

Saturday, 14th July, 1855

PROCEEDINGS
OF THE
LEGISLATIVE COUNCIL
OF INDIA

Vol. I
(1854-1855)

"After the commencement of this Act, no European shall be liable to be sentenced or ordered by any Court within the territories in the possession and under the Government of the East India Company, to be transported."

MR. ELIOTT moved that the words "or American" be inserted after the word "European."

The question was put and agreed to, and the Section, as amended, was passed.

Section II was passed, after a similar amendment.

Section III was passed, after a slight verbal amendment.

Section IV was passed as it stood.

Section V was passed, after an amendment similar to that made in Section I.

Sections VI and VII were passed as they stood.

Section VIII was passed, after an amendment similar to that in Section I.

Sections IX to XV were passed as they stood.

Section XV the Interpretation Clause, enacted that—

"The word European, as used in this Act, shall be understood to include any person usually designated a European British subject, or any European or American."

MR. ELIOTT moved that the words "or any European or American" be left out.

Question put, and agreed to.

Section XVI said:—

"This Act shall commence from and after two months from the publication thereof in the *Calcutta Gazette*."

MR. PEACOCK moved as an amendment that the words "two months from the publication thereof in the *Calcutta Gazette*" be left out, and the words "1st of November 1855" be substituted for them.

Question put and agreed to.

The Preamble and the Title were severally passed, after an amendment similar to that made in Section I.

The Council having resumed its sitting—

MORTGAGE-DEBTS.

THE PRESIDENT moved that the Council resolve itself into a Committee upon the Bill "to amend the English Law in force within the territories in the possession and under the Government of the East India Company, relating to the administration of the estates of deceased persons charged with any money by way of mortgage, and descending or devised;" and that the Committee be instructed to consider the Bill in the amended form in which it was recommended by the Select Committee to be passed.

Motion carried, and Committee formed accordingly.

The Bill was passed as it stood.

The Council having resumed its sitting,—
THE PRESIDENT reported the above Bills.

NOTICES OF MOTION.

MR. GRANT gave notice that he would, on Saturday next, move that the Bill "for the regulation of Ports and Port-dues" be read a third time and passed.

MR. ALLEN gave notice that he would, on Saturday next, move the first reading of a Bill "to prevent the public sale or exposure of obscene books and pictures."

SIR LAWRENCE PEEL gave notice that he would, on Saturday next, move the third reading and passing of the Bill "to amend the Law relating to the administration of the estates of deceased persons charged with money by way of mortgage."

MR. PEACOCK gave notice that he would, on Saturday next, move the third reading and passing of the Bill "to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the Law relating to the removal of such convicts."

MR. CURRIE gave notice that he would, on Saturday next, move the second reading of the Bill "to provide for the better Lighting of the Town of Calcutta."

The Council adjourned.

Saturday, July 14, 1855.

PRESENT:

The Honorable Sir Lawrence Peel, Vice-President, in the Chair.

Hon. J. A. Dorin, Hon. Sir James Colvile,
Hon. Maj. Genl. J. Low, D. Elliott, Esq.,
Hon. J. P. Grant, C. Allen, Esq. and
Hon. B. Peacock, P. W. LeGeyt, Esq.

MARRIAGE OF HINDOOS (BENGAL).

THE CLERK presented a petition from the Association of Friends for the promotion of social improvement, praying the Council to amend the Laws relating to the Marriage of Hindus in Bengal.

INDECENT PUBLICATIONS.

MR. ALLEN moved the first reading of a Bill "to prevent the public sale or exposure of obscene books and pictures." He said, he did not suppose that any Honorable

able Member of this Council would contest the abstract propriety of preventing the sale of obscene books and prints ; for the sale of such works was a misdemeanor by the Common Law of England, by the Law of America, and by the Laws all over the Continent—especially, he believed, in France. But some Honorable Members might think that it was inexpedient to legislate upon the subject at all ; and others, that the prohibition desired might more correctly be assigned a place in the Police Acts for the Presidency towns ; or that it might be embodied in the general Penal Code of India. It had been suggested to him that special legislation would draw attention to the subject, excite curiosity, and tend to enhance the very evil which it was intended to remove, by increasing the sale of such books. This might, perhaps, be the effect where the sales were limited, and where they were conducted secretly ; but in this case, the contrary was the fact. The sales were extremely common ; indecent books were thrust into the hands of passengers in all the principal streets and thoroughfares of this city ; and a Reverend Gentleman had calculated that, in Calcutta alone, 40,000 copies of such books were sold annually. It must be allowed that legislation on the subject would at least enhance the price of the article ; and we all know that the cheapness of a commodity had a great deal to do with the extent of its consumption. Now, the cheapness of the obscene books circulated in this town, was one of the worst features of the case. He held in his hand a Bengali book, printed in good type, upon good paper, and containing some 50 pages of letter-press, and also 11 of the most obscene pictures that could be conceived ; and he was assured that an edition of 8,000 copies of this book had lately been published. It was written in an idiomatic—nay, an elegant style ; and the price of a copy was but 4 annas. As many persons as wished to buy this work, could procure a copy for six pence. If it was advisable to legislate against the sale of such books in any country in the world, it was peculiarly advisable to legislate against it in this, where the people were so ill-informed, and required so much guidance, and where, from the climate and other causes, the scale of morality was so very low.

In England, besides its being a misdemeanor to publish obscene books, it had been, by legislation, made punishable summarily by a single Magistrate. In the year 1824, by the Statute 5 Geo. IV. c. 83, a single Magistrate

was empowered to sentence to imprisonment with hard labour for three months any person who publicly exposed to view, or offered for sale, any obscene print, picture, or indecent representation. In the first year of the reign of her present Majesty, a special Act was passed extending the provisions of the Statute of Geo. IV. to exposure of obscene prints and representations at any shop-window. Since then, the Scotch Police Act had been passed, empowering a Magistrate to punish summarily any person exhibiting obscene books or representations in any Scotch town. The Dublin Police Act contained similar provisions. Therefore, there were several precedents before the Council for passing a special Law on the subject.

With regard to the question whether the prohibition which he proposed would not be better placed in the Police Acts now under preparation for the Presidency towns, he would ask—to speak of Calcutta alone—why should a person in any of the large suburbs which surrounded this city be at liberty to sell books which could not be sold on this side of the Mahratta Ditch ? Persons residing within the Ditch could easily go beyond it, and obtain such works. But more than this, the Reverend Gentleman of whom he had before spoken, had informed him that he had found men offering books of this class for sale in Kishnagur.

But whether India generally required such an Act now or not, there could be little doubt that, with the increase in the number of boys who were capable of reading, the demand for such books would increase, as well as for proper and useful books. Printing and Lithographic Presses were spreading rapidly over the country : they had been introduced by men whose object was the dissemination of salutary and edifying knowledge among the masses ; but who could say that these powerful instruments for good might not be perverted to the most pernicious and degrading of uses if the Legislature did not interfere to put down the publication of obscene works ?

Therefore, he did not consider that it would be advisable to confine the prohibition to the Presidency towns, and merely to legislate on the subject in a Section of the Presidency Police Acts.

Then, as to the question whether the subject ought not to be left to be provided for by the Penal Code, he would remark that the Penal Code was a very elaborate measure, and he did not know when it would be ripe for adoption. It would of necessity take

some time, and he was anxious that the prohibition for which the present Bill was intended, should be passed at once. Moreover he observed that the Code of Mr. Macaulay did not go so far as the English Law went—and so far as he (Mr. Allen) wished to go. The words of Mr. Macaulay's Section were—

"Whoever utters any word, makes any sound, makes any gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by any woman, and intending thereby to insult the modesty of that woman, shall be punished with imprisonment of either description for a term which may extend to two years, or fine, or both."

This went but a very small way. According to it, an obscene book or picture must be shown to a woman for the act to be a punishable offence; but if it were shown to the young of the other sex, the act would not be penal.

Having now stated the reasons which had induced him to bring in this Bill, he would endeavor briefly to explain some of its leading provisions.

They followed the provisions of the Police Acts in England—the Act of Geo. IV, and the Scotch Act; and he had retained the maximum scale of punishment prescribed by them—namely, imprisonment with hard labour for a period not exceeding three months, or a fine not exceeding 100 Rupees.

He had also adopted the mode of procedure prescribed in those Acts, rather than the mode of procedure adopted in the Mofussil Courts of Bengal. In the Mofussil Courts of Bengal, it was necessary, in cases of misdemeanor and bailable offences, that the party wishing to complain should present his complaint to the Magistrate in writing before it could be investigated; and, more than that, according to the Stamp Act, his complaint must be written upon Stamp paper. It appeared to him that to prohibit a Magistrate to take up charges of publication of obscene books and prints, unless the person accusing should appear before him in person, and present his petition on Stamp paper, would be to render the Act perfectly nugatory. He had, therefore, inserted a provision in the Bill, by which a Magistrate would have the power, upon a simple information, of issuing first a summons for the attendance of the accused to answer the charge preferred, and then, in case of default, a warrant for his apprehension. He had gone further. He had taken, almost word for word, Section VI of the Act of George IV,

which allowed any one to apprehend a person whom he found committing the offence, and hand him over forthwith to a Police officer, to be carried before a Magistrate.

In one point he had gone beyond the English Law—that is, in providing against the importation of obscene books and prints. The English Copyright Act at present authorized and directed Custom House officers to search imported books for pirated editions, and, if they found any, to confiscate and destroy them. By this Bill, he proposed to give Custom House officers in India the same power with reference to obscene books and prints. It being a misdemeanor to publish such books and prints, no man could properly say that he was unjustly treated when such property was taken from him and destroyed.

It might be said that there were few among the people of this country who could understand English and French books. But whether that was so or not, he did not see why, if he could do it without injury to others, he should not protect the morality of those few that did understand these languages. But the number in this country that was able to read and understand English, was very far from being few; and, more than that, *pictures* spoke an universal language, and those who could read no language whatever—not even Bengali—would understand obscene pictures, and be injured thereby.

He had made a slight alteration in the title of the Bill since the notice of motion which he gave at the last Meeting of the Council; but he hoped that that would be no breach of the Standing Orders.

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

MR. PEACOCK inquired if the name of the publisher appeared in the book which the Honorable Member had in his hand, and if the publisher resided in India. He did not wish the name of the person to be stated.

MR. ALLEN said, the publisher did reside in India.

The Bill was then read a first time.

PORTS AND PORT-DUES.

MR. GRANT moved that the Bill "for the regulation of Ports and Port-dues" be re-committed, in order that he might make in it certain verbal alterations, rendered necessary by the new Section substituted, at the last Meeting of the Council, for Section XL.

Agreed to.

Section XLIV provided that the Master of every vessel "liable to the payment of Port-dues under this Act," should report her to the Conservator twenty-four hours after arrival.

MR. GRANT moved that the words "or any subsequent Act" be inserted after the words "under this Act."

The motion was carried, and the Section, so amended, was passed.

On the motion of Mr. Grant, the same words were added to Sections XLV, XLVI, XLVII, XLVIII, and XLIX, severally.

The Council then resumed its sitting, and the Bill being reported with amendments—

MR. GRANT moved that it be read a third time, and passed.

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

MORTGAGE-DEBTS.

SIR LAWRENCE PEEL moved that the Bill "to amend the Law relating to the administration of the estates of deceased persons charged with money by way of mortgage" be read a third time and passed.

The Bill was read a third time accordingly.

PENAL SERVITUDE.

MR. PEACOCK moved that the Bill "to substitute Penal Servitude for the punishment of transportation in respect of European or American convicts, and to amend the Law relating to the removal of such convicts" be re-committed, for the purpose of considering certain amendments which he proposed to make.

Agreed to.

MR. PEACOCK said, he proposed to amend Section V. That Section, as it now stood, said:—

"It shall be lawful for the person or persons for the time being administering the Executive Government of any Presidency or place in which an European or American has been lawfully sentenced by any Court to be transported, to order such person, instead of being transported, to be kept in penal servitude for the shortest term of penal servitude substituted by this Act for a term of transportation of the same extent as that to which the offender is liable under such sentence or order."

He proposed to make three amendments in this Section—the first at the concluding part of it. By that part of the Section, a Local Government might order a convict sentenced to transportation to be kept in penal servitude for the shortest term of penal servitude substituted by the Act for a term of

transportation of the same extent as that to which the offender was liable. But the offender, at the time of the order for the substitution of penal servitude, might have served a portion of the term of transportation, and a doubt might arise as to the words "is liable." He therefore proposed to leave out the words "is liable under such sentence or order" in the last two lines of the Section, and to substitute for them the following:—

" was sentenced, or that portion thereof which he shall not have undergone: provided that no person shall be kept in penal servitude under the provisions of this Section after the expiration of the term of transportation to which he was sentenced."

The second amendment which he proposed, was to leave out the words "instead of being transported" in the sixth line. If the words were retained, a question might be raised whether an Executive Government would have the power of substituting penal servitude if a sentence of transportation had been partially carried into effect. —

The third amendment was a consequence of the second. A convict might be serving his term of transportation beyond the jurisdiction of a Local Government. In that case, the Local Government would have no power over him. The order could be made by the Supreme Government alone. He, therefore, proposed to insert the words "the Governor General in Council, or for" after the word "for" and before the word "the" in the first line of the Section.

If the amendments which he moved were carried, the Section would read thus:

"It shall be lawful for the Governor General of India in Council, or for the person or persons for the time being administering the Executive Government of any Presidency or place in which a European or American has been lawfully sentenced by any Court to be transported, to order such person to be kept in penal servitude for the shortest term of penal servitude substituted by this Act for a term of transportation of the same extent as that to which the offender was sentenced, or that portion thereof which he shall not have undergone: Provided that no person shall be kept in penal servitude under the provisions of this Section after the expiration of the term of transportation to which he was sentenced."

The Honorable Member's amendments were severally put, and agreed to; and the Section, so amended, was passed.

The Council then resumed its sitting; and the Bill being reported with amendments—

MR. PEACOCK moved that it be read a third time and passed.

The Bill was read a third time accordingly.

MR. PEACOCK moved that General Low be requested to take the Bill to the Honorable the President in Council, in order that it may be submitted to the Most Noble the Governor General for his assent.

Agreed to.

MORTGAGE-DEBTS.

SIR LAWRENCE PEEL made the same motion in regard to the Bill "to amend the Law relating to the administration of the estates of deceased persons charged with money by way of mortgage."

SESSIONS COURT AT OOTACAMUND.

MR. ELIOTT moved that the Council resolve itself into a Committee to consider the Bill "to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund on the Neilgherry hills."

Agreed to.

Sections I and II were passed as they stood.

Section III stood thus :

"It shall be lawful for the Principal Sudder Ameen of the said Court to exercise all the powers of a Criminal Court constituted according to Regulation II of 1827."

MR. ELIOTT moved that the words "and also, by appointment of the Government of Fort St. George, all the powers of a Joint Magistrate" be added to the Section.

The motion was carried, and the Section, so amended, was passed.

The Title and Preamble were severally passed as they stood.

The Council having resumed its sitting, and the Bill being reported—

MR. ELIOTT gave notice that he would move the third reading of the Bill on Saturday next.

WARE-HOUSING OF GOODS (FORT ST. GEORGE).

MR. ELIOTT moved that the preliminary Report of the Select Committee on the Bill "for the ware-housing of goods intended to be exported from Madras, and to facilitate mercantile dealings concerning goods ware-housed" be adopted; and that a copy of the Report and the Resolution be communicated by the Clerk to the Government of Fort St. George. He said, it would be in the recollection of the Council that, when this Bill first came before it for consideration, exceptions were taken to it by several Ho-

norable Members, and that, after the second reading, it was resolved that it should not be published until the Select Committee to which it was referred should have reported upon it. The Select Committee had made their Report, which had been presented at the last Meeting of the Council. In this Report, the Committee recommended that no further proceeding should be taken for the purpose of passing the Bill. For the reasons stated in the Report, he was content that the Bill should be withdrawn, being satisfied that the object contemplated would, as explained in the Report, be better secured by the operation of the English Factor's Acts, which had been extended to India, than by special legislation. He, therefore, proposed that the Report of the Select Committee be adopted.

SIR LAWRENCE PEEL said, he had a few observations to make before he put the question. It would be in the recollection of many Members of the Council that, when this subject was first brought before the Council, which originated on an application, he believed, on the part of the Bank of Madras for some legislative measure to protect persons who advanced money on the security of ware-housed goods, he observed that it was a mistaken notion to suppose that the security which was enjoyed here in Calcutta rested on the provisions of the Act relating to the Bonded Ware-house; and that it would be found, on looking into the matter, that the protection rested mainly on the Laws which had from time to time been passed here, introducing into this country the provisions of the Statutes commonly called the Factor's Acts. The Select Committee had confirmed this view of the subject by their Report; but he wished it to be understood that the Committee had not pledged themselves to any opinion that the Laws which now existed in this country for the protection of purchasers of goods, were in a satisfactory state. It was certainly singular that, whilst those with whom this subject had originated, were apprehensive that lenders on the security of ware-housed goods were not duly protected, who enjoyed all the security which similar lenders at home enjoyed, no apprehension had been expressed concerning the insecurity, under the existing Laws, of the purchasers of goods. These, indeed, were protected under the Factor's Acts when they bought from agents or persons entrusted with documents of title, like those enumerated in these Acts; but in general, they enjoyed even a less security than existed in

England, where the Law was, in his opinion, also in a very unsatisfactory state on this important question. By the English Law, a purchaser in market overt, who bought *bonâ fide*, could hold the goods against all the world, though the seller had no title. In ancient times, this was an ample protection to merchants and dealers, because most goods were so sold; but a change in the habit of dealing had greatly impaired it. In London, every shop was, by custom, a market overt, and no one had complained of property being rendered unsafe thereby such a Law. But here, who could say what constituted a market overt, or indeed, if any such thing existed? The whole Law was in a state of uncertainty on the point. Few seemed to be aware that, if they purchased in the most open and fair manner at a shop, across the counter, or at a public auction, they ran the risk of being defeated by a dormant title. He felt the Law to be in so imperfect a state, and so much to need amendment, that he should bring the matter before the attention of the Council again, by moving, at a future day, to refer the matter to a Select Committee with a view to frame some legislative measure on the subject.

MR. ELIOTT'S motion was then put, and carried.

MESSENGER.

MR. GRANT moved that General Law be requested to take the Bill "for the regulation of Ports and Port-dues" to the Honorable the President in Council, in order that it may be submitted to the Most Noble the Governor General for his assent.

Agreed to.

LIGHTING OF CALCUTTA.

MR. GRANT said, he proposed to move that the Government of Bengal be requested to furnish this Council with copies of certain papers relating to the project of lighting Calcutta with Gas. The Bill for that project had been set down on the paper for the second reading to-day; but, on looking over the annexure to the Bill, he found that the Council had not sufficient information before it upon which to proceed. He thought that the whole of the correspondence between the Bengal Government, the Municipal Commissioners, and the Oriental Gas Company, out of which this Bill had arisen, ought to be before the Council before legislating on the subject.

Sir Lawrence Peel

The words of his motion were—

"That the Clerk of the Council be instructed to write a letter to the Secretary to the Government of Bengal, requesting him to move the Honorable the Lieutenant Governor of Bengal to order copies of all correspondence between the Bengal Government, the Commissioners for the improvement of the town of Calcutta, and the Oriental Gas Company or their servants, relating to the project for lighting Calcutta with Gas.

"Also, for a copy of the letter from the said Commissioners to the Secretary to the Government of Bengal, dated the 8th of November 1854, No. 1559.

[This letter, Mr. Grant observed, was referred to in one of the printed papers annexed to the Bill, but it was not before the Council.]

"Also, for a plan showing the divisions of the town of Calcutta, designated as Divisions A and B, by the said Commissioners in their letter to the Bengal Government, dated the 8th of May 1855, No. 1812, and the statements annexed to that letter."

MR. GRANT said, the Council had the letter of the Commissioners relating to this plan, but not the plan itself, or the statements which accompanied the letter; and without these, the project was not clearly intelligible.

This was the first time that it had been proposed in this Council to call for papers from a local Government; and if any Honorable Member doubted the regularity of the course, he should be ready to postpone his motion. For his own part, however, he did not see that there would be any irregularity in the Council corresponding with a local Government in order to obtain necessary papers.

MR. PEACOCK said, he doubted whether this Council had the power to order a local Government to produce papers; but he could see no objection to its asking for them. If a local Government should refuse, in any case, to supply papers which the Legislative Council might require, a reference might be made to the Governor General in Council, and His Lordship could order their production. But this Council sat only in a legislative capacity, and had no authority over the local Governments. In this case, he apprehended that there could be no objection whatever on the part of the Bengal Government to supply the papers desired; but he did not wish it to be understood that the Legislative Council had the power to order the production of any papers which a local Government might object to produce.

SIR JAMES COLVILLE said, he thought it never had occurred to the Honorable Gentleman who made this motion to

claim for this Council the power of compelling the production of papers. The intention simply was to ask for them; and he could see no harm in that. He remembered that, on a former occasion, when the Affray Bill was under consideration, it struck him that it might be desirable to have certain returns from the Sudder Dewanny Adawlut; and, on looking at the Standing Orders, he did not see very clearly how, in such a case, a Member who wished for papers ought to proceed. The postponement of that measure, however, prevented him (Sir James Colvile) from then raising this question before the Council. He presumed that the omission of a Standing Order on the subject proceeded on the admission of a want of power in the Council to compel the production of papers. Still, where papers appeared to be necessary to the deliberations of the Council, he could, as he had said before, see no harm in asking a local Government for them. If that local Government saw fit to refuse them, there might possibly be an appeal to the Supreme Government, whose decision would, he supposed, be final. But he did not apprehend that any practical difficulty of this kind would ever arise.

MR. GRANT'S motion was then put, and carried.

MR. PEACOCK said, he understood that a project for the Drainage of Calcutta had been submitted by the late Colonel Forbes to the Bengal Government. The Honorable Member opposite (Mr. Grant) could inform the Council whether this was the case. If it was, he wished that the Bengal Government should be requested to furnish that project also.

MR. GRANT said, there certainly had been one, if not two projects of that kind submitted to the Government of Bengal.

MR. PEACOCK said, he also understood that Colonel Forbes' project had been submitted to the Fever Hospital Committee, and that the Committee had reported upon it. It would be desirable to have that Report likewise.

MR. PEACOCK moved that the Government of Bengal be requested to furnish a copy of the project for the Drainage of Calcutta submitted by Colonel Forbes, and also the Report of the Committee on the Fever Hospital.

Agreed to.

KOOLIN POLYGAMY.

SIR LAWRENCE PEEL said, a petition on an important subject had been pre-

sented to the Legislative Council by an Association for social reforms. He did not mean to enter now upon the subject of that petition; but he wished to guard himself from being supposed favorable to legislation on the subject of polygamy. There was, however, one part of the petition—namely, that relating to the marriages of Koolin Brahmins—which, perhaps, might be safely taken up; and, as a preliminary step to the consideration of the subject, he should move that the petition be printed.

SIR LAWRENCE PEEL'S motion was put and carried.

The Council adjourned.

Saturday, July 21, 1855.

PRESENT :

The Honorable Sir Lawrence Peel, Vice-President, in the Chair.

Hon. J. A. Dorin, D. Elliott, Esq.,
Hon. Major Genl. Low, C. Allen, Esq.,
Hon. J. P. Grant, P. W. LeGeyt, Esq.,
Hon. B. Peacock, and
Hon. Sir J. W. Colvile, E. Currie, Esq.

BANKS OF BENGAL, MADRAS, AND BOMBAY.

THE CLERK brought under the consideration of the Council a Petition, signed by the President of the Bank of Madras on behalf of the Directors, relative to the Bill "to enable the Banks of Bengal, Madras, and Bombay to transact certain business in respect of Government securities and shares in the said Banks." The petitioners prayed that,

"when the Act comes from the Committee to which it has been referred, sufficient time may be allowed to them, before it is further proceeded with, for the due consideration of all its clauses as they may then be presented."

MR. ELIOTT moved that this Petition be printed, and referred to the Select Committee on the Bill.

Agreed to.

REGISTRY OF NATIVE SEAMEN (STRAITS).

THE CLERK reported that he had received, by transfer from the Under-Secretary to the Government of India in the Home Department, a communication from the Straits Government relative to the registry of Native Seamen in those Settlements.