

Saturday, 24th February, 1855

**PROCEEDINGS**  
**OF THE**  
**LEGISLATIVE COUNCIL**  
**OF INDIA**

**Vol. I**  
**(1854-1855)**

shape, to all the Presidencies. If it was right to give the benefits contemplated by the Bill to one Government, it was right to give those benefits to all the Governments. Nor did the Bill provide sufficiently for taking the opinion of the inhabitants of towns whom it was intended to tax for municipal purposes. These and all other questions of the kind, however, and the object of the extension of the Act which he proposed, he would lay before the Council as well as he could when the Bill should come before it for the second reading. At present, he should only move that the letter from the Secretary to the Government of the North-Western Provinces to himself on the subject, be printed.

MR. GRANT said, before this motion was put by the President, he would ask if the letter to which it referred was before the Council. Was it in the possession of the Council? If it was not, it would be better to move that the letter be laid on the table, and printed.

MR. ALLEN altered his motion accordingly, and it was then carried.

MR. MALET said, he had received from the Government of Bombay a letter on the same subject, and he begged to make a similar motion in regard to it.

Agreed to.

#### PRESERVATION OF PEACE (SINGAPORE)

MR. PEACOCK said, at the last Meeting of the Council, a communication was read from the Straits Government, submitting the draft of a Bill for the better preservation of the public peace of the island of Singapore and the places subordinate thereto. He begged to move that this communication, together with the papers connected therewith, be printed, and referred to a Select Committee consisting of Mr. Grant, Mr. Mills, and the Mover.

Agreed to.

#### NOTICES OF MOTION.

MR. ELIOTT gave notice that, on Saturday next, he would move that the Bill "for the amendment of procedure in cases of regular appeal to the Sudder Court in the Presidency of Fort St. George,"—and the Bill "to amend the Law relating to the attendance and examination of witnesses in the Civil Courts of the East India Company in the Presidencies of Fort St. George and Bombay,

Mr. Allen

and to amend the provisions of Section XL Act XIX of 1853," be read a third time, and passed:—and, further, that the latter Bill be re-committed, in order to enable him to move an amendment in Section XI.

MR. MALET gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee on the Bill "to amend Regulation III of 1833 of the Bombay Regulations;"—and the Bill "to amend the Law in force in the Presidency of Bombay concerning the use of badges."

The Council adjourned.

Saturday, February 24, 1855.

#### PRESENT :

Hon'ble J. A. Dorin, Senior Member of the Council of India, Presiding :

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|-------------------------|-------------------|
| Hon. J. P. Grant,       | D. Elliott, Esq., |
| Hon. B. Peacock,        | A. Malet, Esq.,   |
| Hon. Sir James Colvile, | and               |
| A. J. M. Mills, Esq.,   | C. Allen, Esq.    |

THE CLERK presented a petition from Subbaputty Pillay, a resident in the Bangalore cantonment, complaining of a decision by the Commissioner of Mysore on an appeal by the petitioner from a decree made by the Superintendent of the Bangalore Division.

THE PRESIDENT said, this petition was not connected with the business of the Council, and, therefore, could not, under the 22nd Standing Order, be received.

#### USURY LAWS.

MR. PEACOCK presented the Report of the Select Committee on the Usury Laws.

MR. PEACOCK moved that a "Bill for the repeal of the Usury Laws," which had been presented by the Select Committee with the above Report, be now read for the first time. He apprehended there would be no objection to this course in order that the second reading of the Bill might be proposed at the next Meeting of the Council, and its principle be then considered. For the present, he would explain its nature and object. By Act XIII of Geo. 3, c. 63, s. 30, no subject of the Crown was entitled to receive interest at a higher rate than 12 per cent. per annum. If he contracted to receive a higher rate, the contract was absolutely void; and if he did receive it, he

was liable to a penalty of three times the amount of the principal sum lent. That Act, however, applied only to British subjects. Natives, therefore, within the local limits of the Supreme Courts, were at liberty to stipulate for a higher rate of interest; and contracts made by them for any higher rate were not void in Law; nor were they subject to any penalty if they received such higher rate. In the Mofussil, Regulation XV of 1790 of the Bengal Code directed that no more than 12 per cent. per annum should be decreed by the Company's Courts: and Regulations to the same effect had been extended to the ceded and conquered provinces, to Benares, and to Cuttack. A similar Regulation also prevailed at Madras. These Regulations, of course, applied to Natives. In the Mofussil, therefore, of both Bengal and Madras, and in the provinces mentioned, a Native subject could not recover a higher rate than 12 per cent., though, within the local jurisdiction of the Supreme Courts, he could; but he was not subject to any penalty if he contracted for, or received it. A British subject, on the other hand, in the Mofussil, as well as within the local limits of the Supreme Courts, was equally bound by 13 of Geo. 3. In Bombay, there was formerly a Regulation similar to those now in force in Bengal and Madras; but in 1827, when the Regulations of that Presidency were reduced to a Code, it was repealed. Consequently, Natives there might now contract for, and recover, any rate of interest; but British subjects were still precluded, under a penalty, by 13 of Geo. 3, from contracting for, or receiving, interest at a higher rate than 12 per cent. This appeared to be a very anomalous state of the Law; and, as no injury had resulted from the repeal of the Regulation in Bombay, there was no reason why the Usury Laws in India should not be repealed altogether. Whatever provisions might be made, it would be impossible to regulate the value of money by legislative enactment. The Legislature might as well prescribe the rent which a landlord should take for his house, or the price which a tradesman should charge for his commodities, as say that if a person lends money, he should not receive a higher rate of interest upon it than 12 per cent. The consequence of the Usury Laws had been, that all sorts of shifts and devices were resorted to for the purpose of evading them; and in this country, they had proved a prolific source of perjury and fraud. The Select Committee had, therefore, come to

the conclusion that an Act should be passed, on the principle adopted in 1827 in Bombay, and at the last Session of Parliament in England, repealing the Usury Laws in India altogether. In England, Acts of Parliament had been passed from time to time allowing discount to be received on Bills of Exchange above the rate of interest prescribed by the Usury Laws; and at the last Session of Parliament, it was found expedient to repeal these Laws entirely. The object of this Bill was to repeal all the Laws in India relating to Usury, both within and without the local limits of the Supreme Courts. It left any person, whether a Native or a British subject, at liberty to contract for any rate of interest he pleased, and to receive payment of any amount of interest he pleased, without subjecting himself to a penalty; and provided that no contract, whether verbal or written, should be vitiated by reason of any rate of interest being reserved therein.

One Section, which did not affect the principle of the Bill, but regarded a matter of detail, the Select Committee had introduced to prevent fraud. It was a Section providing that no rate of interest above 6 per cent. should be enforced at Law unless the contract were reduced into writing, and that, where no rate of interest had been agreed upon, the Court should not decree more than 6 per cent. By writing, a person might stipulate for, and enforce any rate of interest. By a verbal contract, he might also stipulate for and receive any rate of interest without subjecting himself to a penalty; but he would not be able to enforce payment of a higher rate than six per cent.

The Select Committee had also added a Section in the Bill with regard to compound interest. When the Regulation relating to usury was repealed in Bombay, it was also enacted that, after the lapse of one year, every portion of unpaid interest should become principal money, and carry interest. By this Bill, annual rents were not disallowed; but they were allowed only in those cases where they were contracted for in writing. This would protect persons from being compelled to pay compound interest where they had not agreed to pay it, and would prevent fraud and perjury.

There were other provisions in the Bill, but they related to mere matters of detail, and had been introduced as being necessary to carry out the objects of the Act.

The Bill was then read a first time.

## MUNICIPAL LAW (BENGAL.)

MR. MILLS postponed the second reading of the Bill "to modify" Act XXVI of 1850, so far as it relates to places in the Bengal Division of the Presidency of Fort William."

## REGULAR APPEALS (MADRAS.)

MR. ELIOTT moved that the Bill "for the amendment of procedure in cases of regular appeal to the Sudder Court in the Presidency of Fort St. George," be now read a third time, and passed.

Agreed to.

## EVIDENCE (MADRAS AND BOMBAY.)

MR. ELIOTT moved, under the 87th Standing Order, that the Bill "to amend the Law relating to the attendance and examination of witnesses in the Civil Courts of the East India Company in the Presidencies of Fort St. George and Bombay, and to amend the provisions of Section XL. Act XIX of 1853," be re-committed to a Committee of the whole Council, in order that he might move an amendment in the 11th Section.

Agreed to.

MR. ALLEN said, before the Honorable Member moved his amendment, he should direct attention to Section VII of the Bill, which he thought required alteration. That Section provided that if a witness, being a party to a suit, failed to comply with a summons to attend and give evidence, "the Court, instead of proceeding in the manner provided by the laws in force in the Presidency in respect of defaulting witnesses, may, if the witness be a plaintiff, appellant, or petitionor, dismiss the complaint, appeal, or petition, with costs against such party, or, if such party be a defendant or respondent, may hear and decide the case against such defendant or respondent *ex parte*." It appeared to him that, according to this wording, the Court would not have power to proceed against the party in the manner provided by the laws in force in the Presidency in respect of defaulting witnesses. He (Mr. Allen) did not suppose that such was the intention; and in order to make the meaning clear that the Court might proceed in either mode, he would suggest that the words "instead of proceeding in the manner provided by the laws in force in this Presidency in respect of defaulting witnesses" be trans-

ferred from their present position to the end of the sentence, after the words "*ex parte*," so as to make the word "may" govern the whole.

MR. ELIOTT said, the Section, as he read it, was in no part prohibitory. It did not say that the Court should not proceed in the manner provided by the laws in force in the Presidency in respect of defaulting witnesses, but that it *might* dismiss the suit if the party defaulting were plaintiff, or decide it *ex parte* if he were defendant.

MR. PEACOCK said, by the Act recently passed for the further improvement of the Law of Evidence, it was provided that any party to a suit might be examined as a witness, and that he should be subject to all the rules applying to witnesses. That provision would enable the Court to punish him for refusing to attend and give evidence in the same way as it would punish any ordinary witness. This Bill provided that in lieu of doing this, the Court, if it should think the evidence withheld was material, and would elucidate the matter at issue, might dismiss the suit if the party were the plaintiff, or decide it *ex parte* if he were the defendant. It took away no power, but gave an alternative power.

SIR JAMES COLVILE said, he apprehended that the answer to the objection raised, had been given by his honorable and learned friend opposite (Mr. Peacock.) Act II of 1855 placed a party to a suit who was summoned to give evidence, on the same footing as other witnesses: therefore, the party was subject to the same consequences for default as an ordinary witness; and this Bill only gave an alternative power to impose consequences other than those which might be imposed under that Act.

MR. ALLEN said, if the Section would bear this construction, he had no wish to press the suggestion which he had offered.

The 11th Section, which Mr. Eliott proposed to amend, after directing that witnesses should be examined orally in open Court, and their evidence taken down in writing by or under the superintendence of the Judge, contained the following proviso:—

*"That it shall not be necessary to take in writing the evidence of witnesses in cases tried by District Moonsiffs in the said Presidency of Fort St. George when the claim shall not exceed 20 rupees."*

MR. ELIOTT moved that the words "or in cases tried by Village Moonsiffs in the

same Presidency," be added to this proviso, after the words "Fort St. George."

Agreed to.

The Bill was then reported to the Council, with the amendment.

MR. ELIOTT moved that the Bill be now read a third time, and passed.

Agreed to.

#### MESNE PROFITS AND IMPROVEMENTS.

SIR JAMES COLVILE moved that the Council resolve itself into a Committee on the Bill "relating to mesne profits, and to improvements made by holders under defective titles;" and that it be instructed to consider the Bill in the amended form in which it was recommended by the Select Committee to be passed.

Agreed to.

Section I of the Bill was agreed to as it stood.

Section II was as follows:—

"If any person shall erect any building or make an improvement upon any lands held by him *bonâ fide* in the belief that he had an estate in fee simple or other absolute estate, and such person or any one claiming under him shall be evicted from such lands, the person so evicted shall be entitled, either to have the value of the building or improvement which he has *bonâ fide* erected or made during such holding and in such belief, estimated and paid or secured to him, or, at the option of the true owner, to purchase the lands at the value the same would have brought if such building or improvement had not been erected or made. Provided that the amount to be paid or secured in respect of such building or improvement, shall be the estimated value of the same at the time of such eviction."

SIR JAMES COLVILE said, at the last Meeting of the Council, he had postponed going into Committee on this Bill, because on reading it over, he thought that the language of the 2nd Section, as settled by the Select Committee, was not strictly accurate. The first part of the Section, as it now stood, contemplated the eviction either of a person who had made improvements in lands held by him, or of any one who claimed under him, and apparently intended to provide that the person evicted should receive the value of the improvements whether made by himself or his ancestor; but the latter part, in terms, gave him the value of those improvements only which he had himself made. He (Sir James Colvile) had brought this to the notice of his Honorable Friend opposite (Mr. Peacock), who had bestowed much time and attention upon

the Bill in Committee,—and, upon consideration, they had also agreed that the term "any one claiming under him" was too wide, since it might embrace tenants, and that the class of persons in whose favor this provision was to take effect, ought to be more accurately defined. The Honorable Member had furnished him with amendments which would obviate all possible objection, and which he (Sir James Colvile) proposed to import into the Section. To do this regularly, he must make several motions; but in order to make the effect of the amendments intelligible to the Council, it would be convenient to read, in the first instance, the full Section as it would stand when amended:—

"If any person shall erect a building, or make an improvement upon any lands held by him *bonâ fide* in the belief that he had an estate in fee simple or other absolute estate, and such person, *his heirs, or assigns, or his or their assigns, or his or their under-tenants, be evicted from such lands by any person holding a better title, the person who erected the building or made the improvement, his heirs, or assigns, shall be entitled either to have the value of the building or improvement which such person, his heirs, or assigns, or his or their under-tenants have so erected or made during such holding and in such belief, estimated and paid or secured to him or them, or, at the option of the persons causing the eviction, to purchase the interest of such person in the lands at the value thereof, irrespective of the value of such building or improvement. Provided that, &c."*

The above amendments were made, and the Section so altered was agreed to.

The remaining Sections, the Preamble, and the Title of the Bill were agreed to as they stood.

#### ADMINISTRATION.

SIR JAMES COLVILE moved that the Council resolve itself into a Committee on the Bill "to improve the English Law in force in India, by extending to this country, with some enlargement thereof, the provisions of the Statute 3 and 4, Wm. 4, c. 42, s. 2," and that it be instructed to consider the Bill in the amended form in which it has been recommended by the Select Committee to be passed.

Motion carried.

The Bill was agreed to in Committee as it stood.

#### MILITARY BAZARS (MADRAS.)

MR. ELIOTT moved that the Council resolve itself into a Committee on the Bill

"for the better Regulation of Military Bazars." He said, this was one of those Bills which were depending before the Government of India on the 20th of May last; and he therefore made his motion under the special Standing Order relating to Bills read in Council and published for general information by the Governor General of India in Council previous to that date.

Agreed to.

MR. ELIOTT said that the object of the Bill was to place Small Cause Courts in Military Cantonments and Bazars in Madras on the same footing as Military Courts of Requests in that Presidency. The Military Small Cause Courts in Madras were in charge of the Superintendent of Police, who adjudicated claims to the amount of 20 Rupees. By Act XII of 1842, it was provided that no person should be allowed to recover in any Military Court of Requests unless, at the time the debt for which he sued was contracted, he had been registered as a Military Bazar man within the Cantonment in which the Court was held. It was proposed to extend this rule to parties suing in Military Small Cause Courts, and the present Bill had been framed with that object.

The Bill was agreed to in Committee as it stood.

#### JOINT POLICE OFFICERS (BOMBAY.)

MR. MALET moved that the Council resolve itself into a Committee on the Bill "to amend Regulation III of 1833 of the Bombay Regulations;" and that it be instructed to consider the Bill in the amended form in which it was recommended by the Select Committee to be passed.

Agreed to.

The Bill was agreed to in Committee as it stood.

#### BADGES (BOMBAY.)

MR. MALET made a similar motion as to the Bill "to amend the Law in force in the Presidency of Bombay concerning the use of badges."

Agreed to.

Sections I and II of the Bill were agreed to as they stood.

Section III was as follows:—

"Whoever, whether a British subject or not, wears, or is accessory to the wearing of, a belt or badge otherwise than in conformity with this Act, shall be liable, on conviction before any person lawfully exercising the powers of a Ma-

istrate, within whose jurisdiction the offence is committed, to a fine not exceeding one hundred rupees."

MR. GRANT said, he should propose to omit the words "whether a British subject or not" from this Section. He observed that the Select Committee stated they had inserted them to make it clear that British subjects would be liable to the provisions of the Bill; but there was no doubt whatever that British subjects would be liable to these provisions without any such words. He did not, therefore, see why the liability of British subjects should be stated in terms as to them any more than that of Chinamen, Hindus, Mahomedans, or other classes. The introduction of the words would only tend to raise doubts upon a question on which no real ground for doubt exists. It might mislead British subjects into the belief that Laws passed by the Legislative Council of India did not apply to them, unless they were expressly made so applicable. The consequences of such a misapprehension might be very inconvenient. The only Laws which it was ever necessary to make expressly applicable to British subjects, were those which relate to procedure, because British subjects are not liable to be tried by the Mofussil Courts, acting within their ordinary jurisdiction. When, therefore, it was desired to make such persons so liable in a particular case, it was necessary to make a special provision for that purpose. But British subjects are liable to general penal provisions, like all other classes, and this was a penal clause. He did not observe that it affected procedure.

MR. ALLEN said, he was a Member of the Select Committee on the Bill, and had agreed to introduce the words referred to, in order to clear up a doubt which he understood had been raised. To a certain extent, the Section did alter the procedure, because it provided that whoever should offend against this Act, should be liable, on conviction before any person lawfully exercising the powers of a Magistrate, to a certain fine. In other words, that the offender, even if a British subject, should be liable to the jurisdiction of a Magistrate—a jurisdiction to which he was not now amenable. If the word "whoever" stood alone, the Section would still bring a British subject under the jurisdiction of a Magistrate; but he (Mr. Allen) in common with the other Members of the Select Committee, had thought it would be better to make this appear distinctly, because he had heard it questioned

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as to some of the new Acts passed by the Council—for instance the Post Office Act—whether the word “whoever,” in many of the penal clauses contained therein, would include a British subject. For this reason, as one of the objects of the Bill before the Council was to bring British subjects offending against it under a new jurisdiction, the Select Committee had considered it advisable that the Section should specifically say so. If, however, the Council should be of opinion that the words introduced with that object were unnecessary, he had not the slightest objection to their being left out.

MR. GRANT, with reference to the Honorable Member’s remark that the Section altered the procedure, said—the Section provided that whoever offended against the Act, “shall, on conviction before any person lawfully exercising the powers of a Magistrate, &c.” This, he thought, must mean any person lawfully exercising the powers of a Magistrate *in that case*. But a Mofussil Magistrate would not be in the lawful exercise of his powers in the case of a British subject. As the Section stood, therefore, he would have no more power to punish such a person than he would have to punish a native subject who should have committed the offence contemplated by it, beyond the local limits of his jurisdiction.

SIR JAMES COLVILLE said, he thought the Honorable Member to his right (Mr. Allen) was under an error in supposing that it had ever been a question in the Council whether a British subject would be included in a general prohibition accompanied with a penal sanction. If his (Sir James Colville’s) recollection did not deceive him, a question had arisen, upon either the Electric Telegraph, or the Post Office, or the Indian Railway Act, as to the best mode of enforcing penalties against the different classes of persons who might incur them, and it had been thought expedient to separate the Sections which related to procedure, from those which created the statutory offence. Under these Acts, British subjects were made punishable for offences involving light penalties by the local Magistrate, but in respect of heavier offences were allowed to remain subject only to the Presidency Courts. But his difficulty in supporting the amendment proposed in this Section, was that, if it were carried, it might be necessary to introduce another Section to provide a mode for levying the penalty where the offender was a British subject, and therefore not generally subject to the jurisdiction of

the local Magistrate. He was not sure that it was necessary to direct this Act against British subjects at all. It had certainly never been his fortune, in the course of his travels, to meet with a British subject wearing a *chuprass*; and though, no doubt, the Bill contemplated accessories to the offence, yet, on the whole, the Council seemed to him to be legislating *de minimis*; and he thought it would be a sufficient safeguard against the extortion said to be practised by chuprassies wearing false badges, to be content with punishing the person found actually wearing one. As the Bill stood, whenever a chuprassie offended, his master would probably be charged as an accessory.

MR. GRANT proposed that, after striking out the words “whether a British subject or not” from the first part of the Section, they should be inserted in the latter part, after the words “shall be liable.” This would transfer them to that part of the Section which relates to procedure, and would clearly give local Magistrate’s jurisdiction over British subjects in these cases.

MR. ALLEN said, there could be no objection to this. With regard to what the Honorable Member to his left (Sir James Colville) had said respecting trivial offences, he (Mr. Allen) should observe, that this Section followed the wording of Mr. Macaulay’s Act on the same subject for Bengal. In that Act, the very words “wears, or is accessory to the wearing of,” were used.

MR. PEACOCK said, the Honorable Member opposite (Mr. Grant) had moved that the words “whether a British subject or not” be omitted from the Section. He did not understand the Honorable Member to have altered that motion, and should therefore proceed to consider it as it had been originally put. He was not a Member of the Select Committee on this Bill; but he should vote that the words proposed to be struck out, be retained. As a Member of Select Committees upon other Bills, he had agreed to the introduction of similar words, for the purpose of shewing that a British subject was liable to be convicted by a Mofussil Magistrate for the offences created by those Bills. His own opinion was, that if an Act passed by the Legislative Council, provided that any person offending against it should be punished in a certain manner, it would leave him to the ordinary jurisdiction of the Courts; but that, if it provided that any person should be punished in a particular manner *upon conviction by a Magistrate*,

the Law would enable a Magistrate to punish him in that manner whether he was a British subject or not. Under the existing Regulations, British subjects were not liable to the ordinary jurisdiction of the Mofussil Magistrates; he should have thought that when an Act expressly said that any person committing an offence against its provisions should, on conviction before a Magistrate, be subject to a certain punishment, the words "any person" would include a British subject; but he found that the Sudder Court had put a different construction upon the words "any person." That Court had put a construction upon the old Post Office Act to the effect that the term "any person" did not include a British subject; and therefore, if the object of the present Bill was to make a British subject amenable to the jurisdiction of the Magistrate, words to that effect must be introduced into it, until an Act should be passed getting rid of the construction of the Sudder Court.

As to the improbability of a British subject wearing, or being accessory to the wearing of a badge, the Council had not to consider that. The Council ought not, in such a case, to legislate for particular classes, but for persons generally; and this Bill, in substance, provided that if any person, being a British subject, committed the offence created by it, he should be liable to punishment in the same way as if he were a native.

There was another point upon which he desired to remark. The Honorable Member opposite (Mr. Grant) had read the 3rd Section of the Bill as if it ran "on conviction before a Magistrate or a Justice of the Peace." The words "or a Justice of the Peace" did not occur in the Section; and he (Mr. Peacock) did not know whether the Honorable Member intended that they should be added. If he did not, he (Mr. Peacock) should propose to put them in. The first Act relating to the Railway in Bombay provided, in just the same way as the Bill under consideration, that any person committing an offence against it to which a penalty was attached, should be liable, upon conviction before a Magistrate, &c. But it had been held in Bombay that the Officer sitting there as Justice of the Peace was not a Magistrate. He had never heard before that a Justice of the Peace was not included in the term "Magistrate"; but such had been the decision at Bombay; and, rather than drive the Railway Company to an appeal, a new Act was passed without delay getting rid of this construction. This

Act was XII of 1853, Section I of which provided that any person liable under it to a pecuniary penalty, should be punishable by any Magistrate of Police, Justice of the Peace, Magistrate, Joint Magistrate, &c. But this provision applied only to cases falling within the particular Act which contained it. If the Bombay Justices were right in thinking that the term "Magistrate" did not include a Justice of the Peace, no person would be punishable under the Bill now before the Council by a Justice of the Peace unless the power was expressly reserved to such Officer.

THE PRESIDENT now put Mr. Grant's motion that the words "whether a British subject or not," in the first and second lines of the Section, be left out.

Agreed to.

SIR JAMES COLVILE said, it would be necessary that another amendment should follow on the above. The Section, as it now stood, said "whoever wears, or is accessory to the wearing of, a belt or badge otherwise than in conformity with this Act, shall be liable, on conviction before any person lawfully exercising the powers of a Magistrate, within whose jurisdiction the offence is committed, to a fine not exceeding 100 Rupees." He had considerable objection to the looseness of the language of the Section. If the time had not now gone by, he would have suggested that it would be far better to transfer the Clause in this Section which provided the penalty, to the 2nd Section, which prohibited the act. It would then have clearly appeared that a person doing the things prohibited, would be liable to a fine of 100 Rupees. But the 3rd Section provided the penalty without referring to the offences created by the 2nd Section. It said, generally, "whoever wears, or is accessory to the wearing of, a belt or badge otherwise than in conformity with this Act, &c."

He did not know what was meant by wearing a badge otherwise than in conformity with this Act. He was not aware that the Act prescribed the manner in which badges should be worn—that it prescribed that they should be worn over this or that shoulder, and not round the waist. The Government chuprassies would not wear their badges "in conformity with this Act," because they would wear them independently of it. As he could no longer move to amend the 2nd Section, he should propose to amend the 3rd Section by omitting the words "wears, or is accessory to the wearing of, a badge otherwise than in conformity with this

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Act," and substituting the words "whoever commits, or is accessory to the commission of, an offence under the preceding Section."

MR. MALET said, he should not object to the amendment proposed. The Section followed closely the language of the old Act ; but it seemed to him that the wording now suggested would be better.

SIR JAMES COLVILE'S motion was carried.

MR. GRANT then moved that after the word "shall" and before the words "be liable," the words "whether a British subject or not" be inserted.

Agreed to.

MR. GRANT further moved that, after the words "on conviction before any person lawfully exercising the powers of a Magistrate," the words "or Justice of the Peace" be inserted.

Agreed to.

MR. GRANT next moved that the words "within whose jurisdiction the offence is committed" be amended by the addition of the word "local" before the word "jurisdiction." It would then be made certain that a Magistrate would have power to punish British subjects for offences committed against this Act within the local limits of his jurisdiction. In the Mofussil, a Magistrate now had local jurisdiction, but that did not extend over a British subject : on the other hand, a Justice of the Peace had a local jurisdiction in the Presidency Towns, and in the Mofussil only a personal jurisdiction, which had nothing to do with the place where the offence is committed.

Agreed to.

The Preamble and Title of the Bill were agreed to.

THE PRESIDENT then reported to the Council the four Bills settled in Committee.

#### MESSENGER.

MR. PEACOCK was requested to carry the Bill "for the amendment of procedure in cases of regular appeal to the Sudder Court in the Presidency of Fort St. George,"—and the Bill "to amend the Law relating to the attendance and examination of witnesses in the Civil Courts of the East India Company in the Presidencies of Fort St. George and Bombay, and to amend the provisions of Section XL Act XIX of 1853,"—to the President in Council, in order that they may be submitted to the Governor General for his assent.

#### REGULAR APPEALS (BOMBAY).

MR. ELIOTT moved that the Clerk of the Council be instructed to transmit a copy of the Report of the Select Committee on the Bill "for the amendment of procedure in cases of regular appeal to the Sudder Court in the Presidency of Fort St. George,"—to the Government of Bombay, in order that the Right Honorable the Governor in Council might take into consideration the suggestion of the Committee that a similar Law should be enacted for that Presidency.

Agreed to.

#### NOTICES OF MOTION.

SIR JAMES COLVILE gave notice that, on Saturday next, he would move that the Bill "relating to mesne profits, and to improvements made by holders under defective titles, in cases to which the English Law is applicable,"—be read a third time and passed.

SIR JAMES COLVILE gave notice that, on Saturday next, he would make a similar motion as to the Bill "to enable Executors, Administrators, or Representatives to sue and be sued for certain wrongs."

#### PETITION OF SUBBAPUTTY PILAY.

MR. PEACOCK said, the Petition from Subbaputty Pillay, which had been rejected, complained of a judicial decision. As the object of the Petitioner was to have the decision set aside, he (Mr. Peacock) should move that the Clerk of the Council be ordered to inform him that his Petition could not be entertained by the Legislative Council. Otherwise, the party might suppose that it had been received, and, under that impression, might allow the time for preferring an appeal to the proper tribunal to pass by.

Agreed to.

#### NOTICES OF MOTION.

MR. ELIOTT gave notice that, on Saturday next, he would move that the Bill "for the better regulation of Military Bazars," be read a third time and passed.

MR. MALET gave notice that, on Saturday next, he would make a similar motion as to the Bill "to amend Regulation III of 1833 of the Bombay Regulations,"—and the Bill "to amend the Law in force in the Presidency of Bombay concerning the use of badges."

MR. PEACOCK gave notice that, on Saturday next, he would move the second reading of the Bill "to facilitate the payment of small deposits in Government Savings'

Banks, to the representatives of deceased depositors,"—and of the Bill "for the repeal of the Usury Laws."

The Council adjourned.

Saturday, March 3, 1855.

PRESENT :

Hon'ble J. A. Doria, Senior Member of the Council of India, Presiding.

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| Hon. J. P. Grant,     | D. Elliott, Esq.,   |
| Hon. B. Peacock,      | A. Malet, Esq., and |
| A. J. M. Mills, Esq., | C. Allen, Esq.      |

THE CLERK reported that he had received a communication from the Secretary to the Government of India in the Financial Department, transmitting copy of a Despatch from the Honorable the Court of Directors, and of a Resolution of the Government of India thereon, with a view to the passing of an Act to enable the Banks of Bengal, Madras, and Bombay to transact certain business now devolving on the Government Agents.

PENAL SERVITUDE.

MR. PEACOCK presented the Report of the Select Committee on certain papers received from the Government of India relating to the transportation of European convicts.

MR. PEACOCK said, the Select Committee on the above papers having presented their Report, he had the honor to move the first reading of a Bill (which they had prepared) "to substitute penal servitude for the punishment of transportation in respect of European convicts, and to amend the Law relating to the removal of such convicts." Her Majesty's Government having recently deemed it expedient to discontinue the transportation of convicts to Van Diemen's Land and other parts of Australia, there was now no place to which European or American convicts could be transported from India with safety to their health; and it had, therefore, become necessary for the Government of this country to consider what should be done with that class of convicts. Act 16 and 17 Victoria, c. 99, substituted penal servitude for the punishment of transportation in certain cases. It enacted that, after the passing of the Act, no person should be sentenced to transportation who, if the Act were not passed, would not have been liable to be sentenced to transportation for life, or for fourteen years or upwards; and substituted certain terms of penal servitude. It further

enacted that no person should be transported for any term less than fourteen years. The Select Committee were of opinion that this Act of Parliament did not extend to sentences passed in India, and had therefore prepared this Bill, which followed, to a great extent, the English Act. It did not follow the Act in allowing transportation where the offender would have been liable to transportation for life, or for fourteen years or upwards, because there was now no place to which the Government of India could transport European or American convicts with safety to their health. It, therefore, provided that no European or American convict should be sentenced to transportation; but that in any case in which he would now be liable to be sentenced to transportation, he should be liable to be sentenced to be kept in penal servitude instead. The terms of penal servitude proposed by the Bill were as follows:—instead of transportation for 7 years, or for a term not exceeding 7 years, penal servitude for the term of 4 years. Instead of any term of transportation exceeding 7 years, and not exceeding 10 years, penal servitude for any term not less than 4 and not exceeding 6 years. Instead of any term of transportation exceeding 10 years and not exceeding 15 years, penal servitude for any term not less than 6 and not exceeding 8 years. Instead of any term of transportation exceeding 15 years, penal servitude for any term not less than 6 and not exceeding 10 years. Instead of transportation for the term of life, penal servitude for the term of life.

The Bill also provided that persons sentenced to penal servitude, should be imprisoned in such place or places of confinement as the Governor General in Council might direct. It had been thought better to leave this to the Governor General in Council, as it was left to Her Majesty in Council at home, instead of to the different Governments of Bengal, Bombay, and Madras, inasmuch as it might be necessary to erect one Jail in a healthy place for convicts sentenced from the three Presidencies, instead of providing a separate Jail for each Presidency.

The Bill further provided for the custody of convicts during the interval between the sentence passed upon them, and their removal to the place of confinement directed by the Governor General in Council. It authorized the local Governments to imprison them, with or without hard labor, and to deal with them in all other respects in the same manner as persons sentenced to imprisonment and hard labor; but it also directed that the