

Saturday, 2nd February, 1856

PROCEEDINGS



OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1856.

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DESERTION OF EUROPEAN SOLDIERS.

MR. LEGEYT moved that His Excellency the Commander-in-Chief be added to the Select Committee on the Bill "for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company."

Agreed to.

NOTICE OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday next, move the second reading of the Bill "to amend the articles of War for the Native Army relating to the forfeiture of pay and service in certain cases."

The Council adjourned.

Saturday, February 2, 1856.

PRESENT :

The Honorable J. A. Dorin, Vice-President,	
in the Chair.	
Hon. Sir J. W. Colville,	D. Elliott, Esq.,
H. E. the Commander-	C. Allen, Esq.,
in-Chief.	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq., and
Hon. B. Peacock,	Hon. Sir Arthur Buller.

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition signed by the Mahratta Chief of Vinchoor and other persons, praying for the removal of all legal obstacles to the marriage of Hindoo widows.

MR. LEGEYT moved that the Petition be printed. He said, it was a document of a very satisfactory nature. It emanated from the Chief of Vinchoor, who was now almost the sole remaining Mahratta Sirdar of any note or consideration in the vicinity of Poonah. His father had been a staunch supporter of the Peishwa, and had continued a faithful adherent to his cause until the latest period of his power; and, although the family had suffered very considerably by that adhesion in the loss of jaghirs, the present Chief had, very much to his credit, always shown himself an enlightened and loyal subject to the British Government, supporting every measure calculated to promote the happiness and well-being of the people. The Petition presented to-day, showed that he was pursuing that course in a very admirable manner; and he (Mr. LeGeyt) had great pleasure in moving that it be printed.

Agreed to.

MR. GRANT moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

PATENTS FOR INVENTIONS.

MR. PEACOCK presented the Report of the Select Committee on the Bill "for granting exclusive privileges to Inventors."

EXECUTION OF CRIMINAL PROCESS.

MR. CURRIE moved the first reading of a Bill "to provide for the execution of criminal process in places out of the jurisdiction of the authority issuing the same." He said, this Bill had its origin in repeated representations by the Magistrate of the 24-Pergunnahs respecting the difficulties experienced in the execution of Mofussil process within the town of Calcutta. Act XXIII of 1840 required that any writ, warrant, or other process issued by a Mofussil Court, and designed for execution within the local limits of the Supreme Court, should be endorsed by a Judge of the latter Court. The course prescribed for obtaining the endorsement was to send the process, with a letter, to the Company's Attorney, who procured the Judge's endorsement, and then transferred the process for execution to the Police Office. This procedure was necessarily attended with considerable delay. It was said that it usually occupied two days, whereas, in almost all cases of the pursuit of criminals, despatch and secrecy were essentially necessary to success. Mr. Fergusson, the Magistrate of the 24-Pergunnahs, wrote on the subject as follows:—

"The system has been found productive of considerable inconvenience, causing great delay and publicity in cases where secrecy would have been success; and thus, to a considerable extent, thwarting and paralyzing the efforts of the Suburban Police."

And again, he said—

"Many cases have occurred in which, if I could have searched houses immediately, or authorized the Police to do so, stolen property would certainly have been recovered; but before the tedious process of obtaining the endorsement of Her Majesty's Judge on the search warrant could be gone through, the receivers had of course heard of the enquiry, and either melted down or disposed of the articles. Until this be remedied, Calcutta will continue to be the receptacle for the stolen goods of all the adjacent districts; and we shall continue to experience the difficulty we have hitherto felt in checking crime."

There had been a good deal of correspondence on the subject. As the Magis-

trate of the 24-Pergunnahs was a Justice of the Peace for the Provinces of Bengal, Behar, and Orissa, and, as such, had jurisdiction in Calcutta as well as in his own district, it was not clear to him (Mr. Currie) why that Officer might not, on sufficient grounds, himself issue warrants, as Justice of the Peace, for execution in Calcutta, and, on the arrest of the parties, make them over for trial by himself in his capacity of Mofussil Magistrate. The opinion of the Advocate General, however, was opposed to this procedure. Mr. Ritchie seemed to think that a Mofussil Magistrate could issue warrants as Justice of the Peace only in those cases with which he could deal throughout as Justice of the Peace, and not in cases which he would eventually have to try as a Mofussil Magistrate.

With respect to warrants of arrest, a remedy had already been provided by Act VII of 1854, under which a warrant of arrest against a person who was residing in, or had fled to, another jurisdiction, might be executed on being endorsed by a Magistrate having jurisdiction in the place in which it was to be executed. But this applied only to warrants for arrest. It did not apply to search warrants, in which promptitude of action was equally necessary.

The readiest mode of providing for what was required seemed to be to pass a short Act extending to criminal processes of every description, the provisions relating to warrants for arrest contained in Act VII of 1854. This was the course recommended by the Advocate General; and he had adopted it in this Bill. Mr. Fergusson, the Magistrate of the 24-Pergunnahs, proposed that, as his jurisdiction was conterminous for several miles with that of Calcutta, and as he held a commission as Justice of the Peace for Calcutta under the Statute of the 2nd and 3rd William IV, he should be authorized to back, as Justice of the Peace, warrants issued by himself as Magistrate of the 24-Pergunnahs. But this course had been objected to, and it did not appear to be necessary; for Mr. Fergusson admitted that, if his warrants could be backed by a Justice of the Peace in Calcutta, that would obviate all the inconveniences which were now experienced.

He had introduced a provision into the Bill expressly declaring that its provisions, and those of Act VII of 1854, should be held applicable to the execution of warrants or other criminal processes within the local limits of the Supreme Courts. Some doubt appeared to be entertained as to the effect of

Act VII of 1854 in this respect, as it contained no reference to Act XXIII of 1840; and it was desirable that these doubts should be removed. He himself had been disposed to think that Act XXIII of 1840 might be repealed altogether in so far as it related to criminal process; but it had been pointed out to him that cases might occur in which the Magistrate might have doubts of the propriety of endorsing warrants; and that, in such cases, it might be useful to take the directions of a Judge of the Supreme Court. He had accordingly introduced a provision to that effect.

The Bill was read a first time.

ARTICLES OF WAR FOR THE NATIVE ARMY.

MR. LEGEYT moved the second reading of the Bill "to amend the Articles of War for the Native Army relating to the forfeiture of pay and service in certain cases."

SIR JAMES COLVILE said, he did not wish to offer any opposition to the Motion for the second reading; but he would merely suggest now what he had suggested privately to the Honorable Mover of the Bill, that the Select Committee to whom the Bill might be referred, and which would probably be the same Committee to whom the other Bill for the amendment of these Articles of War for the Native Army had been referred, would do well to consider the expediency of consolidating both the Bills into one measure. He might add that the learned Advocate General had lately mentioned to him, generally, that there were other particulars in which the Articles of War for the Native Army required amendment. He had not entered at large into the subject with the Advocate General, and was not prepared to say what those particulars were. But if this was the case, it might be desirable to have one general Act embodying all the amendments that were required. All he wished to do at present was, to point out the inexpediency of amending a general Act like that in which the Articles of War were comprised, by several different Acts, and of thus creating an uncertainty as to where the existing Law was to be found.

MR. LEGEYT said, he quite agreed in what had fallen from the Honorable and learned Chief Justice. This Bill had, in the first instance, been in the hands of his Honorable Friend, General Low, who, being prevented by illness from being present, had entrusted the introduction of the measure to him. When the other Bills relating to the

Articles of War which had been referred to a Select Committee, were brought before the Council, no communication had then been made on the subject of this Bill. For his own part, he saw no objection to consolidating the alterations proposed in the Articles of War for the Native Army in India into one Bill. He must observe, however, that one of the Bills to which allusion had been made, had for its object the amendment of the Articles of War for the troops of Her Majesty and the East India Company.

SIR JAMES COLVILLE asked if this Council had the power to amend the Articles of War relating to Her Majesty's forces?

MR. LEGEYT said, he had been wrong in describing the Bill to which he had just referred. The Bill was one for the better prevention of desertion from the land forces of Her Majesty and the European soldiers of the East India Company. That Bill would not go so far as to alter the Articles of War for Her Majesty's Forces. He would make enquiries, and see whether the Bill now before the Council and the Bill to amend the 122nd Article of War could not be consolidated into one measure.

MR. PEACOCK said, he saw no objection to the two Bills being consolidated into one; but there would be great objection to the Select Committee inserting additional Clauses in such Bill, because they must do so without any previous publication to the world, and without the Military Authorities having an opportunity of considering, and offering opinions upon, the new Clauses. He did not know what the further amendments were which the Advocate General considered to be desirable in the Articles of War. If any further amendments were necessary, he thought that a Bill should be introduced at once, and published, in order that it might be considered by the Select Committee with the present Bill; but whatever these amendments might be, it would be very undesirable that the Select Committee should insert them without previous notice to the Public.

SIR JAMES COLVILE explained that he had not meant that the Select Committee should be empowered to incorporate new provisions in the Bill. He had thought that, if such further provisions were necessary, the Honorable Member for Bombay might see fit to withdraw the two Bills now before the Council, and introduce a new Bill for the purpose of effecting by one measure all that was required for the amendment of the Articles of War.

MR. LEGEYT'S motion was then put

Mr. LeGeyt

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

ABKAREE REVENUE (CALCUTTA AND MADRAS).

MR. CURRIE moved the third reading of the Bill "to amend Act No. XI of 1849 and Act No. XIX of 1852."

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

DESTRUCTION OF CATTLE (BENGAL).

MR. ALLEN moved the third reading of the Bill "to prevent the malicious or wanton destruction of cattle."

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

ARTICLES OF WAR FOR THE NATIVE ARMY.

MR. LEGEYT moved that the Bill "to amend the Articles of War for the Native Army relating to the forfeiture of pay and service in certain cases" be referred to a Select Committee consisting of His Excellency the Commander-in-Chief, General Low, Sir Arthur Buller, and the Mover.

Agreed to.

REGISTRY OF LANDED ESTATES.

MR. CURRIE said, he begged to draw the attention of the Council to the entry No. 71 in the List prepared in June 1854 by the Committee appointed to classify the legislative business pending before the Government of India on the 20th of May 1854. The entry was headed—"For the revision of mutations in landed property." Perhaps, it might have been more appropriately headed "For the revision of the laws relating to the registry of landed estates." A Regulation of 1793, and other Regulations passed shortly after the completion of the Permanent Settlement, required that registers of landed estates should be prepared in the Collector's Offices. These registers were to contain, amongst other particulars, the names of the proprietors of the estates; they were to be revised periodically, and mutation registers were also to be kept for recording any changes which might take place intermediately. Proprietors were required to report to the Collector all successions to, or transfers of, property under pain of a fine to be fixed, on the report of the Collector, by the Governor General in Council. This requirement, however, had been very little attended to. In many districts,

proprietors seldom registered, unless they had a particular object to serve. Various plans had been suggested, from time to time, for enforcing registration, and thus procuring complete and correct registers ; and, with the permission of the Council, he should read the summary which had been given of them by the Committee :—

“ The question was first raised in 1837, by the then Board of Revenue, who submitted a Draft Act in substitution of Regulation XV of 1797 and Regulation VIII of 1800.

The purport of this Draft Act was to debar all unregistered proprietors from distress or summary suit for the recovery of arrears of rent.”

The Committee went on to say :—

“ The Government of India, before deciding on the subject, called for information in regard to the operations of Sections XII and XIII Regulation IX of 1793,” (a misprint for 1833).

“ On the receipt of this information, the Government of India observed, in a letter No. 88 of the 20th of January 1840, that they were not then prepared to pass the new enactment, but desired the Board to be consulted as to whether the imposition of a fine for non-registration would not suffice to enforce registration.

“ The Board reported that they found themselves unable to concur in the opinion of the Government of India as to the sufficiency of a fine.

“ No orders were passed on this communication. In the early part of 1849, the Government of Bengal called upon the Board, in consequence of a reference made to it upon a point involved in a Registration case, to report their sentiments on the undisposed-of subject of the Registration Law proposed by the Board of Revenue in 1833.

“ The Board submitted a fresh Draft Act, and expressed unanimously their opinion that the introduction of a correct system of Registration would be attended with the best and most satisfactory results ; but the Members were not agreed as to the practicability of introducing compulsory registration.”

This second Draft Act provided similar means for enforcing registration to those contained in the Draft Act submitted by the Board of Revenue in 1837 ; but it went considerably further. It prescribed rules for registration, and for the establishment in each district of subordinate Registry Offices, to render registration more easy and less expensive to small proprietors.

The Committee remarked in conclusion :—

“ The subject has been considered by the Honorable Mr. Peacock, who pointed out in a Minute, dated the 25th June 1853, various objections to the Draft ; and here the matter rests.”

That being the case, it devolved upon him to deal with the matter under Article 31 of the Standing Orders, which said :—

“ If a draft or project of a Law be proposed, by the Governor or Governor in Council of a Presidency, or by the Lieutenant Governor of a Lieutenant Governorship, the fact shall be reported to the Council by the Clerk, and the draft or project shall, together with any annexures thereto, be printed and recorded. If, within four weeks of such Report being made, no Member shall make any motion upon the subject, it shall be the duty of the Member nominated by the Governor of such Presidency, or by the Lieutenant Governor of such Lieutenant Governorship, to bring the same before the Council, either by bringing and taking charge of a Bill for the purpose of carrying the proposal into effect, or by making such other motion upon the subject of the proposal as he may think fit.”

He was not prepared, under existing circumstances, to adopt the Draft Act sent up by the Bengal Government. It was very loosely and confusedly drawn, and was, no doubt, open to the strictures which the Honorable and learned Gentleman to his right (Mr. Peacock) had made upon it in the Minute alluded to by the Committee. He, however, was still of opinion that a correct registry of landed estates would be very useful for administrative purposes ; but there was great difficulty in enforcing registration by compulsory means ; and the new Bill for the improvement of the Sale Law, which had been read a second time at the last Meeting of the Council, made it so much the interest of proprietors to register, that, should the provisions to which he alluded become law, compulsory means might possibly be no longer necessary. He agreed, therefore, with the Honorable and learned Gentleman so far, that he thought it would not be expedient, at the present time at least, to pass an Act of the kind which had been sent up by the Bengal Government, and he should propose the following Motion :—

“ That a copy of the Minute recorded by the Legislative Member of the Council of India, under date June 25th, 1853, on the Draft Act entitled an Act for the Registry of Titles in landed property, which was submitted to the Bengal Government by the Board of Revenue, and laid before the Government of India on the 30th June 1852, be communicated to the Government of Bengal, in order that the necessity or expediency of legislating in the manner proposed by the Board of Revenue may be further considered by that Government.”

This course had the concurrence of the Lieutenant Governor of Bengal. Had it been otherwise, he should have moved for a Select Committee to consider and report on the subject ; but as the case stood, this did not appear to be necessary.

MR. PEACOCK said, he could have no objection whatever to his Minute being sent

to the Bengal Government. It was so long since he had written it, that he did not precisely remember whether he had made any suggestion respecting it; but he rather thought that he had proposed that the attention of the Board of Revenue should be drawn to the objections which he had raised; and he was under the impression that the substance of his Minute had been sent to the Bengal Government.

MR. CURRIE'S motion was put, and agreed to.

NOTICE OF MOTION.

MR. ELIOTT gave notice that he would, on Saturday next, move the first reading of a Bill to amend Act XXIII of 1854.

MESSENGER.

MR. CURRIE moved that Mr. Grant be requested to carry the Bill "to amend Act No. XI of 1849 and Act No. XIX of 1852" to the Most Noble the Governor General for his assent.

Agreed to.

MR. ALLEN moved that Mr. Grant be requested to carry the Bill "to prevent the malicious or wanton destruction of Cattle" to the Most Noble the Governor General for his assent.

Agreed to.

NOTICE OF MOTION.

MR. PEACOCK gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "for granting exclusive privileges to Inventors."

The Council adjourned.

Saturday, February 9, 1856.

PRESENT :

The Honorable J. A. Doria, Vice President, in the Chair,

H. E. the Commander-in-Chief,	D. Elliott, Esq.,
Hon. General Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq. and Hon. Sir A. Buller,

THE CLERK presented to the Council the following Petitions:—

MARRIAGE OF HINDOO WIDOWS.

A Petition, signed by 44 Native Inhabitants of Calcutta, praying for the insertion of a Marriage Registration Clause in the Bill "to

Mr. Peacock

remove all legal obstacles to the Marriage of Hindoo Widows."

Also a Petition from certain Native Inhabitants of Bengal, praying for the passing of a general Marriage Act, a draft of which accompanied the Petition, in lieu of the above Bill.

MR. LEGEYT moved that the above Petitions be referred to the Select Committee on the Bill.

Agreed to.

MESSAGES FROM THE GOVERNOR GENERAL.

The following Message from the Most Noble the Governor General was brought by Mr. Peacock, and read:—

MESSAGE No. 66.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 26th January 1856, entitled "a Bill to enable Magistrates and certain other Officers to take cognizance of certain offences without requiring a written complaint."

By Order of the Most Noble the Governor General.

CECIL BEADON,

Secretary to the Govt. of India.

FORT WILLIAM, }
The 4th February 1856. }

The following Messages from the Most Noble the Governor General were brought by Mr. Grant, and read:—

MESSAGE No. 67.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 2nd February 1856, entitled "a Bill to amend Act No. XI of 1849 and Act No. XIX of 1852."

By Order of the Most Noble the Governor General.

CECIL BEADON,

Secretary to the Govt. of India.

FORT WILLIAM, }
The 8th February 1856. }

MESSAGE No. 68.

The Governor General informs the Legislative Council that he has given his assent