COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under ther provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 21st December 1866.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble H. P. A. B. Riddell.
The Hon'ble J. E. L. Brandreth.
The Hon'ble M. J. M. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble D. Cowie.

TRANSHIPMENT OF GOODS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART, in moving for leave to introduce a Bill to facilitate the transshipment of goods imported into Bombay by Steamers, said that the Bill had been prepared under the instructions of the Bombay Government for the following purposes. Within the last few years and since the abolition of the Indian Navy, the mercantile steam navy of Bombay had greatly increased. He believed that, at the present time, not less than ten distinct lines of steamers belonging to more than half that number of companies, had Bombay as one of their terminal points, and there was every reason to suppose that, when Bombay become the chief port of commerce between India and Suez, the number of steamers would increase.

As might be supposed, many of these steamers brought large quantities of goods intended, not for use or import in Bombay, but for transshipment and re-export to other ports, and the inconvenience of the provisions of the Customs' Act as affecting these goods had long been felt.

By the law as it stood, all goods imported into Bombay for transshipment to other ports were dealt with thus: if they were destined for a British port, they might be transshipped and re-exported without payment of duty, on the exporter giving security that they would be duly imported at the port of destination. If they were intended for a foreign port, duty must be paid, but a drawback of seven-eighths was given on re-export. Both these operations occupied much time and effectually prevented goods being transshipped with the same celerity as mails and passengers' luggage. This delay necessitated the landing of the goods instead of simply transshipping them from one steamer to the other, and had given rise to numerous complaints, and the leading steamer companies had urged the adoption of some simpler process.

The plan now proposed by the Government of Bombay was suggested in its main features by the companies themselves. It was proposed to levy a small fee on each package or bale transshipped, instead of going through the long process of examination, valuation, payment of duty and repayment, and preparation of security-bonds that was now required. The privilege would be given under the following conditions: (1) the goods must be imported by a steamer; (2) they must be separately manifested as for re-export; (3) the parties interested must make a special application for the permission; (4) the chief Customs' Officer would at his discretion grant it, or apply the ordinary provision of the Customs' Act. The amount of fees and subsidiary regulations would be laid down by the local Government.

He (MR. SHAW STEWART) had reason to believe that the Government of Bombay desired that a law on the subject of Bonded Warehouses should be introduced this session, and it might be desirable in that case to consider both Bills together; but having received no instructions on the subject, he contented himself with asking leave to introduce the Bill of which he had given notice.

The Motion was put and agreed to.

MURDEROUS OUTRAGES (PUNJÁB) BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill for the suppression of murderous outrages in certain districts of the Pubjáb, said that the recent murderous attacks, attributable to religious fanaticism, made on Europeans in stations on the Punjáb frontier, which were the main cause of the present Bill being proposed, were doubtless well known to the Council from the newspapers and other sources, and it would not be necessary that he should enter into their details.

The principal objects of the Bill were two, 1st, to provide for a more speedy mode of trial and giving effect to the sentences passed, for the offences to which he had referred, and 2ndly, to provide for attempts at murder, made under fanatical motives, being punishable with death, which they were not under the present Penal Code.

The Council would easily imagine the feeling of utter insecurity, not to say also of vehement indignation, on the part of a small European community, when one of their number lost his life, by the hand of some fanatical miscreant, so long as the murderer remained unpunished. The sentence in such a case might not be carried into effect if the existing law took its ordinary course in less than weeks or even months. If the feeling to which he had referred were unreasonable, no doubt it would be deserving of no consideration by this Council. But it was not unreasonable. There was additional insecurity of life every day that punishment lingered. There was nothing more likely to spread than a fanatical spirit. Crime which had its origin in such motives ought to be met with the speediest retribution. He thought, too, that officers in the service of the State, who were obliged to reside in frontier stations, were especially deserving of all the protection which the Legislature could afford them.

This was one of his reasons for introducing this Bill. Another reason was that, when it was known what speedy and certain punishment would follow the crime in accordance with the procedure of this Bill, as compared with all the delays of the present system, this knowledge, it was hoped, would have some effect in preventing the so constant recurrence of this crime. Some further reasons for the Bill might also be adduced. Hitherto the District Officer had, as the phrase ran, taken the law into his own hands. Now take the case, the last which occurred, in which the District Officer put a man to death for an attempt at murder. Attempt at murder was not punishable at all by the Penal Code, and the District Officer had no legal power to try the case. Unless he (Mr. Brandreth) was very much mistaken, this District Officer was, in a legal and technical point of view, as much guilty of murder as any one could be guilty of any offence under the Penal Code; and yet his act had been approved of and considered morally justifiable. Surely such a disagreement between the legal and moral sense should not be suffered to continue any longer. It was not right to lay on the District Officer the responsibility of thus ignoring the law in order to check these crimes. If a District Officer were a less determined man, he might be deterred by the fear of a prosecution such as the late Governor of Jamaica is at present threatened with. If there was reasonable ground for expect-

ing that we had heard the last of these outrages, he (MR. BRANDRETH) should have been far from recommending any change in the existing law. He did not think that our Codes of law, with all the safeguards which they insisted upon, should be set aside to meet a case of barely possible contingency. But there was no reasonble ground for such a hope. This crime had been too frequent of late to justify such an expectation. Not to take into account the crimes which occurred during the earlier period of our possession of the Punjáb, in one year of which, if he recollected aright, no less than four of these crimes were committed, take the last five years or thereabouts. Within that period, no less than five of these cases of murderous outrages took place. In three of these cases the crime was complete. Three Europeans were murdered by fanatics. Four of these cases occurred in the single Division of Peshawur. Besides there had been two or three cases of an exceedingly doubtful character which occurred within the same period and in the same Division. One of these cases which he referred to was probably heard of by the Council, that of the Missionary, the Revd. Mr. Löwenthal, who was murdered two years ago at Peshawur. There was no parallel crime known in the Bengal Presidency.

The mode in which he (MR. BRANDRETH) proposed to provide for the speedy trial of these cases was this. By Act XV of 1862, the District Officer was empowered to try all cases not punishable with death which he would otherwise have to commit to the Sessions. By the procedure thus established, all the delays of a preliminary enquiry to which some sixty Sections of the Procedure Code were devoted, and other formalities, were avoided. This procedure he proposed to extend to the cases contemplated in this Bill, but the cases would be tried by the Commissioner, not the Magistrate. The Commissioner was the officer of the greatest judicial experience in the Division, and he alone was under the present law empowered to try cases of murder. Provision however would be made for the trial, in the absence of the Commissioner, being conducted by any officer invested with the full powers of a Magistrate.

The other object of the Bill to which he had referred was to punish attempts at murder with death. He thought no one would doubt that, if they were to have a Bill at all, that must form one of the provisions of it. The framers of the Penal Code, he saw it stated in one of the papers connected with this case, because it was framed for non-professional Judges, thought it more safe not to make attempts at murder capital offences. But it was indispensably necessary that the present class of cases should be made an exception to this principle. The peciding officer must have a larger discretion. Of course, so far as would be

consistent with a speedy decision of the case, provision should be made for the trial being as fair and deliberate as possible.

The provisions for this and some other matters which he proposed introducing into the Bill ought to be explained in detail to the Council. But he thought that the explanation would be better made when he should introduce the Bill.

The Motion was put and agreed to.

HORSE-RACING BILL.

The Hon'ble MR. MAINE introduced the Bill to legalize horse-racing in India, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that this Bill had for its object the placing of the law of India, as it applied to horse-racing, on the same footing as the law of England. The history of the difference was briefly as follows: There was a long series of English Statutes discountenancing gaming and wagering; but the older Statutes had reference only to particular games stigmatized by the law. Ultimately in 1845, the 8th and 9th Vic., cap. 109, was passed under the influence, as Mr. MAINE believed, of the strong popular feeling against gaming-houses. The greatest part of the Act was aimed at common gaming-houses; but section 18 rendered all contracts by way of gaming or wagering entirely illegal, and declared that they should not be enforced at law or in equity. There however, followed this proviso—

> Provided always that this enactment shall not be deemed to apply to any subscription or contribution, or agreement to subscribe or contribute for or toward any plate, prize or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime or exercise.

Now, there was no question that horse-racing, when the stakes were above £50, was a "lawful game." The earlier Statutes on the subject imposed certain restrictions as to weight and age; but now it was finally settled that horse-racing, limited as above, was lawful. The Indian Act, however, which passed in 1848, and was numbered XXI of 1848, while copying literally the general language of the English Statute as to gaming and wagering, omitted the proviso.

The result was that it had been decided that under the Indian law as it stood, a promise to contribute to a prize or stake dependent on a race might be evaded with impunity. Dishonourable persons appeared to have taken advantage of this state of the law, and the Calcutta Turf Club had addressed to the Council the following petition:—

"That your petitioners are associated together as members of a Club under the name of the Calcutta Turf Club for the purpose of regulating the national pastime of horse-racing with a view to the promotion of true sport and the prevention of fraud.

"That your petitioners steadily keeping this object in view, have drawn up and published, for the guidance of all persons desirous of indulging in the pastime of horse-racing on fair and straight-forward principles, two distinct sets of Rules, the one for the internal management of the affairs of the Club, providing *inter alia* for the expulsion of any member behaving in a manner likely to bring discredit on the Club; the other for the regulation of the terms on which horses are to be aged, weighted and run.

"That certain members from among your petitioners are annually elected to be stewards of the races, and that in that capacity they become trustees of public monies given for the promotion of racing, as well as of certain entrances and stakes payable for the privilege of contesting for the prizes given out of the public monies before mentioned.

"That though the said trustees are in honour bound to pay out of such public monies and private stakes, as far as such will go, the amounts advertised to be given, yet that your petitioners have not the power to prevent evil-minded and dishonourable persons from evading payment of their just contributions in the shape of entries and stakes, such power being taken from them by Act XXI of the Acts of the Governor General of India in Council for the year 1848.

"That by the 8th and 9th of Victoria, Chapter 109, Section 18, lawful games are expressly excepted from such exclusion as is imposed by Act XXI of 1848 before mentioned.

"That your petitioners respectfully submit that horse-racing cannot be considered in any other light but that of a lawful game, it having been patronized from time immemorial by the highest personages in the realm both in England and in this country.

"That such being the case, the time has come to put horse-racing on the same footing in this country on which it stands in England, and such position cannot be attained unless horse-racing in this country has similarly extended to it the protection of the laws of the realm.

"That your petitioners humbly request that your Excellency will see fit to abrogate Act No. XXI of 1848, in so far as it now applies to horse-racing,

and will pass a short Act in Council to that effect, thus making this noble pastime in reality and not only in name, a lawful game in this country."

The arguments urged by the Club were no doubt entitled to consideration. But MR. MAINE justified the Bill chiefly on the ground that there was nothing in horse-racing which accounted for the law's licensing the immoral act of omitting to perform a definite promise. It would be observed by the Council that the promise in question had nothing in common with a bet or wager, and therefore did not fall among the objects which, according to their preamble, the framers of Act XXI of 1848 had in view. Such a promise involved no element of chance or uncertainty. It was a distinct unconditional pledge to pay a sum to the winner, whoever he might be. Impunity accorded to the breaker of such a promise could only be defended by assuming that there was something inherently evil in horse-racing; and if that were so, the law ought to go further. In its present state the law only increased the evils, if any, which attended horse-racing. In all probability the framers of Act XXI had omitted the English proviso, because the distinction in the English law between lawful and unlawful games had no existence in India.

The Motion was put and agreed to.

REMOVAL OF PRISONERS' BILL.

The Hon'ble MR. MAINE introduced the Bill to make further provision for the removal of prisoners, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He said that this was a very simple matter. The Bill was necessitated by the difference of the criminal procedure of the High Courts and of the Courts in the Mofussil. As the law stood, the local Government had power to order the removal of persons sentenced to imprisonment by the Mofussil Courts from one prison to another in the territories of the same Government. But no European or American sentenced to imprisonment by a High Court could be so removed without the consent of the Governor General in Council. This had been found to cause delay, injurious in some instances to the health of the prisoner, and the first Section of the present Bill, which had been prepared at the suggestion of the Government of Bombay, accordingly proposed to authorize the local Government to order the removal of any prisoner from the jail in which he was confined to any other jail within the territories subject to the same Government.

The next point to which he would refer was the provision embodied in the third Section of the Bill. The Governor General in Council had, under Act

XXIV of 1855, Section 6, power to remove Europeans and Americans sentenced to penal servitude from one prison in British India to another. Under Act III of 1858, Section 5, he had a like power as to State prisoners. But he did not appear to possess any general power of removing convicts from prison to prison. The want of such power being obviously inconvenient, the third Section of the present Bill proposed to authorize the Governor General in Council to remove any prisoner, whether European, American or Native. and whether sentenced by a High Court or by a Court not established by Royal Charter, from the jail in which he was confined to any other jail in British India.

The remaining Section of the Bill had been introduced under the following circumstances. Under the sixth Section of Act IV of 1849 (for the safe custody of criminal lunatics), the local Government had power to remove to lunatic asylums persons sentenced to imprisonment by any Court. The local Government had a similar power, under Section 396 of the Code of Criminal Procedure, as to criminal lunatics sentenced by the Courts or Magistrates in the Mofussil. But, in consequence of the repeal of Act IV of 1849 by Act XVII of 1862, it appeared to have now no such power as to criminal lunatics sentenced by a High Court. The second Section of the present Bill, which had been transcribed from the Section of the Code of Criminal Procedure which he had mentioned, accordingly proposed to authorize the local Government to remove such lunatics to asylums, and in case of recovery to remand them or order them to be discharged. Perhaps the Committee to which the Bill would be referred, might consider it preferable to provide simply that the provisions contained in that Section should apply to the High Courts. There was the more reason for doing so, as the Code now applied to the High Court of the North-Western Provinces and the Chief Court of the Punjáb.

The Motion was put and agreed to.

PUBLIC GAMBLING BILL.

The Hon'ble MR. RIDDELL introduced the Bill to provide for the punishment of public gambling and the keeping of common gaming-houses in large towns in the North-Western Provinces of the Presidency of Fort William, and in the Punjáb, Oudh, the Central Provinces and British Burma, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that the Bill had been prepared in accordance with the representations of the Government and Sadr Nizámat of the North-Western Prov-

inces and of the Chief Commissioner of British Burmah. By the passing of the Penal Code, the laws under which gambling was punishable were abrogated, and except where local laws prohibited the practice it had been unchecked. It had been suggested that the clauses of the Penal Code against public nuisances might be used to check public gambling, but practically he believed it had not been found possible so to apply them. The consequences had been that in the North-Western Provinces and Burmah, gambling had increased until its evil effects had led to urgent and repeated representations of the necessity for some legislative action.

In the Punjáb, Oudh and the Central Provinces, the provisions of Sections 10 to 15 of Act No. XXI of 1857, the Calcutta and Howrah Police Act, had been carried out as rules under the authority of the Executive Government ; it was now proposed to convert these rules into express legislative enactments.

The testimony of numerous officers was conclusive as to the existence of regular gaming-houses where systematic play was carried on. The Magistrate of Farukhábád stated that play was carried on night and day by bodies of co-partner associates, bound together by mutual agreement and sharing the profits among themselves according to their original interest in the speculation, watchers being stationed near the doors to keep off the Police, who received a percentage on all the winnings. The Commissioner of Kumaon stated that the practice of public gambling had much increased, and that as the Penal Code cancelled the laws which previously existed against gambling, it was presumed that it was sanctioned, and that much crime had been the result.

The provisions of the Bill now before the Council were substantially the same as those of a local Act passed by the Bombay Council, and with the law in the Presidency towns and suburbs, and in the Punjáb and Provinces under the administration of the Government of India. It provided for the punishment of three descriptions of offences within the prescribed limits—

I.—Keeping a common gaming-house.
II.—Gaming in a common gaming-house.
III.—Gaming in a public street.

All these had been prohibited, and the prohibition had been found to work very well in the Provinces which he had named and in the Presidency Towns. Some of the provisions of the Bill would have to be discussed in Committee, as for instance, the provision which authorized the local Government to extend the Act to any town counting more than 5,000 inhabitants. The restriction

would have to be maintained in the North-Western Provinces, and, he believed, also in Bengal. The warrant by which a gaming-house might be entered and searched, must be signed by a Magistrate or an officer invested with the full powers of a Magistrate, and must be executed by no person under the rank of an Inspector.

He saw no reason why separate Acts, almost identical in words, should be provided for different parts of India; namely, one Act for Calcutta and Howrah, one for the town of Madras, another for the Island of Bombay, a fourth for the Presidency of Bombay, a fifth for the Straits' Settlement; the Council were now going to pass another Bill for the North-Western Provinces, the Punjáb, Oudh, the Central Provinces and British Burmah; His Honour the Lieutenant Governor of Bengal would probably soon pass another Bill for Bengal also. He (MR. RIDDELL) thought it would be far better if this Bill were made generally applicable to all India, and provided for an amendment of the Penal Code.

The Hon'ble MR. MAINE merely wished to say that it was desirable to reserve any amendment of the Penal Code until the Code was revised as a whole. He thought that the Section of the Penal Code to which Mr. Riddell had referred might ultimately be altered with advantage. But piece-meal amendments of the Code were undesirable.

The Motion was put and agreed to.

ESCAPED CONVICTS' BILL.

The Hon'ble MR. MAINE introduced the Bill for the more effectual punishment of persons resisting lawful apprehension, and for other purposes, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He said that this Bill was necessitated by the difficulty arising from the definition contained in the 40th Section of the Indian Penal Code of the word "offence," which ran as follows:—"The word 'offence' denotes a thing made punishable by this Code." That Section was followed by Sections defining a "special law" and "local law," the former being "a law applicable to a particular subject," such as the Post Office Act and the Railway Act; the latter being "a law applicable only to a particular part of British India," of which it was unnecessary to give any example. Now the question had recently arisen as to whether escape from lawful custody for an offence against some special or local law, but not expressly made punishable by the Code could, as the law stood, be punished at all; for though Section 224 of the Code

provided a punishment for escaping from custody in which any person was detained for an *offence*, that was, as MR. MAINE had said, "a thing made punishable by the Code." There was much conflict of opinion as to whether this applied to a case in which the offence was one merely recognized by the Code as punishable, or whether the definition in Section 40 was to be construed strictly. The present Bill accordingly proposed to preclude these doubts by making the crime referred to penal, whether the offence was punishable by the Code or only under some special or local law. This of course might have been done more shortly by simply substituting for Section 40 of the Code a Section providing that "offence" should denote any thing made punishable by the Code or by any special or local law, but it would, he thought, be found on examination that this would go too far, and he did not wish at present to propose any substantive amendment of the Penal Code. The Bill would extend the definition of "offence" only as regarded certain specified Sections of the Code. Since the publication of the Bill in the *Gazette*, the Legislative Department had received various communications in favour of making the extended definition proposed to be given to the word "offence" in Sections 224 and 225 apply to the same word in other Sections, as, for example, Section 201 (causing disappearance of evidence), Section 214 (offering a gift in consideration of screening an offender), and several other Sections. These communications would be carefully considered by the Committee to which he hoped the Bill would now be referred.

The Motion was put and agreed to.

PÁNDHARÍ TAX (CENTRAL PROVINCES) BILL.

The Right Hon'ble MR. MASSEY asked for leave to withdraw his motion for leave to introduce a Bill to provide for the re-assessment of the Pándharí tax in certain parts of the Central Provinces.

Leave was given.

The following Select Committees were named:—

On the Bill to legalize horse-racing in India—The Hon'ble Messrs. Shaw Stewart and Hobhouse and the Mover.

On the Bill to make further provision for the removal of prisoners—The Hon'ble Messrs. Riddell, Shaw Stewart and Hobhouse and the Mover.

On the Bill to provide for the punishment of public gambling and the keeping of common gaming-houses in large towns in the North-Western Provinces of the Presidency of Fort William, and in the Punjáb, Oudh, the Central Provinces and British Burmah—The Hon'ble Messrs. Maine, Brandreth, Shaw Stewart and Hobhouse and the Mover.

On the Bill for the more effectual punishment of persons resisting lawful apprehension, and for other purposes—The Hon'ble Messrs. Riddell, Shaw Stewart and Hobhouse and the Mover.

The Council adjourned till the 4th January 1867.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

CALCUTTA,
The 21st December 1866.

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