

MR. PEACOCK moved the first reading of a Bill "to authorize the infliction of corporal punishment in certain cases." The Council, he said, was well aware that, in the North Western Provinces and other parts of India, many of the jails had been destroyed during the late disturbances, and that in some districts there were no means of carrying out a proper system of prison-discipline. On the Arms Act being sent up to the Chief Commissioner of Agra, that Officer suggested that, in lieu of, or in addition to, the punishment of fine which might be imposed under some of the Clauses of the Act, the Magistrate should have power to award corporal punishment. He stated that, in many cases in which a fine might be imposed, it would be almost impossible to levy it; and that, if the offender should be sentenced to suffer imprisonment for the default, there would be no means of giving effect to the sentence. The Chief Commissioner said that he was assured that the only means of carrying out the provisions of the Act would be to allow corporal punishment to be inflicted in lieu of, or in addition to the punishment of fine in cases falling within the provisions of Sections XXII and XXV of the Act. For his (Mr. Peacock's) own part, he did not think that corporal punishment should be inflicted in every case of unlawful possession or concealment of arms; but he would leave these offences subject to imprisonment and fine, and make it discretionary with the Magistrate to order corporal punishment not exceeding thirty stripes with a rattan to be inflicted in lieu of the fine, in the event of its not being paid. He had, certainly, agreed with the Law Commissioners who prepared the Penal Code in the general views which they had expressed on the subject of corporal punishment. They had recommended that no corporal punishment should be inflicted; and in the Code as it was last settled, there was no provision for such punishment. But recent events had very much altered his opinion on the question. It appeared to him that it was very

inexpedient to overcrowd our jails with prisoners for petty offences. He had lately seen a suggestion from the Government of the North-Western Provinces that, in cases of simple theft, corporal punishment should be allowed to be inflicted when the value of the property stolen exceeded fifty Rupees. As the Law now existed, no corporal punishment could be inflicted where the value of the property stolen was above that amount. Where the value was under fifty Rupees, the Magistrate might order corporal punishment, not exceeding thirty stripes with a rattan, to be inflicted; and he might also order corporal punishment in the case of juvenile offenders. That had been extended to Bombay by Act I of 1853; and the principle of allowing corporal punishment had been discussed and determined by the Council on a recent occasion, when the Police Bill for Calcutta was before it. The Council had adopted the principle of authorizing corporal punishment in certain cases. That Act provided that, in certain cases of theft, where the value of the property stolen did not exceed fifty Rupees, the Magistrate might order corporal punishment, not exceeding thirty stripes with a rattan, to be inflicted. It appeared to him, however, that where a theft was unaccompanied by aggravating circumstances, it should be competent to Magistrates, especially in districts where there were no means of enforcing proper prison-discipline, to award corporal punishment, even if the value of the property stolen was above fifty Rupees. He had, therefore, provided by this Bill that, in cases of simple theft, it should be lawful for Magistrates to sentence the offenders to corporal punishment not exceeding thirty stripes with a rattan.

He had also provided that in any case in which a fine should be imposed under Section VIII of Act XI of 1857, or under Section XXII or XXV of Act XXVIII of 1857, the Magistrate might order corporal punishment not exceeding thirty stripes with a rattan to be substituted for it in case it should not be paid forthwith. Sections XXII and XXV of Act XXVIII of 1857 were the Sections with respect to which the Chief Commissioner of Agra had said it would be impossible to carry out the object of the Act unless corporal punishment were allowed to be inflicted in lieu of, or in addition

to, the fine. Section XXII provided hard labor for a term not exceeding two years, and a fine not exceeding five thousand Rupees for wilfully neglecting to give notice of possession of ammunition &c. in certain cases; and Section XXV provided imprisonment with or without hard labor for a term not exceeding two years, in addition to any other penalty which might be awarded under the Act, for refusing to produce, or for concealing arms, ammunition, &c. when search was made. Act XI of 1857 was the Act which authorized the Executive Government to disarm, by proclamation, any person or specified class of persons in any district; and Section VIII provided a fine not exceeding fifty Rupees or imprisonment for a term not exceeding six months, for unlawful possession of arms. In cases under this Section, also, it might be very necessary and very proper, if the fine imposed was not paid, to direct corporal punishment in substitution for it instead of over-crowding the Jails by sending the offenders to prison.

He had also provided that corporal punishment not exceeding thirty stripes with a rattan might be inflicted, in case the fine imposed was not paid, for petty offences, such as abusive language, calumny, and inconsiderable assaults or affrays, which were now punishable with fine under Regulation IX. 1793.

He had further provided that nothing in the Bill should be deemed to authorize the infliction of corporal punishment on any European, or on any female. The reasons which had induced him to bring in the Bill, did not apply to Europeans; and females had always, very properly, been exempt from corporal punishment.

Lastly, he had provided that the word "Magistrate" should include any person lawfully exercising the full powers of a Magistrate, and also any Assistant to a Magistrate, or a Deputy Magistrate specially appointed by the Executive Government to exercise the powers vested in a Magistrate by this Bill.

These were the general provisions of the Bill. Doubtless, it was susceptible of improvement; and, when it came before a Select Committee and before a Committee of the whole Council, any necessary amendments might be made in it.

SIR ARTHUR BULLER asked if the duration of the Act was limited?

MR. PEACOCK replied, it was not. Possibly, the Select Committee to whom the Bill would be referred might think it right to recommend that the duration of the Bill should be limited. The question of permitting corporal punishment would be re-considered by the Select Committee on the Penal Code. If that Committee should determine that it ought not to be permitted, this Act would be repealed: if it should determine otherwise, provisions for corporal punishment would be introduced into the Code, and the Council would have an opportunity of discussing the general principle when the Code should come before it in Committee.

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

The Bill was read a first time.

ESCAPED OFFENDERS.

MR. PEACOCK moved the first reading of a Bill "for the punishment of certain offenders who have escaped from jails, and of persons who shall knowingly harbour such offenders." He said, he need scarcely inform the Council that, during the recent disturbances in the North-Western Provinces and other parts of India, many of the jails had been broken open and destroyed, and the prisoners forcibly released. Many of such prisoners were, at the time of their release, undergoing sentences of imprisonment for heinous crimes, and a large number of such prisoners were still at large. He had thought it right, therefore, to bring in a Bill to subject every such person to heavy punishment if he should fail, within one month after the passing of the Act, to surrender himself to a Magistrate or Police Officer, and make true answer, to the best of his knowledge, to all such questions as should be put to him by a Magistrate touching the jail from which he had escaped, and the cause for which he had been there detained. As it was very inexpedient to over-crowd the jails, or to allow convicts of this description to remain in the country, he had provided by the Bill that every such person should, upon conviction, be sentenced to transportation for life. He did not propose to leave it to the discretion of the Court before which such an offender should be convicted, to pass

a more lenient sentence. The Bill also provided that any person who had escaped from jail or other lawful custody whilst detained under a committal for trial for any heinous offence, or under a charge of being guilty of such offence, and who should not, within one month after the passing of the Act, surrender himself to a Magistrate or Police Officer, and declare from what jail he had escaped, and the nature of the charge upon which he had been detained—should, on being convicted of having escaped, and of having committed the heinous offence for which he had been detained, be subject to the same punishment. The latter provision applied to persons who had not hitherto been convicted; and, therefore, they ought not to undergo any more severe punishment than the present law allowed for escaping from prison, unless they should also be convicted of having committed the offence for which they had been detained.

The heinous offences contemplated by the Bill, were murder, attempts to murder, thuggee, dacoity, robbery, belonging or having belonged to a gang of thugs, or to a gang of dacoits, or to a wandering gang associated for the purposes of theft or robbery, and all crimes against person or property attended with great personal violence. It was very desirable that the country should be rid of offenders of this class; and, therefore, the Bill did not leave it to the discretion of the Magistrate to sentence them to transportation for life, but made it incumbent on him to do so.

He had also provided that whoever should knowingly harbour or conceal any such escaped prisoner, or, being aware of the place of concealment, should wilfully fail to give information thereof to a Magistrate or Police Officer, should be liable to imprisonment with or without hard labor for any term not exceeding seven years, and also to fine.

Many prisoners who had escaped, were not in custody for any heinous offence. He had thought it right that the Magistrate should have the power of tendering a pardon to any such prisoner, both in respect of his having escaped from custody, and of the offence for which he was detained, upon condition of his giving such information as

Mr. Peacock

might lead to the apprehension and conviction of any heinous offender punishable under the Act.

The Bill provided that offences under the Act might be tried by a Sessions Judge, or by a Special Commissioner appointed under Act XIV of 1857.

Before he concluded, he desired to offer his thanks to a gentleman of great ability and of considerable experience—Mr. Edward Lantour, the Judge of the Twenty-four Pergunnahs—for many very useful suggestions. Mr. Lantour had been kind enough himself to prepare a Bill upon the subject; and although he (Mr. Peacock) had not adopted all the provisions which were contained in that Bill, he felt bound to acknowledge the valuable assistance which he had received from that gentleman as well on this as on many other occasions.

The Bill was read a first time.

COMPULSORY LABOR (MADRAS).

MR. ELIOTT moved that the Bill "to make lawful compulsory labor for the prevention of mischief by inundation, and to provide for the enforcement of customary labor on certain works of irrigation in the Presidency of Fort St. George" be now read a third time and passed.

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

PORT-DUES (CUTTACK).

MR. CURRIE moved that the Bill "for the levy of Port-dues in certain Ports in the Province of Cuttack" be now read a third time and passed.

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

COMPULSORY LABOR (MADRAS).

MR. ELIOTT moved that Mr. Peacock be requested to take the Bill "to make lawful compulsory labor for the prevention of mischief by inundation, and to provide for the enforcement of customary labor on certain works of irrigation in the Presidency of Fort St. George" to the Governor-General for his assent.

Agreed to.

PORT-DUES (CUTTACK).

MR. CURRIE moved that Mr. Peacock be requested to take the Bill "for the levy of Port-dues in certain Ports in the Province of Cuttack" to the Governor-General for his assent.

Agreed to.

NATIVE PASSENGER SHIPS.

MR. ELIOTT moved that Mr. Currie be added to the Select Committee on the Bill "for the regulation of Native Passenger Ships."

NOTICES OF MOTION.

MR. PEACOCK gave notice that he would, on Saturday the 9th Instant, move the second reading of the following Bills, namely,

The Bill "to remove from the operation of the general Laws and Regulations the Delhi Territory and the Meerut Division, or such parts thereof as the Governor-General in Council shall place under the administration of the Chief Commissioner of the Punjab."

The Bill "to authorize the infliction of corporal punishment in certain cases."

And the Bill "for the punishment of certain offenders who have escaped from Jail, and of persons who shall knowingly harbour such offenders."

Also that he would on the same day move that the Standing Orders be suspended to enable him to proceed with the above Bills.

The Council adjourned.

Saturday, January 9, 1858.

PRESENT:

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

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General	E. Currie, Esq.
J. Low,	and
Hon. B. Peacock,	H. B. Harrington,
D. Elliott, Esq.	Esq.

BOMBAY WATER-WORKS.

MR. LEGEYT moved the first reading of a Bill "to give effect to an

agreement between the Government of Bombay and Her Majesty's Justices of the Peace for the Town of Bombay in relation to certain Water-works in the Islands of Salsette and Bombay." The principal object of this Bill, he said, was to give the Government of Bombay some security for the repayment of a very large sum of money disbursed by it in the construction of certain water-works known as the Vihar Valley Water-works. It would be in the recollection of the Council that, on several occasions of late years, the scarcity of water in Bombay towards the end of the hot season, had produced much painful anxiety and distress; and that, only two years ago, it was called on to pass a Bill which was rendered necessary by an extreme drought in the Island at that time, and which materially affected private comfort and property.

The population of Bombay had, of late years, increased very largely and very rapidly. Within the last twenty years, it had nearly doubled, and it now amounted to about 600,000. The Island being entirely dependent for its supply of water on the periodical rains which fell from the middle of June till the end of September, any failure of those rains necessarily produced extreme scarcity and distress. This state of things had been an object of great solicitude with the Government and the Inhabitants of the Island for some years past. Several projects for remedying the want of water had been submitted from time to time to the Government, and tested by scientific enquiry. After a careful examination of several, one, in which it was proposed to collect water in a large reservoir in the neighboring Island of Salsette, and bring it into Bombay by means of iron pipes, a distance of about fourteen miles, — was found to present the most effectual and feasible results. The cost of this work was then estimated at twenty-five lakhs of Rupees. It was obvious that an outlay of this kind, being solely for the benefit of the Inhabitants of Bombay, was one which should fall, not on the general revenues of the country, but on the Inhabitants of the place who would benefit thereby. It was accordingly proposed that the sum of twenty-five lakhs should be advanced by