



S U P P L E M E N T  
TO THE  
BOMBAY GOVERNMENT GAZETTE.

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**Published by Authority.**

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WEDNESDAY, 6TH AUGUST 1862.

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**PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.**

THE following Extract from the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Victoria, Chapter 67, is published for the information of all whom it may concern :—

The Council met at Poona on Wednesday the 30th July 1862.

*PRESENT:—*

His Excellency Sir H. B. E. FRERE, K.C.B., the Governor of Bombay, presiding.

His Excellency Sir W. R. MANSFIELD, K.C.B.

THE HONORABLE MR. FRERE.

THE HONORABLE MR. INVERARITY.

THE HONORABLE THE ADVOCATE GENERAL.

THE HONORABLE MR. TRISTRAM.

THE HONORABLE MR. RUSTOMJEE J. JEEJEEBHoy.

THE HONORABLE MR. MADHOWROW VITTUL VINCHOORKUR.

THE HONORABLE MR. JUGGONATH SUNKERSETT.

THE HONORABLE MR. ROBERTSON.

THE HONORABLE MR. SCOTT, and

THE DEPUTY SECRETARY.

His Excellency the PRESIDENT said the first subject for consideration was the Report of the Select Committee on a Bill to amend Section 45, Clause 1, of Regulation XIII. of 1827.

Mr. FRERE said the Report had been for some time before the Council, and he moved the Bill as amended by the Select Committee be read a second time.

Sir W. MANSFIELD, in moving the amendment of which he had given notice, said he had been led to consider the report of the Select Committee, and he thought there had been an omission in the Draft.



In this country when a British subject was guilty of an offence he could not be tried except by English Law, and should not therefore be subject to penalties by Local Legislation which may be contrary to that Law. He called attention to the reasons given by the Sudder Judges, and he thought the Act defective as being wanting in injunction or warning, and as being permissive only when it should be imperative. Whatever might be the precautions taken under the Regulations for the securing of Native Prisoners, that does not affect the immunities of the British-born Convict as by Law secured to him in his own Country.

He believed that no discretion ought to be given to executive officers. His own experience was against it. In behalf of the unfortunate class of subjects, who looked to him for protection, he moved the insertion of the Clause of which he had given notice.

- II. " Provided always that British-born Subjects sentenced to hard labour or to rigorous imprisonment or to penal servitude shall not be secured with fetters, excepting when it may be urgently necessary so to secure them for the discipline of the Jail or the prevention of violent or dangerous behaviour."

Mr. JUGGONATH SUNKERSETT said that he thought that the Bill should not be confined to British-born subjects, and he proposed by way of amendment that the word " Prisoners " should be inserted instead of " British-born subjects. "

Mr. ROBERTSON said he thought much depended on the way in which prison labour was carried on. He would rather see the amendment as it originally stood.

Mr. RUSTOMJEE J. JEEJEEBHOY said he was in favour of Mr. Juggonath Sunkersett's amendment.

Mr. FRERE remarked that he differed from His Excellency the Commander-in-Chief. It was very desirable that Englishmen should retain the liberty they possess in England, in all parts of the world in which circumstances would permit it, but we must bear in mind that the Gaols in this Country are very different from those in England where with closed doors and windows men may be left in security, but were the doors and windows so closed in this Country, the English Prisoners would be stifled. Some further security is therefore required in the open Gaols in this Country, and hence the necessity that all prisoners convicted of serious offences, European as well as Native, should be confined in fetters.

His Excellency Sir W. Mansfield's amendment would meet the case suggested by the Honorable Mr. Robertson, as it allows of Europeans being fettered when urgently necessary, and the necessity would be most urgent when prisoners were working in a dense jungle. But he (Mr. Frere) could not see that the amendment proposed gave any security against the abuse of the discretion with which the Session Judge is invested in this Country in the control and management of the Gaol. The Judge here has control of the Gaol, and acts the part of visiting Justice in England. There you have a visiting Justice within call and the Gaoler's powers are circumscribed, here you have no visiting Justice but the Judge who is further responsible for the Prisoner's safe custody, and we must trust to his discretion in the management of the Gaol as we would were he the visiting Justice in England. The Draft as drawn out by the Judges of the Sudder Foujdaree Adawlut was confined to Europeans, but the Select Committee to whom it was referred thought that all persons should be exempted from fetters at the discretion of the Session Judge, and he would not limit the exercise of that discretion in the case of Europeans any further than in the case of other Prisoners. He therefore opposed the amendment.

The ADVOCATE GENERAL was in favour of the Bill as it originally stood without the amendment. It appeared to him much better that the Judge should have general discretion. He thought it would be an invidious distinction to single out the British-born subjects as contradistinguished from the other subjects of Her Majesty.

His Excellency Sir W. MANSFIELD in reply said we were not justified in inflicting on English subjects in India punishments from which they were exempt in England.

The point which had been noticed by Mr. Juggonath Sunkersett had occurred perhaps quite as strongly to himself when considering his proposed amendment.



The PRESIDENT put the question whether Mr. Juggonath Sunkersett's amendment should stand part of the Bill:

The Amendment was negatived.

The PRESIDENT then put the question whether the Clause proposed by Sir W. Mansfield should stand part of the Bill.

The Council then divided :

*Ayes.*

The Honourable Mr. SCOTT,  
The Honourable Mr. TRISTRAM.  
The Honourable Mr. INVERARITY.  
His Excellency Sir W. R. MANSFIELD.  
The Honourable Mr. ROBERTSON.

*Noes.*

The Honourable Mr. JUGGONATH SUNKERSETT.  
The Honourable Mr. RUSTOMJEE JAMSETJEE  
JEEJEEBHOY.  
The Honourable Mr. FRERE.  
The Honourable the ADVOCATE GENERAL.

The Amendment was accordingly carried.

The ADVOCATE GENERAL moved that the following Clause be added to the Bill :—

III. "When any prisoner shall be sentenced to hard labour or rigorous imprisonment the Court shall at the time of passing such sentence declare whether such prisoner shall or shall not be secured with fetters."

Mr. SCOTT was in favour of the amendment, if it would still be competent for the Court or the Gaoler to put on fetters after sentence in case of necessity arising from violent conduct, &c.

Mr. TRISTRAM would vote for this amendment.

Mr. INVERARITY and Mr. JUGGONATH SUNKERSETT were in favour of it.

Sir W. MANSFIELD would like before he voted to have further information on the subject of the present practice with regard to fettering prisoners in Jail.

Mr. FRERE explained that as the law now stood when a Session Judge passed sentence of imprisonment with hard labour, the Convict as a matter of course had fetters put upon him when he was received into Gaol—it was a part of the sentence. Imprisonment with hard labour being imprisonment in Irons. This however did not prevent the Session Judge on the recommendation of the Civil Surgeon, or if he saw a man as he thought too heavily ironed, from ordering him lighter fetters or to be released from fetters altogether.

The Bill as proposed by the Select Committee left it discretionary with the Session Judge to place the Convict in Irons. The amendment just carried restricted the use of fetters to cases of prison discipline. The amendment now proposed would make it imperative on the Session Judge to declare when passing sentence whether the Convict should be fettered or not. That is, it would give the Judge a power of enhancing the punishment in any case he liked—the sentence would be of imprisonment with hard labour, with or without fetters, and the fetters would become an enhancement of punishment, not instruments of prison discipline, to which the amendment last carried evidently intended to restrict their use in Europeans, and he could not see why there should not be the same restriction in all cases, he would therefore oppose the amendment of the Advocate General.

Mr. VINCHOORKUR was in favour of the existing law and practice by which the Judge had a discretion.

The ADVOCATE GENERAL disclaimed any intention of neutralizing by a side-wind the amendment of the Commander-in-Chief.

Mr. SCOTT proposed that the following words be added to the Advocate General's amendment,—“Provided that it shall be lawful to put on fetters in all cases when after sentence it may be found urgently necessary so to secure prisoners for the discipline of the Jail, or the prevention of violent or dangerous behaviour.”



The ADVOCATE GENERAL said he had no objection to the addition.

The Clause as thus amended was put and carried.

Mr. FRERE moved that the Bill be recommitted to a Select Committee consisting of—

Sir WILLIAM MANSFIELD,  
The ADVOCATE GENERAL,  
Mr. SCOTT,  
Mr. JUGGONATH SUNKERSETT, and  
The MOVER,

with instructions to report at the next sitting.

*Carried.*

Mr. TRISTRAM said he had been instructed to bring forward a Bill for the levy of Port dues in the Ports of the North Canara District. He thought that one or two of the Clauses might with advantage be amended; for instance, he wished to know whether a Steamer putting in at Sadasheoghur to coal would be liable to the Port dues contemplated by the Act. He moved that the Bill be read a first time.

Mr. ROBERTSON said he believed any steamers touching at Sadasheoghur to coal would have to pay the Port dues.

The PRESIDENT put the question whether the Bill be read a first time, which was carried.

Mr. TRISTRAM moved that the Bill be referred to a Select Committee consisting of—

The Honourable Mr. ROBERTSON,  
The Honourable Mr. SCOTT,  
The Honourable Mr. RUSTOMJEE, and  
The MOVER,

with instructions to report this day fortnight.

*Carried.*

Mr. INVERARITY said the duty had been cast upon him of introducing a Bill for amending the law relating to the Small Cause Court at Kurrachee.

He described the extent of the jurisdiction of the Court, and pointed out the reasons which had led Government to bring forward the present Bill, and explained its provisions. He thought it might be worthy of consideration whether the proposed increase of Jurisdiction with reference to the Court at Kurrachee might not be extended to other Small Cause Courts. He moved the Bill be read a first time.

*Carried.*

Mr. INVERARITY then moved that the Bill be referred to a Select Committee consisting of—

The ADVOCATE GENERAL,  
Mr. ROBERTSON, and  
The MOVER,

with instructions to report at next meeting of Council.

*Carried.*

The PRESIDENT adjourned the meeting till Wednesday next the 6th August at 11 o'clock.

*By order of His Excellency the Governor in Council,*

LYTTELTON H. BAYLEY,

Deputy Secretary to Government.

*Poona, 30th July 1862.*