

Saturday, July 9, 1859

LEGISLATIVE COUNCIL
OF
INDIA

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Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals" be adopted.

Agreed to.

PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Bombay Government, regarding the extension of Corporal Punishment under Act I of 1853, so as to embrace assaults and all petty offences, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

MR. LEGEYT moved that a communication received by him from the Bombay Government, relative to the transfer of an infant child by its mother to a Kalawunt or dancing girl, be laid upon the table and referred to the Select Committee on the same Bill.

Agreed to.

The Council adjourned.

Saturday, July 9, 1859.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*,
in the Chair.

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

ACTS OF THE LEGISLATIVE COUNCIL.

THE CLERK reported to the Council that he had received from the Home Department a copy of a Despatch from the Secretary of State for India reviewing Acts XX to XLI of 1858.

MR. PEACOCK moved that the above communication be printed.

Agreed to.

AMALGAMATION OF SUPREME AND SUDDER COURTS.

THE CLERK also reported that he had received from the Home Depart-

ment an Extract of a Despatch from the Secretary of State for India, relative to the amalgamation of the Supreme and Sudder Courts.

MR. HARRINGTON moved that the above Extract be printed.

Agreed to.

MAGISTRATES.

MR. PEACOCK begged to move the first reading of a Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate." He said, a case lately came before the Supreme Court for consideration, as to the effect of Section LII of the Post Office Act XVII of 1854. By that Section certain offences, which did not require to be now mentioned, were punishable, on conviction before a Magistrate, with imprisonment for two years, and also with fine. Several other Sections rendered offenders liable to imprisonment for two years and to fine on conviction before a Magistrate. Section LVIII enacted that—

"Any person, whether a European British subject or not, who shall be guilty of any offence for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any Justice of the Peace for any of the Presidency Towns of Calcutta, Madras, and Bombay, Magistrate, Joint Magistrate, or person lawfully exercising the powers of Magistrate; and any person hereby made punishable by a Justice of the Peace shall be punishable upon summary conviction."

Then Section LXVI declared that—

"The word 'Magistrate' in this Act shall include Joint Magistrates and persons lawfully exercising the powers of Magistrates."

The Supreme Court, putting the best construction upon the wording of the Act, without reference to what had passed in this Council at the time of its passing, came to the conclusion that the word "Magistrate" in Section LII meant a Zillah Magistrate, and did not include Justice of the Peace. Therefore, if an offence under any of those Sections were committed by any person who could not be tried before a Zillah Magistrate, that person could not be committed at all.

When the Act was originally before the Council, the words "Justice of the Peace" stood in the Interpretation Clause; but they were afterwards struck out of that Section in Committee. The words "Justice of the Peace" were not originally in the Fine Clause (Section LVIII), but were introduced after the Act had been published. He was unfortunately absent from the Council on account of indisposition when the Bill was before the Committee, and he was therefore unable to say why they were struck out. Both the learned Judges, Chief Justice Peel and Mr. Justice Colvile, were present. He remembered that Mr. Mills and Mr. Elliott took a very active part in the discussion, and he recollected to have been told by Mr. Mills, subsequently to the passing of the Bill, that the words "Justice of the Peace" had been struck out from the Interpretation Clause; he was not sure that the reason was stated, but he had no doubt that the omission had been advisedly made.

Now it must be borne in mind that the judicial powers of a Zillah Magistrate and the judicial powers of a Justice of the Peace were very different. A Zillah Magistrate had in many cases larger powers of punishment than a Justice of the Peace, and his decision was subject to an appeal to the Court of Sessions. But there was no appeal from the conviction of a Justice of the Peace, and the writ of *Certiorari* did not enable the Court to go into any questions as to evidence or the amount of punishment. There was therefore a check on the Mofussil Magistrate which there was not on a Justice of the Peace. Section LII and the other Sections referred to created new offences, so that the new remedy provided by the Act would require to be followed. It appeared to him, therefore, upon a proper construction of the words of Section LII, that an offence under that Section, committed within the local limits of the jurisdiction of the Supreme Court, would not be punishable at all.

A similar Section was adopted both in the Railway and the Electric Telegraph Acts passed in the same year. All offences punishable with fine only were made punishable by a Justice of the Peace or Magistrate; and the In-

terpretation Clause merely declared that "the word 'Magistrate' shall include a Joint Magistrate and any person lawfully exercising the powers of a Magistrate." It was clear therefore that by the term "Magistrate" a Mofussil Magistrate only was meant, and that it was intended to render those offences punishable in the Mofussil by the Magistrate in the same manner as many other offences which Zillah Magistrates at present had power to punish to the extent of two years' imprisonment.

For these reasons it appeared to him that the Act required amendment. He did not wish by that Bill to increase the powers of Justices of the Peace or of Police Magistrates, but only to provide that offences under that Act, punishable upon conviction before a Magistrate, should not be committed with impunity within the local limits of the Supreme Court, or by a European British subject in the Mofussil. Generally speaking, he did not see that there would be any serious objection to allow Justices of the Peace or Magistrates of Police to punish certain offences committed within the limits of the Supreme Court with fine or imprisonment not exceeding six months. In fact, they had that power in many cases under the existing law. The whole subject would be fully provided for by the Code of Criminal Procedure now under consideration. What he proposed was to declare that, if any offence, which by any Act of the Governor General in Council heretofore passed was declared to be punishable upon conviction by a Magistrate, should be committed by a European British subject beyond the local limits of the jurisdiction of any of Her Majesty's Supreme Courts, the offender should be liable, upon conviction before any such Court, to the punishment to which by such Act the offender was declared to be liable upon conviction before a Magistrate. So that for all those offences punishable in the Mofussil with imprisonment for two years, if the same be committed within the jurisdiction of a Supreme Court, a European British subject would be liable to be similarly punished on conviction before the Supreme Court. According to the construction put upon the Acts, a European British subject would not be liable to

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be tried in the Mofussil by a Magistrate, and that he might therefore commit any offence under those Acts with impunity.

Then he proposed to provide that, if any offence, which by any Act of the Governor General in Council heretofore passed was declared to be punishable upon conviction by a Magistrate, should be committed by any person within the local limits of any Court of Judicature established by Royal Charter, the offender should be liable, upon conviction before such Court, to the punishment to which by such Act the offender was to be liable upon conviction before a Magistrate.

Another difficulty which arose was, whether, when the power of punishment was given to a Magistrate or Justice of the Peace, it was intended that a Justice of the Peace should have the same power as a Zillah Magistrate. To obviate this difficulty, he proposed to enact that, whenever in any Act heretofore passed by the Governor General in Council the word "Magistrate" was declared to include a Justice of the Peace, such Justice of the Peace should not, by virtue of such Act, be deemed to have jurisdiction in respect of any offence, unless the same should be committed within the local limits of one of the Courts of Judicature established by Royal Charter.

He was aware that even now the Act would not be quite perfect, inasmuch as there were many offences punishable with fine only, for which a European British subject could not be punished in the Mofussil by a Zillah Magistrate. He did not propose such an amendment of the law in this Bill. That was a matter which required to be fully considered. It would be impossible to send such cases to the Supreme Court for punishment, and, consequently, in such cases the offence under the present state of the law would go unpunished. At present he merely wished to correct the mistake which had been committed in the Post Office and other Acts in regard to several offences punishable with two years' imprisonment to render those offences punishable when committed by a European British subject in the Mofussil, or by any person within the local limits of the Supreme Court.

The Bill was read a first time.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYTT moved the second reading of the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay." He said, he might mention that it was not his intention, as stated in the Orders of the Day, to move the suspension of the Standing Orders in order that the Bill might be passed through its subsequent stages. If the Bill should pass the second reading, he proposed to refer it to a Select Committee for the purpose of undergoing revision, previously to its coming before a Committee of the whole Council for consideration.

MR. SCONCE said, he did not propose to offer any opposition to what he understood to be the primary object of this Bill. But there were one or two points on which he should be glad to have some information from the Honorable Member for Bombay before the Council came to vote upon the question now put.

From the Preamble, as well as the 3rd Section of the Bill, it appeared to be the object of the proposed law to declare that "no spirituous liquor should be manufactured in any part of the Island of Bombay, except from the juice drawn from cocoanut, brab, or date trees, and in such manufacture no mouro, dates, rice, or other materials whatsoever should be used," and he understood that the Bill had been prepared from the old law, which exclusively dealt with spirituous liquors derived from the juice of the cocoanut, brab, and date trees. But he did not see that any explanation had been given of the grounds of the change now proposed by the absolute prohibition of the manufacture of spirituous liquor from any substance but the three trees named in the Bill.

Now if, as every where, common spirituous liquors were, and might be, distilled from other materials than the juice of trees, he wished to know why in the Island of Bombay distilleries of spirits from rice, for instance, might not be allowed to be used.

Again, there appeared to be some inconsistency between the 3rd and 11th Sections of the Bill. By Section III, as he had just observed, the manufac-

ture of spirituous liquors, except from the juice of cocoanut, brab, or date trees, was interdicted, whereas by Section XI the distillation of spirits from other materials, under the license of the Collector, appeared to be contemplated. The object of this latter Section he supposed to be that the Collector might grant a license to "make or distil any spirits, arrack, or other spirituous liquor," and thus the Section seemed to open up the manufacture from materials which the earlier portion of the Bill disallowed.

The only other matter which occurred to him was with regard to the District of Mahim. It appeared that brab trees in that district were not subject to the Abkaree Regulations in force in the Island of Bombay. The remark of the Bombay Government, with reference to the original proposition of continuing the exception, was that "it should be considered whether there are valid grounds for continuing exceptional rates in the Mahim district." But it seemed to him clear that if that matter was to be considered at all, more especially if the Standing Orders were to be suspended, the Council should have some information as to the grounds of such an exception.

There were one or two other matters with respect to the details of the Bill to which he should not now allude.

MR. LEGEYT desired to say a few words in explanation, as far as he was able to reply to the questions proposed by the Honorable Member for Bengal.

The prohibition referred to by the Honorable Member, to the manufacture of spirituous liquors from any other trees or sources than those mentioned in the Bill, certainly appeared a harsh and stringent provision. But he (Mr. LeGeyt) might venture to state that, except those trees, the Island of Bombay produced no other articles from which the manufacture of spirits was made. The manufacture of spirits from other materials was carried on in the contiguous Islands of Salsette and of Caranja, and the Distilleries there were subject to the general Abkaree Law of Bombay. The Abkaree of the Island of Bombay had always been legislated for separately. The erection of a Distillery, in a small yet very populous place like Bombay, would be found an

intolerable nuisance, which the public convenience or public health could not permit for a moment.

Besides there was no occasion for it, the Island of Caranja being only five miles from Bombay, and the Island of Salsette contiguous to it, quite near enough for all the purposes in question.

Then, with regard to the Honorable Member's remarks on Section XI, the object of that Section was to provide a penalty for the manufacture of spirits without license, and he was instructed that there was at present no law to punish persons using stills without license.

With regard to Mahim, that district was situate at the North end of Bombay, and for some reason or other it had not been usual to levy the same duty there as in other parts. A discretionary power, as to the amount of tax to be imposed generally, was now proposed to be left to the Government of Bombay, similar to that which had been given by the Bengal Abkaree Act of 1856 to the Revenue authorities in Bengal.

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

CIVIL PROCEDURE.

MR. HARRINGTON moved the second reading of the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

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

EMIGRATION TO MAURITIUS, &c.

MR. PEACOCK moved the second reading of the Bill "to amend the law relating to the Emigration of Native inhabitants of India to the Island of Mauritius and other places."

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

EMIGRATION TO ST. VINCENT.

MR. PEACOCK moved the second reading of the Bill "relating to the

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Emigration of Native laborers to the British Colony of St. Vincent."

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

ABKAREE REVENUE (BOMBAY).

MR. LEGEYT moved that the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay" be referred to a Select Committee consisting of Sir Charles Jackson, Mr. Sconce, and the Mover.

Agreed to.

MR. LEGEYT moved that the Standing Orders be suspended, in order that the Select Committee on the above Bill might be instructed to report thereon within eight days.

Agreed to.

CIVIL PROCEDURE.

MR. HARRINGTON moved that the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)" be referred to a Select Committee consisting of Mr. Peacock, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS).

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 Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

CRIMINAL APPEALS.

MR. SCONCE moved that certain papers relative to a proposed amendment of the Law of Criminal Appeals be printed.

Agreed to.

BILLS OF EXCHANGE.

MR. HARRINGTON gave notice that he would, on Saturday the 16th Instant, move the second reading of the Bill "for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as holidays."

EMIGRATION TO MAURITIUS, &c.

MR. PEACOCK moved that the Bill "to amend the law relating to the Emigration of Native Inhabitants of India to the Island of Mauritius and other places" be referred to a Select Committee consisting of Mr. Legeyt, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

MR. LEGEYT moved that Mr. Sconce be added to the Select Committee on the Bill "for the Registration of Literary, Scientific, and Charitable Societies."

Agreed to.

VILLAGE WATCHMEN (BENGAL).

MR. LEGEYT moved that Mr. Sconce be added to the Select Committee on the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal."

Agreed to.

EMIGRATION TO ST. VINCENT.

MR. PEACOCK moved that the Bill "relating to the Emigration of Native laborers to the British Colony of St. Vincent" be referred to a Select Committee consisting of Mr. Legeyt, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

The Council adjourned.