

Saturday, 21st November, 1857

PROCEEDINGS  
OF THE  
LEGISLATIVE COUNCIL OF INDIA,

FROM

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ject was that, in respect to a very numerous class of offenders, one uniform course should be adopted. He would have no objection to give Courts Martial the power of ordering Sepoy Mutineers and Deserters to be marked, were it not that, by giving the power to Government alone, the system would be uniform. If the power were given to Courts Martial, one Court Martial might be against marking an offender, while another might be in favor of marking for the same offence committed under similar circumstances. As to the objection of the Honorable and learned Chief Justice regarding sentences of Courts Martial not coming necessarily before Government, he thought a sufficient answer had been given by the Honorable Member for Bengal in saying that Government had control of the Jails in which prisoners, who were sentenced to imprisonment, were confined; and in cases where they were sentenced to transportation it rested with the Government to carry the sentence into execution. Again, as the Honorable Vice-President had remarked, Sessions Judges and Special Commissioners had now power to try for Mutiny and Desertion, and their decisions would not come before the Commander-in-Chief. Upon the whole, he thought the power would be best vested in the Government. However, he did not propose to proceed with the Bill until next Saturday; and in the meantime the question now raised might undergo the consideration of the Select Committee to whom he proposed to refer the Bill.

The Bill was then read a second time; and, on the motion of Mr. PEACOCK, referred to a Select Committee consisting of the Chief Justice, General Low, Mr. LeGeyt, and the Mover.

GENERAL LOW then moved that the Bill be printed for general information.

Agreed to.

#### FOREIGNERS.

MR. PEACOCK gave notice that he would, on Saturday the 21st instant, proceed with the Bill "to make further provision relating to Foreigners."

The Council adjourned.

Saturday, November 21, 1857.

#### PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General J. Low,	E. Currie, Esq., and
Hon. B. Peacock,	Hon. Sir A. W. Buller.
D. Elliott, Esq.,	

#### LIQUOR LICENSES (BOMBAY).

THE CLERK presented to the Council a Petition of retail Liquor Sellers at Bombay against the sale by public auction of licenses for the retail sale of liquor.

MR. LEGEYT moved that the above Petition be referred to the Select Committee on the Bill "for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the town of Bombay."

Agreed to.

#### CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received from the Under-Secretary to the Government of India in the Home Department, a copy of the following Despatch from the Court of Directors to the Government of India:—

47/1857 Judicial.

"1. By our Legislative Despatch No. 2 dated 4th February 1853, we authorized you, 'if you should see fit, to proceed to pass a Law for giving effect to the Penal Code, as it may be finally arranged by you, with the concurrence of Mr. Peacock.'

2nd. By our Judicial Despatch No. 40 dated 10th September 1856, we also authorized you to bring before the Legislative Council, without reference to us, a measure for giving effect to the recommendations of the Indian Law Commissioners in regard to Procedure, with such alterations and modifications as you might consider necessary with a view to their adaptation to the Courts of the East India Company.

3rd. We observe, from the proceedings of the Legislative Council recently received, that the Penal Code and Codes of Procedure are now under their consideration.

4th. According to the Penal Code, the punishment for murder is death; and by the 8th Rule at page 96 of the First Report of the Law Commissioners, it is provided that 'no person whatever shall, by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts.'

5th. Should these provisions be enacted as they now stand in the proposed Codes, their effect will be to render natural-born subjects of Her Majesty subject in capital as in all other cases to the jurisdiction of the Courts of the East India Company.

6th. To enact such a law, however, would be beyond the power of 3 and 4 Wm. IV, the Governor-General in c. 85, s. 46. Council, without the previous sanction of the Court of Directors. The sanction already given in general terms to pass the Codes, we consider to be insufficient to meet the specific conditions of the law in regard to the infliction of capital punishment upon British subjects; and the object of our present Despatch is to supply the omission in our former Despatches, by suggesting that the Clause giving jurisdiction to the Mofussil Courts over British subjects should be followed by a Proviso to the effect that such persons, when charged with capital crimes, shall be tried as heretofore by Her Majesty's Supreme Courts of Judicature. Considering, however, the great importance of the question of making British subjects amenable to the jurisdiction of the Mofussil Courts in criminal matters, and the interest it has already excited in this country as well as in India, we think that legislation upon that point had better be postponed, until the question has been referred to us (accompanied by a statement of your views in regard to it) and a measure for carrying that object into effect has received our approbation. The reference, however, need not delay the passing of the much needed legislative measures for the improvement of the existing Procedure of the Civil and Criminal Courts."

MR. PEACOCK moved that the above Despatch be referred to the Select Committees on the Bills regarding Criminal Procedure.

Agreed to.

#### ARTICLES OF WAR (NATIVE ARMY).

MR. PEACOCK presented the Report of the Select Committee on the Bill "to amend the Articles of War for the Native Army."

#### MERCHANT SEAMEN.

MR. CURRIE moved that the Bill "for the amendment of the law relating to Merchant Seamen" be now read a second time.

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

#### FOREIGNERS.

MR. PEACOCK moved that the Council do resolve itself into a Commit-

tee upon the Bill "to make further provision relating to Foreigners"; and that the Committee be instructed to consider it in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to III were passed as they stood.

MR. LEGEYT rose to propose for the consideration of the Council the introduction of two new Sections after Section III. The first of these Sections provided as follows :—

"The Governor-General in Council, or the Executive Government of any Presidency or place, or any of the Chief Commissioners or Commissioners mentioned in Section VI of this Act, may require any Foreigner, at the time of reporting himself as required by the preceding Sections, to produce and deliver to the Commissioner or other Officer appointed to receive such report a passport, or to give a reference to one or more respectable person or persons residing at or near the place of his arrival. Every Foreigner, residing or being at the time of the passing of this Act in any part of the said Territories, shall in like manner furnish the said Commissioner or other Officer with a reference to one or more respectable person or persons residing at or near the place of his residence. If the said Commissioner or other Officer shall, after due enquiry, be satisfied that such Foreigner is a fit person to reside in India, he shall grant him a license to reside."

The next Section was as follows :—

"Every such license shall state the name of the person to whom it is granted, the nation to which he belongs, the district or limits within which he is authorized to reside or to be. Such license shall authorize the person, to whom it is granted, to remain or to be in or to pass through any place situate within such district or limits."

He said that, since the Bill had been drawn up, it had been suggested to him (and he believed the suggestion was well founded) that, without some such provisions as those he now proposed for consideration, the Bill would not be found effective or useful. The Bill, as it stood, simply required a Foreigner to report himself on arrival, and, if he wished to travel, to obtain a license for that purpose, without being obliged to give a guarantee from any one that he was a fit or proper person to reside or travel in India. Since the Bill had been introduced, its scope had been widely extended, and its character had been materially altered. The Bill, as amended by the Select Committee to whom it

had been referred, included under the denomination of Foreigners, with the exception of the natural-born subjects of the Queen, all persons not being the natives of any place in the possession and under the Government of the East India Company. But it appeared to him that the Bill, in order to be quite complete, should require from all persons liable to come under its operation a guarantee of their fitness to remain or travel in the country. He thought that such a measure would not be felt as a hardship. By travelling Asiatics, the possession of a passport was considered a proof of respectability and a privilege. Foreigners would have to pay nothing for their passports ; and all that the Sections proposed by him required of them was to give some test of their respectability, and that they were fitting persons to remain in India. Such a provision would be very advantageous as a Police measure, since it would be of great assistance to the Police in giving them a knowledge of many persons located in different parts of India, of whom at present much too little was known. He would not take up the time of the Council to show the material importance that the proposed measure would prove to the Police. It was well known that Persians, Arabians, and people from beyond Afghanistan and the neighbouring countries, were in the habit of immigrating in large numbers annually, and of passing through different districts of British India, causing considerable trouble and uneasiness in their route ; but there was at present no law which could prevent their doing so. With respect to the Western Coast of India, particularly those districts bordering on the Nizam's Dominions, great inconvenience had been felt. In Central India, also, large bodies of people, known by the name of "Welayutes," wandered about the country armed and mounted on horses ; and only within the last month some of these people had seized a small Town in the neighbourhood of Indore, and had to be dislodged by our Troops after a severe action. This Act would touch all the evils arising from such extended and vagrant immigration.

He (Mr. LeGeyt) recollects that, some six or seven years ago, a large body of persons calling themselves Persians and numbering about six hundred men,

were travelling about the Deccan. They reported themselves as travellers, and there was no law in existence which could touch them. They were upwards of a year going from place to place between Mysore and the Nerbudda river, and caused considerable excitement at the different places which they visited.

He then proceeded to remark that the proposed rules regarding licenses to reside would in fact be rather a convenience to resident Foreigners than otherwise, for, under the existing provisions of the Bill, no such resident could leave the place of his abode without taking out a special license or being liable to obstruction from the want of it.

With these observations, he moved that the first of the two new Sections proposed by him for consideration be introduced after Section III.

MR. CURRIE said that the wording of the proposed Section, which was less stringent in respect of new comers than of old residents who might by such residence be said to have in a measure established their respectability, would require considerable alteration, even if the principle were adopted, with respect to which also he confessed he had great doubts. The Section did not indicate the sort of pass that was required. But he much doubted the efficacy or desirableness of any passport-system. What appeared to him to be really required was a summary power of deportation, which the Bill already gave. This seemed to him to be the really useful power ; and he thought that the Bill, as it at present stood, Section XIII of which gave full powers of deportation to the Government, would provide a remedy for all the evils of which the Honorable Member for Bombay complained.

THE CHIEF JUSTICE said, he had great doubts as to the principle of both the Sections proposed by the Honorable Member for Bombay. He thought in the first place that it was not desirable to make the Act more stringent than was required for the object contemplated by the introduction of the Bill. He had not given his mind to the case of the wandering hordes referred to by the Honorable Member. If the present law should be found insufficient to check the invasion of India by such persons, whether Arabs or Pathans or whatever

else they might be, he would rather like to have that provided for specially. But in legislating on such a matter as that now before the Council, it was necessary to avoid any restriction not absolutely requisite, and especially to avoid anything invidious towards the subjects of friendly Foreign European States to whom the Sections in question more particularly applied. He was in favor of legislating on the subject to the extent only to which the Select Committee had gone. When a Foreigner arrived here, he might give the information required by Section II. But he might not have a passport or might not be able to give a reference to two persons willing to come forward to vouch for his respectability. The inconvenience which attended the passport-system was patent to all who travelled on the Continent of Europe; and its introduction into this country might give offence unnecessarily. The possession of a passport was but a poor criterion of the character of the person who produced it. He believed that Polish, German, or other military adventurers would have little difficulty in furnishing themselves with passports.

As to the other Section or the other Clause of the Section, he entertained still stronger objections. It would oblige every Foreigner to take out a license to reside in a place where he was already resident or perhaps carrying on business; and he (the Chief Justice) did not see the necessity for such a provision.

MR. PEACOCK said, he agreed with what had fallen from the Honorable Member for Bengal and the Honorable and learned Chief Justice. He thought the proposed Section to be quite unnecessary. If the Government had the power of deportation, that was all that was required. If the provision proposed for consideration by the Honorable Member for Bombay was unnecessary, as the Honorable and learned Chief Justice had shown it to be, he thought it was objectionable and would cause much inconvenience. Take the Arabs for instance. If every one of these Foreigners were to come before a Magistrate or other Officer for a license to reside in India, it would, in his opinion, be highly inconvenient both to the officials and to the people to whom the proposed amendment applied. Under these circum-

stances, as the first portion of the Section in question appeared to him unnecessary, and the second portion objectionable, he would vote against its introduction.

THE CHAIRMAN was also opposed to the principle of the proposed Section, and thought that the Bill went quite far enough for the purposes required. He said that, from information which had been received by Government and which led to the introduction of the present Bill, it appeared that the passport-system would have no value whatever.

The Section was then put and negatived.

Sections IV to VI were passed as they stood.

Section VII prescribed the form of license to be taken out by a Foreigner to enable him to travel in or pass through any part of British India. It provided as follows:—

“Every such license shall state the name or names of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass, or the limits within which he is authorized to travel.”

MR. PEACOCK said, the Honorable Member for Madras had suggested to him that licenses might be granted to Foreigners for particular periods. It appeared to him (Mr. Peacock) that this was already provided for; but to make it clear, he proposed that the following words be added to the Section:—

“and the period, if any, during which the license is intended to have effect.”

Agreed to.

Sections VIII and IX were passed as they stood.

Section X prescribed the procedure upon apprehension by persons not being Magistrates or Police Officers.

MR. PEACOCK pointed out an inaccuracy in this Section. He said, it only provided for cases of apprehension “by a person not being a Magistrate, Deputy Magistrate, or Assistant to a Magistrate, or a Police Officer;” but it did not seem to provide for the case of persons apprehended by a Magistrate, Deputy Magistrate, or Assistant to a Magistrate, or a Police Officer. He therefore suggested amendments which made the Section run thus:—

“If any person be apprehended by a person not being a Magistrate or a Police Officer, he

shall be delivered over as soon as possible to a Police Officer, and carried before a Magistrate; and whenever any person shall be apprehended by or taken before a Magistrate, such Magistrate shall forthwith report the case to the Government to which he is subject and shall cause the person brought before him to be discharged, or to be conveyed to one of the Presidency Towns, or to be detained pending the orders of such Government."

Agreed to.

Section XI was passed as it stood.

Section XII was passed after a verbal amendment.

Section XIII was passed as it stood.

Section XIV was passed after a trifling amendment.

Section XV provided as follows:—

"The Governor-General in Council, or the Executive Government of any Presidency or place, or any of the Chief Commissioners or Commissioners mentioned in Section VI of this Act, may by order prohibit any person or persons, or any class or classes of persons, not being a natural-born subject or subjects of Her Majesty, from residing or travelling in or passing through any part of the said Territories, or from passing from any part of India to another without a license, &c."

MR. PEACOCK said, certain persons within the meaning of the Charter Act were allowed to reside in India. He therefore proposed the insertion, after the words "natural-born subject or subjects of Her Majesty," of the words "within the meaning of s. 81, 3 and 4 William IV, c. 85," and the omission of the words "residing or."

The amendments were severally agreed to.

Sections XVI to XVIII were passed as they stood.

Section XIX provided that—

"Whoever shall wilfully give a false answer to any question which by this Act he is bound to answer, or shall make any false report, shall, upon conviction before a Magistrate, be liable to imprisonment for a period not exceeding two years, and shall be liable to a fine not exceeding one thousand Rupees."

MR. ELIOTT thought that the penalty should be as heavy as in the preceding Section, for the Master or Commander of a Ship or vessel neglecting to report, namely, two thousand Rupees.

MR. PEACOCK said, in the preceding Section the penalty was a fine only. In the Section under consideration, the penalty was fine and imprisonment, and was much higher.

The Section was then passed as it stood.

Section XX or the Interpretation Clause was passed after a verbal amendment, and with the insertion of the words "within the meaning of s. 81, 3 and 4 Wm. IV c. 85" after the words "a natural-born subject of Her Majesty."

Sections XXI and XXII were passed as they stood.

MR. CURRIE wished to introduce a new Section. There were Native States bordering on the North, East, and West of India, the subjects of which were engaged in constant traffic within the British Territories. It would embarrass that traffic if licenses from traders were required. Any person passing up the Grand Trunk Road would meet strings of camels from Caubul and the country west of the Indus. The Nepalese brought their produce to Goruckpore, Chumparun, Sarun, and the neighbouring districts. It would be a poor return for the good offices of the Nepalese Government to require the inhabitants of Nepaul trafficking in our territories to report themselves or to apply for a pass. He therefore thought that persons of this description should be exempted from the operation of the Bill. It might rest with the Government to extend it to Native States. But the rule should be as contained in the following Section which he proposed to introduce after Section XXII, namely,

"The foregoing provisions of this Act shall not extend to the Native subjects of any state bordering on the said Territories, unless the Governor-General of India in Council or the Executive Government of any Presidency or place, as regards their respective jurisdictions, shall by order extend the said provisions or any of them to the subjects of any such state, or to any class or individual of such subjects."

MR. PEACOCK said, he was very much in favor of the introduction of the proposed Clause. When the Bill was originally prepared, the Interpretation Clause gave a different definition of the word "Foreigners" than the Bill as it now stood. He thought the general rule should be that the subjects of Native States should not be exempted.

THE CHIEF JUSTICE would only suggest, as a matter of Police to those whom it concerned, that the persons professing to belong to the classes in

question would require to be carefully watched; and would remind the Council that Lieutenant Burton of the Bombay Army had recently visited Mecca and Medina disguised as a Caubulee undetected by the fanatical Mahomedans of those places.

MR. LEGEYTY, adverting to the expression "Native States," thought that to exempt the inhabitants of Native Indian States from the operation of the Bill, and to leave it operative on other neighbouring Foreign States, such as the Portuguese territories of Goa, Damaun, and Diu, and the French territories in India, would be exceedingly invidious. He did not see at all why the inhabitants of Native Foreign States as a general rule should not come under the restrictions provided in the Bill. If the Executive Governments chose to do so, they could exempt them from these restrictions or any portion of them; and he thought that such exemptions should be the exception and not the rule.

MR. ELIOTT said, Government would find it necessary to extend the exceptions. He would arm the Government with the powers given by this Act, and vest them with a discretion.

MR. LEGEYTY said, he would leave the Bill as it now stood, and give the Government the power of exempting Native States in common with others.

THE CHIEF JUSTICE was against the proposed Section. He thought that difficulties might arise with reference to Natives. It appeared to him that some of the trading people would require to be looked after. He would rather leave the power of granting exemption to the Executive Government. To grant it by law might create some difficulty with reference to existing Treaties.

MR. CURRIE said, as doubts had been taken as to the expediency of inserting the Clause proposed by him, he would not press it. He thought, however, that, in the cases referred to, exemption should be the rule and not the exception.

The Motion was then by leave withdrawn.

Section XXIII was the Exemption Clause.

After a trifling amendment made by Mr. Peacock—

THE CHIEF JUSTICE said, it

*The Chief Justice*

might be useful to empower Government to exempt persons, not only temporarily or otherwise, but also wholly or partially. He accordingly moved an amendment to this effect.

Agreed to.

SIR ARTHUR BULLER thought that power should be given for revoking an exemption. He therefore moved the addition of words to that effect at the end of the Section.

Agreed to.

Section XXIV, and the Preamble and Title, were severally passed as they stood.

The Council having resumed its sitting, the Bill was reported.

#### **PORT-DUES (GULF OF CAMBAY).**

MR. LEGEYTY moved that the Special Report of the Select Committee on the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay" be adopted. If it were adopted, further proceedings on the Bill would be suspended until the receipt of the communication from the Bombay Government referred to in paragraph 4 of the Report.

Agreed to.

#### **COTTON-FRAUDS (BOMBAY).**

MR. LEGEYTY moved that a communication received by him from the Government of Bombay on the subject of Cotton-Frauds, be printed.

Agreed to.

#### **ARTICLES OF WAR (NATIVE ARMY).**

MR. PEACOCK moved that the Council do resolve itself into a Committee on the Bill "to amend the Articles of War for the Native Army;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I was passed as it stood.

Section II was passed after a verbal amendment.

Sections III and IV were passed as they stood.

The Preamble was passed after a verbal amendment.

The Title was passed as it stood.

The Council having resumed its sitting, the Bill was reported.

MR. PEACOCK then moved that the Bill be now read a third time and passed.

Agreed to.

MR. PEACOCK moved that General Low be requested to carry the Bill to the Governor-General for his assent.

Agreed to.

#### PORT-DUES (CUTTACK).

MR. CURRIE moved that a communication received by him from the Government of Bengal be laid upon the table and referred to the Select Committee on the Bill "for the levy of Port-dues in certain Ports in the Province of Cuttack."

Agreed to.

The Council adjourned.

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*Saturday, November 28, 1857.*

#### PRESENT :

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.
Hon. Major General J. Low,	E. Currie, Esq.
Hon. B. Peacock,	Hon. Sir A. W. Buller, and
D. Elliott, Esq.	H. B. Harington, Esq.

MR. HARINGTON took the oaths as a Member of the Council for the Lieutenant-Governorship of the North Western Provinces.

#### LUNATICS.

MR. CURRIE moved that the Bill "relating to Lunatic Asylums" be now read a second time.

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

MR. CURRIE moved that the Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature" be now read a second time.

THE CHIEF JUSTICE said, he rose only to express his thanks to the Honorable Member for the pains he had taken with this part of the subject of Lunacy; and to say that, as far as he had yet been able to judge, the Bill generally had his concurrence. There was one point on which he had some doubt; but that would be better discussed in

Committee; and he had no objection whatever to the second reading of the Bill.

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

MR. CURRIE moved that the Bill "to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature" be now read a second time.

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

#### FOREIGNERS.

The order of the day for the third reading of the Bill "to make further provision relating to Foreigners" being read—

MR. PEACOCK moved that the Bill be recommitted to a Committee of the whole Council for the purpose of considering a proposed amendment therein.

Agreed to.

The Bill was passed after a verbal amendment in Section XV on the motion of MR. PEACOCK, and was reported to the Council.

MR. PEACOCK then moved that the Bill be read a third time and passed.

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

#### GANJA (BOMBAY).

MR. LEGEYT moved that the Bill "relating to the sale of Ganja in the Presidency of Bombay" be now read a third time and passed.

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

#### FOREIGNERS.

MR. PEACOCK moved that General Low be requested to take the Bill "to make further provision relating to Foreigners" to the Governor-General for his assent.

Agreed to

#### GANJA (BOMBAY).

MR. LEGEYT moved that General Low be requested to take the Bill "relating to the sale of Ganja in the Presidency of Bombay" to the Governor-General for his assent.

Agreed to.