

Saturday, 16th February 1856

PROCEEDINGS



OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1856.

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Also, that the Standing Orders be suspended to enable him, on the same day, to pass the above Bill through its subsequent stages.

CONSERVANCY (PRESIDENCY TOWNS, &c.)

MR. LEGEYT moved that a communication received by him from the Government of Bombay, relative to the regulation of Burial and Burning grounds, be laid upon the table, and referred to the Select Committee on the Bill "for the conservancy and improvement of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

ABKAREE REVENUE (BENGAL).

MR. CURRIE moved that the Bill "to consolidate and amend the Law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal" be referred to a Select Committee, consisting of Mr. Allen, Mr. LeGeyt, and the Mover.

Agreed to.

The Council adjourned.

Saturday, February 16, 1856.

PRESENT:

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

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition signed by the Rajah of Kishnagbur and certain Zemindars, Talookdars, and others, in and about Santipore, for legalising the Marriage of Hindoo Widows.

MR. GRANT moved that this Petition be printed.

Agreed to.

BENGAL MARINERS' AND GENERAL WIDOWS' FUND.

THE CLERK also presented a Petition from the Directors, Members, and Beneficiaries of the Bengal Mariners' and General Widows' Fund, praying for the passing of an Act (a draft of which accompanied the

Petition) providing for the dissolution of the Society and the division of the Fund.

MR. PEACOCK said, it appeared to him that the better course would be to appoint a Select Committee to report upon this Petition: he should move that the Petition be printed and referred for report to a Select Committee, consisting of Sir Arthur Butler, Mr. Currie, and the Mover.

Agreed to.

OUTRAGES IN MALABAR.

MR. ELIOTT moved the second reading of the Bill "to give effect to the provisions of Act XXIII of 1854 from the time of its promulgation in the District of Malabar."

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

EXECUTION OF CRIMINAL PROCESS.

MR. CURRIE moved the second reading of the Bill "to provide for the Execution of Criminal Process in places out of the jurisdiction of the authority issuing the same."

MR. ELIOTT said, he very much approved of this Bill, and should support the Motion for the second reading; but he wished to know the reason why a difference was made between Mofussil Magistrates, and Magistrates having jurisdiction within the local limits of the Supreme Court. The former were to act on their own discretion; but the latter, if any objections to the execution of a Warrant or other process occurred to them, were to refer the matter to a Judge of the Supreme Court. He did not see why a reference to higher authority should be more necessary within than without the limits of the Supreme Court.

MR. CURRIE replied, that the Section provided that Magistrates having jurisdiction within the local limits of the Supreme Court, when they had any doubts as to the propriety of backing a process sent to them for endorsement, might refer the process to a Judge of the Supreme Court, to be dealt with according to the provisions of Act XXIII of 1840. As he had said on the motion for the first reading, he had originally intended to propose that Act XXIII of 1840 should be repealed altogether, in so far as it relates to criminal process; but it had been suggested to him by the Advocate General, 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. In deference to this opinion, he had inserted the provision in question ; and he himself thought that it was unobjectionable, though not, perhaps, absolutely necessary.

SIR ARTHUR BULLER said, he presumed the reason of the difference alluded to by the Honorable Member for Madras, was to be found in the convenience of the reference in the one case, and not in the other. The Supreme Court was always at hand to the Calcutta Magistrates, and a reference to it by them most easy. But it would be otherwise in the case of Magistrates at distant stations. A reference of their doubts to the Supreme Court would obviously be attended with great delay.

MR. PEACOCK said, it appeared to him that the proviso in this Section might be useful in this way. A Magistrate in the Mofussil might issue a Warrant for the purpose of being executed within his own jurisdiction, and it might afterwards be found necessary to execute it within the local limits of the Supreme Court at Calcutta. If executed in the Mofussil, the proceeding would be subject to the Law applicable to the Mofussil : in the latter, to the English law. If the Warrant were sent for execution in Calcutta, the Magistrate at Calcutta, who must give effect to it in accordance with the English Law, might be of opinion that there was some defect in it. In such a case, not wishing to subject the Mofussil Magistrate to an action, he might, if he entertained a doubt as to the validity of the Warrant, refer the matter to a Judge of the Supreme Court. In any case however, it appeared to him (Mr. Peacock) that the question was one which had better be considered by the Select Committee to whom the Bill would be referred, than on the motion for the second reading.

MR. CURRIE'S motion was then put and carried, and the Bill read a second time.

OUTRAGES IN MALABAR.

MR. ELIOTT moved that the Standing Orders be suspended, in order that he might carry through the subsequent stages the Bill "to give effect to the provisions of Act XXIII of 1854 from the time of its promulgation in the District of Malabar."

MR. GRANT seconded the Motion.

Agreed to.

MR. ELIOTT then moved that the

Mr. Currie

Council resolve itself into a Committee upon the Bill.

Agreed to,

On Section I being proposed—

MR. ELIOTT said, he should explain what alterations he intended to propose in Committee. His intention was to move amendments in it, which would effect the object to which he had adverted in opening the subject of the Bill at the last Meeting—namely, to make the measure applicable to Moplahs who committed outrages against other Moplahs who were in the service of Government, or who might give evidence in prosecutions against members of their tribe. For the reasons which he had stated at length on the motion for the first reading, he thought it necessary that the Bill should be made operative in this respect. He proposed, therefore, to move an amendment in the Preamble, and an additional Section. The first part of the Preamble recited that Act XXIII of 1854 was promulgated throughout the District of Malabar long prior to the proclamation, and was believed by the Moplahs, and by all other classes of the inhabitants, to have the force of Law ; and the concluding part expressed that it was expedient that the said Act should have effect according to the general belief and understanding in that respect. To these recitals, he proposed to add the following— "And whereas it is expedient to extend the application of the said Act"—with a view to the protection of Moplahs employed in the service of Government, and also of persons of the same class who have given information or evidence against Moplahs in respect of offences punishable under the Act ; and to introduce a new Section to give effect to that object. His first amendment would be, the introduction of the new Section after Section I.

Section I was then put, and carried.

MR. ELIOTT moved the following, as Section II :—

"From and after the passing of this Act, the provisions of Act XXIII of 1854 shall apply to any Moplah who murders, or attempts to murder, any person employed in the service of Government, or any person who has given information or evidence against a Moplah in respect of any offence punishable under the said Act : and to any Moplah who takes part in any outrage directed by Moplahs against any person, wherein murder is committed, or attempted to be committed, or is likely to be committed : and to any person who shall procure or promote the commission of any such crime as aforesaid, or shall incite or encourage any other person or persons to commit the same ; or who, after hav-

ing committed, or having been accessory to any such crime as aforesaid, shall forcibly resist any person or persons having lawful authority to apprehend him ; or who shall join, or assist, or incite or encourage other persons to join or assist in such resistance."

At the request of Mr. Currie,

THE CHAIRMAN read Section II of Act XXIII of 1854, which was as follows :—

" Any Moplah who murders, or attempts to murder, any person belonging to any other class, or who takes part in any outrage directed by Moplahs against persons of any other class, wherein murder is committed, or is attempted to be committed, or is likely to be committed ; and any person who shall procure or promote the commission of any such crime as aforesaid, or shall incite or encourage any other person or persons to commit the same, or who, after having committed or having been accessory to any such crime as aforesaid, shall forcibly resist any person or persons having lawful authority to apprehend him ; or who shall join or assist, or incite or encourage other persons to join or assist in such resistance, shall, on conviction thereof, be liable not only to the punishment provided by the existing law for the offence of which he may be convicted, but also to the forfeiture of all his property, of whatever kind, to Government, by the sentence of the Court by which he is tried."

MR. LEGEYT asked, why the Section should not be made applicable to the murder, or to an attempt at the murder, of Moplahs generally. It might happen that a Moplah might render himself obnoxious to others of his caste, without being in the service of the Government, or without having given any evidence against Moplahs, and might have violence inflicted upon him. Would it not be advisable, therefore, to word the Section so that it should include outrages against any Moplah whatever.

SIR ARTHUR BULLER said, if a Moplah was known to be likely to give evidence against one or more persons of his own caste, and was put out of the way in consequence, the Section proposed would not meet his case.

MR. GRANT said, the Law proposed was a very stringent Law, and it was desirable, if possible, that it should not go beyond the actual necessity of the case. The murder of a Moplah would always be an offence under the ordinary Law ; and it appeared to him that it might be objectionable to enlarge the words of the Section, so that they should include every case of murder of one Moplah by another—such a case, for instance, as the murder of one Moplah by another from feelings of jealousy.

After some conversation, MR. ELIOTT said, in deference to the general sense of the

Council, he would ask leave to withdraw the Section he had proposed, in order that he might submit an amended one.

Agreed to.

MR. ELIOTT then moved the following amended Section as Section II :—

" From and after the passing of this Act, the provisions of Act XXIII of 1854 shall apply to any Moplah who murders, or attempts to murder, any person : and to any Moplah who takes part in any outrage directed by Moplahs against any person, wherein murder is committed, or attempted to be committed, or is likely to be committed : and to any person who shall procure or promote the commission of any such crime as aforesaid, or shall incite or encourage any other person or persons to commit the same ; or who, after having committed, or having been accessory to any such crime as aforesaid, shall forcibly resist any person or persons having lawful authority to apprehend him ; or who shall join or assist, or incite or encourage other persons to join or assist in such resistance."

Agreed to.

MR. ELIOTT then moved that the following be introduced as Section III of the Bill :—

" The said Act XXIII of 1854, and this Act, shall be read and construed together as one Act."

Agreed to.

The Preamble and Title were then, upon Mr. Eliott's motion, amended so as to correspond with the Bill as altered ; and were severally passed as amended.

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

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

Agreed to.

MR. ELIOTT moved that Mr. Grant be requested to take the Bill to the Most Noble the Governor General for his assent.

Agreed to.

PATENTS FOR INVENTIONS.

On the Order of the Day for the adjourned Committee of the whole Council on the Bill " to grant exclusive privileges to Inventors " being read, the Council resolved itself into a Committee.

Section XXVII, the consideration of which had been postponed, being read by the Chairman—MR. PEACOCK said, since the last Meeting of the Council, he had had an opportunity of consulting with his Honorable friends opposite in regard to this Section, and would now propose certain amendments in it which they had seen, and which, he believed, had their assent.

The Honorable Member then proceeded to move his amendments, which were several-

ly agreed to, and which caused the Section to read thus :—

" Any of the said Courts of Judicature, if it think fit, may direct an issue for the trial before the same Court, or any other Court of Her Majesty, or of the East India Company, of any question of fact arising upon an application under Sections XXIII, XXIV, or XXV of this Act, and such issue shall be tried accordingly, in a summary manner : and if the issue be directed to another Court, the finding shall be certified by the Court before which the same was tried, to the Court directing the issue. If the issue be directed to any of Her Majesty's Courts of Judicature, the Court by which the issue is tried may, before the finding is certified, direct a new trial of such issue according to the usual course and practice of such Court. If the issue be directed to a Court of the East India Company, the finding shall not be subject to appeal to any other Court of the said Company ; but the evidence taken upon the trial shall be recorded, and a copy thereof, certified by the Judge, shall be transmitted, together with any remarks he may think fit to make thereon, to the Court by which the issue was directed ; and such Court may either act upon the decision of the Court which tried the issue, or direct a new trial if it shall appear necessary."

On Section XXVIII, the consideration of which had also been postponed, being read by the Chairman—

MR. PEACOCK said, he had spoken to his Honorable and learned friend opposite (Sir Arthur Buller) upon this Section since the last meeting. The Honorable and learned Member, upon consideration, agreed with him that the difficulty which he had suggested at the last meeting, and which existed in England, could not be got over without giving rise to other and still greater difficulties. He (Mr. Peacock) had therefore no amendment to move in the Section.

SIR ARTHUR BULLER said, he likewise did not see how the difficulty to which he had adverted at the last meeting of the Council in reference to this Section, could be got over without opening a door to still greater difficulties. If the Supreme Court at one Presidency should uphold a Patent, and the Supreme Court at another Presidency should declare it void, the Patentee would have an appeal to the Privy Council open to him, when the unfavorable judgment would either be affirmed or reversed.

The Section was then passed as it stood.

The Preamble and Title were passed as they stood.

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

CATTLE TRESPASS.

MR. ELIOTT moved that a communication which he had received from the Go-

vernment of Madras, relative to the prevention of the offence of Cattle Trespass, be referred to the Select Committee engaged in considering the projects of Law relating to Cattle Trespass.

Agreed to.

NOTICE OF MOTION.

MR. GRANT gave notice that, on Saturday next, he should move that the Standing Orders Committee be instructed to prepare a Standing Order for the purpose of requiring notice to be given of amendments of Bills intended to be moved in Committees of the whole Council.

EXECUTION OF CRIMINAL PROCESS.

MR. CURRIE moved that the Bill "to provide for the execution of Criminal Process in places out of the jurisdiction of the authority issuing the same" be referred to a Select Committee, consisting of Mr. LeGeyt, Sir Arthur Buller, and the Mover.

Agreed to.

NOTICE OF MOTION.

MR. PEACOCK gave notice that, on Saturday next, he would move that the Bill "for granting exclusive privileges to Inventors" be read a third time and passed ; but that, before doing so, he should move that the Bill be re-committed, in order that a Section which was antecedent to those that had been reserved for this meeting, might be re-considered.

He would also call attention to Section XXXV of the Bill, a further consideration of which might be necessary before the third reading. The Charter Act directed that the Legislative Council should not pass any measure which might affect the prerogative of the Crown, without the previous sanction of the Crown ; and it might be a question whether, with reference to that restriction, this Council had power to pass the present Bill. His own opinion, and that of the other Members of the Select Committee, was that the Bill did not affect the prerogative of the Crown ; but, in order to avoid all doubt upon the subject, Section XXXV had been introduced, which declared as follows :—

" Nothing herein contained shall abridge or affect the prerogative of the Crown, in relation to the granting or withholding the grant of any Letters for Inventions or otherwise, or affect or interfere with any Letters Patent for an invention heretofore granted, or hereafter to be granted by the Crown."

It appeared to him that, even without this Section, the Bill would not affect any prerogative of the Crown; but that, with it, it certainly could not have that effect. He wished, however, before moving for the third reading, to take the opinion of Honorable Members upon the question. If Honorable Members should determine that the Bill would interfere with the prerogative of the Crown, it would be necessary to send it home for the assent of the Crown previously to its being passed.

The Council adjourned.

Saturday, February 23, 1856.

PRESENT :

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

OUTRAGES IN MALABAR.

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

MESSAGE No. 69.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 16th February 1856, entitled "a Bill to give effect to Act XXIII of 1854 from the time of its promulgation in the District of Malabar, and to extend the application thereof in future."

By Order of the Most Noble the Governor General,

CECIL BEADON,

Secretary to the Govt. of India.

FORT WILLIAM, }
 The 22nd February 1856. }

MARRIAGE OF HINDOO WIDOWS.

The CLERK presented a Petition from certain Hindoo residents of Moorshedabad, in favor of the Bill "to remove all legal obstacles to the Marriage of Hindoo Widows."

Also a Petition from certain Native Inhabitants of Dhoolia, in the Bounbay Presidency, in favor of the same Bill.

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

Agreed to.

CLAIMS IN PRE-EMPTION.

SIR JAMES COLVILE presented the Report of the Select Committee on Mr. Lautour's Petition concerning a proposed law to secure title against persons claiming rights of pre-emption.

INSPECTOR OF PRISONS (BOMBAY).

MR. LEGEYT presented the Report of the Select Committee on the Bill "to relieve the Court of Sudder Fouzdar Adawlut at Bombay from the supervision of the Jails in that Presidency."

INSPECTOR OF PRISONS (FORT ST. GEORGE).

MR. ELIOTT moved the first reading of a Bill "for the better control of the Jails within the Presidency of Fort St. George." He said, occasion had arisen for this Bill by the appointment of an Inspector General of Prisons at Madras. The existing laws in that Presidency placed the general control and management of the local prisons in the Sudder Fouzdar Adawlut; and the appointment of an Inspector General of Prisons made it necessary that those portions of the law, which entrusted to that Court the supervision of prisons, should be repealed. The Bill was like the Bill for Bombay, which was read a second time in October last, and the Report of the Select Committee on which had been presented this day. He thought it would have been very desirable that, as there was no difference between the two Bills, except in the enumeration of the existing laws to be repealed, Madras should be included in the Bill for Bombay. But the Standing Orders were against this course; and he had therefore brought in a separate Bill, of which he now begged to move the first reading. After the second reading, a motion might perhaps be made for the suspension of the Standing Order which required a publication for three months before any further step was taken, in order to its being considered in a Committee of the whole Council at the same time with the Bombay Bill, with which it might then be amalgamated.

The Bill was read a first time.