

Saturday, February 13, 1858

**LEGISLATIVE COUNCIL**  
**OF**  
**INDIA**

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# PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

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1858.

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

**MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA AND HOWRAH).**

MR. CURRIE postponed the Motion (which stood in the Orders of the Day) for the third reading of the Bill "for raising Funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah."

**POR-T-DUES AND FEES (KURRACHEE).**

MR. LEGEYT moved that the Council do resolve itself into a Committee on the Bill "for the levy of Port-dues and fees in the Port of Kurrachee;" 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 Committee after the omission of Section VII, and the substitution for it (with certain necessary modifications) of Sections V and VI Act II of 1858; and, the Council having resumed its sitting, was reported.

**CONFISCATION OF VILLAGES, &c.**

MR. PEACOCK moved that the Standing Orders be suspended to enable the Select Committee to whom the Bill "to authorize the confiscation of, or the imposition of fines on Villages and other places for offences committed by the Inhabitants" might be referred, to present their Report before the expiration of the period prescribed by Standing Order No. LXIX.

GENERAL LOW seconded the motion.

Agreed to.

**POR-T-DUES AND FEES (KURRACHEE).**

MR. LEGEYT gave notice that he would, on Saturday the 13th Instant, move the third reading of the Bill "for the levy of Port-dues and fees in the Port of Kurrachee."

**CONFISCATION OF VILLAGES, &c.**

MR. PEACOCK moved that the Bill "to authorize the confiscation of,

or the imposition of fines on Villages and other places for offences committed by the Inhabitants" be referred to a Select Committee consisting of Mr. Currie, Mr. Harington, and the Mover, with an instruction to present their Report thereon within a fortnight.

Agreed to.

MR. PEACOCK moved that Mr. Elliott and Mr. LeGeyt be added to the Select Committee on the above Bill.

Agreed to.

**NOTICE OF MOTION.**

MR. ELIOTT gave notice that he would, on Saturday the 13th Instant, move for a Committee of the whole Council on the Bill "for the levy of Port-dues and fees at Ports within the Presidency of Fort St. George."

The Council adjourned.

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Saturday, February 13, 1858.

**PRESENT:**

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

Hon. Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major Genl. J. Low,	E. Currie, Esq.,
Hon. B. Peacock,	Hon. Sir A. W. Buller
D. Elliott, Esq.,	and
	H. B. Harington, Esq.

**RESTORATION OF POSSESSION OF LANDS (N. W. P.)**

MR. HARINGTON moved the first reading of a Bill "to facilitate the recovery of land and other real property, of which possession may have been wrongfully taken during the recent disturbances in the North-Western Provinces of the Presidency of Bengal.

In doing so, he said from the correspondence which had lately been received from the Officiating Secretary to the Chief Commissioner at Agra, as reported to the Council on Saturday last, as well as from information derived from other quarters, it appeared that, since the breaking out of the mutiny in the Native Army of Bengal in the month of May last, there had been considerable unauthorized disturbance of possession of land and other real property in some of the districts in the North-Western

Provinces. Indeed, to such an extent had this been the case, that in one of the districts through which he had passed in his recent journey from Agra to Calcutta, he had been informed that, during the comparatively short interval that had elapsed since the period just mentioned, nearly one-half of the entire Zillah had changed hands. The parties whose possession had been thus wrongfully disturbed, had been chiefly persons who had acquired their title to the property at public sales, held either for the recovery of arrears of Government Revenue, or in execution of decrees of the Civil Courts; and their title to the property so sold to them had never been called in question. The persons by whom they had been dispossessed, had been, for the most part, the old or former owners, whose proprietary right having become extinguished, they had continued to reside on the land as cultivators, though, in consideration of their former position, they had not unfrequently been allowed more favorable terms, as regarded the rate of rent taken from them, than ordinary ryots or tenants at will. These persons, probably imagining that our rule was drawing to a close, and that in all probability it would soon cease altogether, took advantage of the temporary suspension of authority to eject the parties who were in legal possession of the property which formerly belonged to themselves, and had re-established their own possession therein. In many instances, the ouster had been attended with acts of great personal violence, for which all concerned were of course liable to severe punishment; but there was reason to apprehend that great difficulty would be experienced in obtaining reliable proof for the identification and conviction of individual offenders. There could be no doubt, however, that, in nearly every case, the act of dispossession, or of assumption of possession, having been without authority of law, was wrongful; and he had, therefore, used that term in the Title of the Bill which he was desirous of introducing, in preference to the word "forcible." He might here mention that it was the opinion of several old and experienced officers, that in allowing the compulsory sale of land in satisfaction of money-decrees, we had acted unwisely, and without a due

regard to native feeling and custom. It was alleged that the practice, if not altogether unknown in Native States, was rarely, if ever, resorted to in them; and the frequency with which such sales had taken place under our system, was said to have made our rule very unpopular amongst the people. It was also objected that, by removing the old land-holders from the position which they had so long held, we had deprived ourselves of the support which they were able to afford us in times of trouble such as we had lately passed through; and that the new men, who had taken their places, having no local influence, and being looked upon with dislike by the old proprietors and the ryots generally, were elements rather of weakness than of strength. There might be, and, no doubt, there was some force in these objections; but this was clearly not the time for entering into the large and important questions which were involved in them. What the Council had to consider was, whether parties who, in a time of anarchy and disorder, had been wrongfully turned out of property of which they were in legal possession under a title acquired from ourselves, or in conformity with our Regulations, had not a just claim upon the Government, now that order and public tranquillity were being rapidly re-established, to be restored at once to the state in which they were at the time the mutiny broke out; and, assuming that upon this point there could be no difference of opinion, it then remained to consider and determine in what mode the redress to which these parties were entitled, could be best afforded.

The local Civil Courts, as at present constituted, were, of course, fully competent to deal with cases of this description; but if the ousted parties were left to seek their remedy in them, it was obvious that they would be subjected, not only to considerable expense under the operation of the Stamp Laws, but also to great and vexatious delay before they could hope to recover their rights—a regular action of this nature, with the appeals allowed in it, usually occupying from two to three years, and sometimes even a longer period, before it was finally disposed of. It had been suggested that, under the provisions of Act IV. of 1840 of the Bengal Code,

the Magistrates were competent to reinstate parties whose possession had been disturbed during the period alluded to; but the interference of a Magistrate under that Act could be exercised only on proof of forcible dispossession, and then only when the complaint was preferred within one month from the date of dispossession. There were also other reasons why, in his opinion, the Act in question could hardly be considered as sufficient to suit the present state of things.

Under these circumstances, it appeared advisable to create a special class of Courts for the trial and determination of cases of dispossession of land or other real property which had occurred during the recent disturbances, and to invest the Officers who would preside in these Courts with a summary jurisdiction which would enable them to afford speedy redress and to punish the offenders without any great expense to the complainants; and the Bill of which he was now to move the first reading, had been prepared with that view.

It proposed to give the Government authority to appoint one or more special Commissioners for the trial and determination of cases of the nature of those under consideration, and to assign to the Officers so appointed such extent of local jurisdiction as might from time to time be deemed proper. The Commissioners would be at liberty to hold a Court at any place within the limits of their respective jurisdictions which might appear convenient for the trial of cases brought before them: and during the time that their appointment lasted, the action of the local Civil Court, in respect of cases recognizable by the Commissioners, would be suspended. On entering on their duties, the Commissioners would issue a proclamation calling upon all persons who might, without authority of law, have taken possession of any land or other real property since the beginning of May last, to surrender the same to the parties then in possession; and warning them that, in the event of their failing to comply with the requisition within the period allowed, and of its being afterwards proved, on the complaint of the ousted party, that they had wrongfully seized, and that they were still in possession of the property to which the complaint related, they would not only be compelled to deliver up the property

and to account for any mesne profits that might have accrued during the period of their unlawful possession, but that they would also be liable to imprisonment, which might extend to seven years, or to fine, or to both fine and imprisonment. Looking to the time when, and to the circumstances under which, the dispossession had taken place, he did not think that these penalties could be considered as too severe, or as out of place in a Bill of this nature.

The trial before the Commissioners would be of a very simple and summary character. There would be no written pleadings beyond a brief plaint setting forth the names of the parties, their description, and places of abode, the title under which the complainant claimed to be in possession of the property at the time that he was ejected therefrom, and the date of his dispossession. Before summoning the defendant, the Commissioner would examine the complainant on oath or solemn affirmation in order to satisfy himself that there was probable cause for noticing the complaint. The defendant would ordinarily be required to attend the Court of the Commissioner in person; but it would be in the discretion of the Commissioner to dispense with such personal attendance on sufficient cause shewn. The Commissioners, having the parties and their witnesses before him, would go into the proofs adduced by the parties in support of their respective statements, and would make such further enquiry as might appear necessary; and if the complaint appeared to him to be substantiated, he would order the complainant to be reinstated and maintained in possession, and proceed at once to enforce his order, calling in the aid of the Magistrate if necessary.

No institution fee would be required from the complainant in the shape of Stamp duty or otherwise. Considering the circumstances of the country at the time the dispossession had taken place, he thought that the Government might fairly be called upon to exempt parties claiming redress under the proposed Bill, from the operation of the Stamp Laws; and as the decision of the Commissioner would be confined to the question of possession, it was not intended that there should be any appeal from his order, whether in favor of or

against the complainant; but if either of the parties had any claim of right, he would be at liberty to institute a regular suit to establish the same, anything in the decision of the Commissioner notwithstanding.

These were the leading provisions of the Bill, and he now begged to move its first reading.

The Bill was read a first time.

#### KURNOOL.

MR. ELIOTT moved the second reading of the Bill "for bringing the District of Kurnool under the Laws of the Presidency of Fort St. George."

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

#### POR-T-DUES (KURRACHEE).

MR. LEGEYT moved that the Bill "for the levy of Port-dues and fees in the Port of Kurrachee" be now read a third time and passed.

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

#### POR-T-DUES (FORT ST. GEORGE).

MR. ELIOTT moved that the Council resolve itself into a Committee on the Bill "for the levy of Port-dues and fees at Ports within the Presidency of Fort St. George"; and that the Committee be instructed to consider it in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment.

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

#### KURNOOL.

MR. ELIOTT moved that the Bill "for bringing the District of Kurnool under the Laws of the Presidency of Fort St. George" be referred to a Select Committee consisting of Mr. Currie, Mr. Harington, and the Mover.

Agreed to.

#### POET-DUES (KURRACHEE).

MR. LEGEYT moved that General Low be requested to take the Bill "for

the levy of Port-dues and fees in the Port of Kurrachee" to the President in Council, in order that it may be submitted to the Right Honorable the Governor-General for his assent.

Agreed to.

#### STATE OFFENCES.

MR. ELIOTT said he had received a communication from the Madras Government forwarding a letter from the Advocate General of that Presidency referring to a trial held in the Supreme Court there under Act XI of 1857 (for the prevention, trial, and punishment of offences against the State), and in which the learned gentleman called attention to what he considered were defects in the Act. It did not appear to him (Mr. Elliott) that the defects alluded to, if they were such at all, required to be corrected; and he should, therefore, only move to lay the communication on the table.

The Council adjourned.

—  
Saturday, February 20, 1858.

#### PRESENT:

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

Hon. the Chief Justice.	P. W. LeGeyt, Esq.,
Hon'ble Major General	E. Currie, Esq.,
J. Low,	Hon. Sir A. W. Buller,
Hon'ble B. Peacock,	and
D. Elliott, Esq.,	H. B. Harington, Esq.

#### CONFISCATION OF VILLAGES, &c.

MR. PEACOCK presented the Report of the Select Committee on the Bill "to authorize the confiscation of, or the imposition of fines on Villages and other places for offences committed by the Inhabitants."

#### CORPORAL PUNISHMENT.

MR. PEACOCK also presented the Report of the Select Committee on the Bill "to authorize the infliction of Corporal Punishment in certain cases."

#### BOMBAY WATER-WORKS.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to