

Saturday, May 28, 1859

LEGISLATIVE COUNCIL
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Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George." He was under the impression at the time that the late Member for Bengal was upon that Select Committee, and he had therefore proposed to substitute his successor for him. But he now found that the Select Committee on that Bill already contained its full complement of Members, and that he had labored under a misapprehension in supposing that the late Honorable Member for Bengal was one of them. He now begged to move that Mr. Peacock be relieved from that Committee.

Agreed to.

The Council adjourned.

Saturday, May 28, 1859.

PRESENT :

The Honorable B. Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-General Sir	H. Forbes, Esq.,
J. Outram,	Hon. Sir C. R. M.
P. W. LeGeyt, Esq.,	Jackson, and
H. B. Harington, Esq.,	A. Sconce, Esq.

APPEALS.

The Clerk presented a Petition from the Indigo Planters' Association against the Bill "to provide for the more speedy disposal of appeals in cases appealable to the Sudder Court, and of applications for special appeals."

Mr. SCONCE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

The Clerk also presented a Petition from the British Indian Association against the same Bill.

Mr. SCONCE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

TRIALS BY SESSIONS JUDGES.

Mr. HARINGTON moved the first reading of a Bill "to enable Sessions Judges to pass sentence in certain cases without reference to the Sudder Court."

He said, a Bill "to provide for the more speedy disposal of appeals in cases appealable to the Sudder Court, and of applications for special appeals," was, the Council would recollect, brought in by his Honorable friend, the late Member for Bengal, on the last day on which he sat as a Member of that Legislature. The object of that Bill, which, after being read a second time, was now under the consideration of a Select Committee, whose report upon it would be due in the course of a few days, was to afford relief to the Sudder Courts at Calcutta and Agra on the Civil side. The Bill, of which he was now to move the first reading, was introduced with a view still further to relieve those Courts, though on the Criminal side, and this it proposed to do by enabling Sessions Judges to pass sentence in certain cases which, under the law, as it now stood, required to be referred for the final orders of the Nizamut Adawlut. He had reason to know that the late Honorable Member for Bengal originally intended to include in the Bill brought in by him the whole of the provisions contained in the Bill which he (Mr. Harington) had prepared. The Sudder Court at Calcutta recommended, he believed, that those provisions should be introduced into that Bill, but as it was fully expected that the new Code of Criminal Procedure, which embraced all the modifications of the existing Regulations and Acts relating to the reference of Criminal trials to the Sudder Courts, now proposed for adoption, would soon become law, the late Honorable Member for Bengal considered it unadvisable to anticipate the new Code in the Bill brought in by him, and he, accordingly, confined the provisions of that Bill to the business coming before the Sudder Court on the Civil side. It was proper, therefore, that he (Mr. Harington) should explain why, instead of following the example set him by the late Honorable Member for Bengal, and waiting patiently for the passing of the new Code of Criminal Procedure, he was anxious to hasten matters, and had considered it necessary to bring in this Bill at the present time. The explanation which he had to offer to the Council on this point was this. Honorable Members were aware that considerable disappointment

had been felt at home in consequence of no provision having been made in the new Code of Civil Procedure, which was lately passed by the Council, for amalgamating the Supreme and Sudder Courts according to the scheme proposed by the original framers of that Code, and that so much importance was attached to the amalgamation of those two Courts, and to their formation into a single high Court, that it was considered desirable in some quarters that the Codes of Civil and Criminal Procedure should be stayed until the scheme of amalgamation was matured and could be embodied therein. He believed he was not wrong in saying that a wish to this effect had been expressed, at least such was generally reported to be the case. The reason why nothing had as yet been done by this Council towards carrying out that part of the scheme of Her Majesty's Commissioners, which related to the amalgamation of the Supreme and Sudder Courts, had already been mentioned more than once within the last few days, and it was unnecessary for him to repeat now what was then said.

With respect to the new Code of Criminal Procedure, he wished to observe that, although the Select Committee, to which the Bill containing that Code was referred, had made their report, and the Bill was now ready to be committed to the whole Council, he thought it very probable that the Honorable and learned Vice-President, who had charge of the Bill, would not consider himself justified in going on with it at present in the face of the wish to which he had alluded, but that he would prefer to wait for further instructions from home, which might not be received for a considerable time. He (Mr. Harington) was unable to say what course the Honorable and learned Vice-President intended to pursue in existing circumstances; but should he have decided not to proceed with the Bill under his charge at present, he thought the Council at large would concur in the propriety of that decision, for, independently of the desire which they must all feel to defer, as far as lay in their power, to the wishes of the Home authorities in this matter, it was obvious that it would be far

Mr. Harington.

better that there should be a little delay in the passing of the Code than that they should run the risk of the result of their labors, after they had been brought to a close here, being eventually disallowed at home. It was not possible for them to stay proceedings in respect to the new Code of Civil Procedure, because the Bill, in which that Code was contained, had received the assent of His Excellency the Right Honorable the Governor General before they were made aware of the fact that any wish of the nature of that mentioned had been expressed, and in so far, therefore, as the Civil Code was concerned, they could only await Her Majesty's pleasure. Then, in addition to the obstacle which had been so unexpectedly raised up in the way of their proceeding with the new Code of Criminal Procedure, he might state that the Select Committee, to which the Bill containing that Code was referred, had recommended such very material and important alterations in it, that, in the event of their recommendations being adopted by the Council at large, he thought it very probable that it would be considered proper to republish the Bill for general information before it was read a third time, which would cause a further delay of several weeks; and that, moreover, the references made in the new Code of Criminal Procedure to the new Penal Code were so numerous, and the two Codes were so intimately connected with one another, that it seemed desirable that they should pass into law simultaneously, but the Select Committee on the Penal Code had not as yet been able to present their report. Considerable progress had been made in the work of revision committed to them, but much remained to be done, and it was, at present, quite impossible even to hazard a conjecture as to when the new Penal Code would come into operation. Taking all these circumstances together, it certainly appeared to him (Mr. Harington) that, if the amendments of the existing Code of Criminal Procedure proposed in the Bill which had been prepared by him, were really necessary and likely to prove beneficial, it would be better to pass them at once, particularly as they chimed in, as he had stated, with the new Code of Crimi-

nal Procedure, rather than wait for an indefinite period, or until the new Code of Criminal Procedure should become law, which might not happen this year. He trusted that he had said enough to justify the course which he was pursuing in bringing in the present Bill, and that in its introduction he should not be considered to be unnecessarily occupying the time of the Council. He would now proceed to notice briefly the cases in which the Bill proposed that Sessions Judges should have power to pass sentence without reference to the Sudder Court.

These were, *first*, cases of rape. According to the law in force in Bengal and Madras, Sessions Judges had no power to pass sentence on a conviction for this offence, but were obliged to refer their proceedings for the orders of the Sudder Court. No doubt rape was a very heinous crime, and there was reason to fear that it was one of very common occurrence in some parts of India; but he (Mr. Harington) did not consider it to be of a more heinous character than several other offences, the perpetrators of which might, on conviction, be punished by Judges of Sessions without reference to the Sudder Court. In support of this opinion, he might observe that the punishment awarded by the Sudder Court, in cases of rape referred for their orders, very rarely exceeded what the Sessions Judges were competent to adjudge in cases punishable by them under the general Regulations, that is, seven years' imprisonment with hard labor in irons. A Bill to enable Sessions Judges to pass sentence in cases of rape was brought in by the late Honorable Member for Bengal so far back as the 8th March 1856, and what had just been mentioned by him on the subject of the punishment of the crime was one of the reasons assigned by the Honorable Mover of the Bill for its introduction. The Bill was read a second time on the 15th March of the same year, and was referred in the usual course to a Select Committee, but no report was made, and on the 20th November last the Committee was discharged on the motion of the late Honorable Member for Bengal, and the papers were ordered to be referred to the Select Committee on the Criminal Procedure Code.

The next class of cases to which the Bill referred were cases of forgery and perjury. The Regulations of Bengal and Madras fixed a minimum punishment for these two offences, any thing short of which the Sessions Judges were precluded from awarding on conviction; but if in any case the punishment so fixed appeared too severe, the Sessions Judges were required to refer their proceedings for the orders of the Sudder Court, stating at large the grounds on which they considered a mitigation of punishment necessary. In the cases referred to the Sudder Court under this rule, the Court were obliged to revise the proceedings, not only with a view to ascertain whether the ground on which a remission of punishment was recommended was sufficient to justify their interference, but also whether adequate proof existed in the record to sustain the conviction, which of course occupied a good deal of time. But if the Sessions Judges could be safely entrusted with power to award punishment in cases of forgery and perjury, extending in some cases to sixteen years' imprisonment in banishment, it certainly seemed unreasonable to impose upon the exercise of their discretion the restriction just mentioned, particularly as it might be relaxed on their recommendation. He might add that the Select Committee on the new Penal Code were opposed to any minimum of punishment being declared by law, and they had recommended that the Code should be altered accordingly.

The last class of cases to which the Bill related were cases falling within the provisions of Clause 1 Section IV Regulation VI. 1832. That Clause declared that "in all trials in which recourse might be had to the provisions of the Regulation, the futwa of a Mahomedan law officer was unnecessary, and might be dispensed with at the option of the Court, anything in the existing Regulations to the contrary notwithstanding; provided that, whenever the futwa was dispensed with, and the crime of which the prisoner was convicted was one which the Judge was not specifically empowered by the Regulations to punish, he should not proceed to pass sentence, but should refer the case for the consideration of the Nizamut Adawlut, stating at length in

the proceedings the opinion of the punchayet, assessors, or jury, and his own opinion as to the crime proved, and the nature and extent of the punishment which should be awarded."

The effect of the proviso which he had just read was to preclude the Sessions Judges in those Districts of the Bengal Presidency, in which there was no Mahomedan law officer, from passing sentence in cases of child-stealing, which were very numerous, abduction, exposure of new-born infants, conspiracy, and many other cases the offences charged in which were not of a more heinous character than those just mentioned, and on a conviction for which a more severe punishment than seven years' imprisonment, to which extent, as already noticed, the Sessions Judges had power to pass sentence under the general Regulations, was seldom, if ever, awarded, and to devolve upon the Sudder Court the necessity of revising the proceedings of the Court below, and of coming to a decision thereon. The Sudder Court at Agra had again and again recommended the rescission of this rule and the substitution for it of a provision that, in cases of the nature of those mentioned, where the offence charged had been declared punishable by a conviction and sentence of the Nizamut Adawlut, no reference should be necessary to that Court, but that the Session Judges, on conviction, should be at liberty to pass sentence within certain limits, although the offence was not one which those Officers were specifically empowered to punish by any Regulation. This was what was now proposed to be done. In suggesting this alteration of the law, the Sudder Court justly observed that the effect of the existing rule was to devolve upon the Sudder Court the final determination of a large number of cases of comparatively little importance, without, as the Court believed, any commensurate public benefit.

He (Mr. Harington) was quite prepared to admit that the amount of relief which would be afforded to the Sudder Courts at Calcutta and Agra, by the introduction of the present Bill, would not be very great, but still it would be something. It was scarcely necessary for him to say that every

minute of the time of the Judges of the Sudder Court was very valuable, and all would agree that the time of the Judges of that Court should not be occupied with work of comparatively little importance. Every hour saved from the disposal of the cases to which the present Bill related, would be so much time gained for other more important business; and as they had recently been called upon to pass a law for the relief of the Sudder Courts at Calcutta and Agra, one of the provisions of which would have a retrospective effect in respect to certain classes of cases which might be depending on the date on which the Bill should come into operation, he thought they were bound to relieve those Courts of all work which, from its nature, could be sufficiently well performed by the subordinate Courts, and for the devolvement of which upon the Sudder Courts no special or sufficient reason appeared to exist. It was upon these grounds that he ventured to commend this Bill to the favorable consideration of the Council, and to express a hope that they would give their assent to the motion which he was about to make. He would only add that the Bill, as drawn, applied to the Presidency of Bengal alone, but such parts of it as related to the crimes of rape, perjury, and forgery, could hereafter be extended to Madras, if the authorities at that Presidency should express a wish that it should be so extended.

The Bill was read a first time.

SIGNALS (RIVER HOOGHLY).

MR. SCONCE moved the first reading of a Bill "to enforce Signals of the names of vessels passing Signal Stations established within the River Hooghly and the branches thereof." He said that the Bill which he now had the honor to lay before the Council originated in a reference from the Lieutenant-Governor of Bengal. The object of the Bill was simply to compel Masters of vessels to report or signalize the names of their vessels when they neared any Telegraphic Station. On a late occasion a China steamer anchored at Saugor for nearly a whole day; and although the Pilot on board suggested to the Master the necessity of report-

Mr. Harington

ing her arrival, the arrival of the vessel remained unannounced.

Under these circumstances it had been considered necessary that signaling by vessels should, by law, be enforced. The suggestion had been made by the Superintendent of Marine ; and the Lieutenant-Governor of Bengal, and the Chamber of Commerce to whom a reference was made on the subject, had given their support to Captain Rennie's proposition.

The Bill was very short and simple. The first Section provided that the Master of every inward-bound vessel belonging to a British subject, or sailing under British Colors, on nearing a Signal Station, should, on the requisition of the Pilot in pilotage charge of his vessel, signalize the name of the vessel by the usual numbers, and that every Signal so made should continue hoisted till answered from the Station to which it was addressed.

The second Section imposed a penalty for neglect of that injunction ; and the third Section provided that this Act should be taken as part of the Ports Act XXII of 1855.

He supposed, generally, that there could be no doubt of the right of the Legislature to pass such a law when the interests of the public rendered it necessary. It was not always easy nor, as a general principle, was it on this occasion necessary, to draw the line by which, as regards the legitimate interference of the Legislature, the rights to be enjoyed by private parties without interruption should be distinguished from those in which the public had an interest. But it appeared to him that there were several considerations which might be urged in support of this Bill. Looking, generally, to the connection subsisting between navigators and the public whom they in a great measure served, it seemed to him that Masters of vessels might very reasonably be compelled to serve the purpose for which this Bill was intended to provide. In coming to this Port they had the protection of the law, the benefit of the Port itself, and of whatever advantages arose from the system of administration therein established. In other respects, they might

be regarded as public traders. They offered themselves to the public, although on a large scale, as carriers of goods and communications ; and in return for the advantages which they derived from the public, some acknowledgment was due from them to the public. But, looking more particularly to the vessels engaged in the China Trade, it may be fairly said that the position which they occupied tended to exclude others from occupying the same line, and thus the advantages which they possessed partook in some degree of the nature of a monopoly, and for that reason also it appeared to him very proper that they should be required to disclose the fact of their return to Port.

The Bill was read a first time.

PORTS AND PORT-DUES.

MR. FORBES moved the first reading of a Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues.)" He said that Act XXII of 1855 was passed to provide for the safety of vessels and the convenience of traffic in the several Ports in India and the Straits, for the improvement and maintenance of Ports, and for the levy of Port-dues in order to defray the cost of such improvements and maintenance. It provided for the levy by distraint of all claims of Government on account of Port-dues, as long as the vessel, in respect of which they were leviable, remained at anchor in the harbour, if the Master of the vessel refused to pay them on demand. But no provision was made for the collection at one Port of the claims due at another Port, if any vessel should leave the harbour without settling the claims. Experience had shown that such a provision was necessary, and instances had lately occurred on the Western Coast of India of vessels leaving their Port without satisfying the claims of Government on account of Harbour-dues.

The object of this Bill was to give the authorities, who, by Act XXII of 1855, had power to collect Harbour-dues for the Port at which they were employed, the same power to collect the dues which any vessel might have left undischarged at any other Port.

But as any Master of a vessel, who would attempt to defraud the Government by wilfully leaving a harbour without payment of the Port-dues, would, if no penalty attached to the attempt, always take his chance of evading the demand, it was further provided that, unless it were shown that departure was caused by stress of weather or other circumstances over which the Master had no control, his departure should be considered to have been wilful, and he would be liable to a penalty in addition to the Port-dues which he attempted to evade.

If this Bill, and the Bill which had just been introduced by the Honorable Member for Bengal, should pass a second reading, he (Mr. Forbes) proposed to communicate with that Honorable Gentleman privately, in the hope that both Bills might be incorporated into one in Select Committee, thus avoiding the inconvenience which would arise from there being before the Council two Bills to amend the same Act.

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

The Bill was read a first time.

PENAL CODE.

Mr. Forbes moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned.

Saturday, June 4, 1859.

PRESENT :

The Hon'ble Barnes Peacock, *Vice-President*.

The Hon. Lieut.-Genl.	H. Forbes, Esq.,
Sir J. Outram,	and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.
H. B. Harington, Esq.,	

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws.

Mr. Forbes

Saturday, June 11, 1859.

PRESENT :

The Hon'ble Barnes Peacock, *Vice-President*.

H. B. Harington, Esq.,	H. Forbes, Esq.,
	and
	A. Sconce, Esq.

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws. The Council was therefore adjourned by the Vice-President at half past 11 o'Clock to Saturday, the 18th Instant, at 11 o'Clock.

Saturday, June 18, 1859.

PRESENT :

The Hon'ble Barnes Peacock, *Vice-President*,
in the Chair.

Hon. Lieut.-Genl. Sir	H. Forbes, Esq.,
J. Outram,	Hon. Sir C. R. M.
Hon. H. B. Harington,	Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

THE CLERK presented a Petition from Mr. Robert Bain, of Prince of Wales' Island, praying for the repeal or a modification of Act VI of 1857 for the acquisition of land for public purposes.

Mr. PEACOCK moved that the Petition be printed.

Agreed to.

APPEALS.

THE CLERK presented a Petition from Zemindars and others of Bengal and Behar against the Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals."

Mr. SCONCE moved that the Petition be printed.

Agreed to.

MALACCA LANDS.

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits