M.R.O. 1—20.000—16-10-20.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 311 Press
~~Mis.~~

59-61

Dated 8.3.1861 ~~19-~~

14/11

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 8th March 1861.

Read the following papers:—

No. 59. From JOHN D. MAYNE, Esq., Clerk of the Crown, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 21st February 1861.

With reference to my letter of the 18th instant, I have the honor to forward a copy (in duplicate) of the Descriptive Register of Private John Rankin of the 1st Battalion Her Majesty's 18th Royal Irish Regiment, who has been sentenced by a General Court Martial to Penal Servitude.

No. 60. From Major W. J. WILSON, Commissioner of Police, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 6th March 1861, No. 33.

1. With reference to the Orders of Government, marginally noted, I have the honor to report for the information of His Excellency the Governor in Council, the arrival of a Military Convict* from Secunderabad yesterday under sentence of Penal Servitude for 14 years.

Judicial Department, dated 15th June 1858, No. 785, and 26th February 1861, No. 261.

* *John Rankin, Her Majesty's 18th Royal Regiment.*

2. The original commitment of the prisoner is herewith forwarded.

No. 61. ORDER THEREON, 8th March 1861, No. 311.

The Superintendent of Marine will provide passage to England for the Convict John Rankin, Her Majesty's 18th Royal Irish.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

To

THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA.

The humble Petition of the Bombay Association,

SHEWETH,

That your Petitioners, who are Members of the Bombay Association, beg permission to bring to the notice of your Honorable Council the feelings of alarm and apprehension with which their countrymen contemplate the further continuance of Act III of 1858 of your Honorable Council, entitled "an Act to amend the law relating to the arrest and detention of State Prisoners," whereby, after reciting that doubts have been entertained whether State Prisoners, confined under Regulation II. 1819 of the Madras Code, or Regulation XXV. 1827 of the Bombay Code, can be lawfully detained in any fortress, jail, or other place within the local limits of the jurisdiction of the Supreme Courts of Judicature at Madras and Bombay respectively; and it is expedient that such doubts be removed, and that the powers of the said Regulations and of Regulation III. 1818 of the Bengal Code be extended, it is amongst other things enacted that,

SECTION I. So much of Section I Clause 1 of Regulation XXV. 1827 of the Bombay Code as provides that, with reference to the individual, the apprehension and confinement therein referred to, shall not be in breach of British law, is repealed, except so far as the said provision applies to European British subjects.

SECTION II. The provisions of Regulation III. 1818, of the Bengal Code, Regulation II. 1819, of the Madras Code, and Regulation XXV. 1827 of the Bombay Code as altered by Section I of this Act, relating to the arrest and confinement of persons as State Prisoners, shall be in force within the local limits of the jurisdiction of the Supreme Courts of Judicature at Calcutta, Madras, and Bombay respectively :—

SECTION III. All powers for the better custody of State Prisoners, which, by virtue of Act XXXIV of 1850, are vested in the Governor General in Council, shall be possessed and may be exercised by the Governor in Council of Fort Saint George and the Governor in Council of Bombay, respectively, for the better custody of State Prisoners arrested within their respective Presidencies.

SECTION IV. Any person arrested as a State Prisoner before the passing of this Act, or now confined as a State Prisoner by the order or under the warrant of the Governor General in Council, or of the Governor in Council of Fort Saint George, or of the Governor in Council of Bombay, respectively, shall be deemed to have been lawfully arrested and to be lawfully confined.

2. That, as it thus appears, the effect of this Act is to give the Governor in Council (and by delegation, any subordinate Officer) the power of arresting, at his will and pleasure and without cause shewn, any of the native inhabitants of the Presidency, under the allegation that they are State Prisoners, and imprisoning them for any length of time in any of the jails or fortresses thereof, and to make such arrest and detention legal, however arbitrary and unjust it may in fact have been.

3. Your Petitioners would respectfully submit that it is against the most fundamental provisions of British Law to imprison a man save on specific grounds constituting some offence recognized by law and set forth clearly in the warrant of commitment, the sufficiency of these grounds always being open to question before the Supreme Court on a proceeding of Habeas Corpus, which Court, should it find them inadequate, has no option but must at once discharge the prisoner.—That one of the chief objects of the creation of the Supreme Court was the protection of persons within its jurisdiction from any acts of oppression or illegality on the part of the local Government or its servants, which generous object is entirely frustrated by the act complained of.

4. Your Petitioners will not, before your Honorable Council, presume to argue in defence of the dearest rights and liberties belonging to British subjects; they will content themselves with respectfully claiming for themselves and their countrymen to enjoy those rights and liberties in as full and perfect a manner as any other classes of Her Majesty's subjects.

5. They beg respectfully to remind your Honorable Council that Her Majesty's most Gracious Proclamation to the Princes and People of India, distinctly recognizes and emphatically pronounces that henceforth the Queen's Native Indian subjects are to be on an equality as regards rights with Her European British subjects—a charter which has been understood and prized by the teeming millions of this Country, and cannot be infringed without universal alarm and discontent.

6. They therefore submit that the Act in question is unconstitutional and violates Her Majesty's Prerogative, and they particularly complain of the distinction which is drawn in it between Natives of India and Europeans as contrary to the spirit of the Proclamation as well as in itself unjust, invidious, and, if continued, as sure to create a deplorable animosity of races.

7. Your Petitioners will not deny that at the time when the act became law, there may have been some justification, in the critical circumstances of the Empire, for clothing the local Governments of the disturbed districts with the power of suspending, temporarily, those guarantees for liberty which are provided by the law. They venture, however, to doubt whether there was ever any necessity for extending such exceptional powers to the Government of Bombay and particularly within the local jurisdiction of the Supreme Court; but they maintain, with all humility, that those powers ought on principle to have been with drawn when the occasion which required them passed away, and they humbly represent to your Honorable Council that in the present peaceful state of the Bombay Presidency

the continuance, nevertheless, of the Act in question and its enrolment in the Statute Books, as if it were designed to be permanent, is looked upon by your Petitioners and their Countrymen as an arbitrary and galling encroachment on their liberties as British subjects.

8. Your Petitioners would submit that the ordinary Courts of Law in this Island, with their ordinary procedure, are sufficient to protect the Government and the Public in quiet times such as the present, and that to continue despotic institutions (introduced for a temporary purpose) long after the occasion which required them has passed away, is objectionable in principle and a bad precedent, and, in a country politically situated as India, peculiarly liable to abuse.

9. Your Petitioners deem it right to transcribe, for the information of your Honorable Council, the unimpeachable testimony publicly borne by Lord Elphinstone, the late noble Governor of Bombay to the loyalty of the native inhabitants of this city during the mutiny, as expressed on the three following occasions.

1*st.* In his replies to the addresses of loyalty presented by the Bombay Association and other Native inhabitants, dated 25th June 1857 and 26th Idem (vide appendix A.)

2*nd.* In his speech at a dinner given to the European Soldiers by the Native inhabitants of Bombay on the 6th January 1858 (vide Appendix B.)

3*rd.* In his reply, dated 11th May 1860, to the address of the European and Native inhabitants of Bombay, voted on the occasion of his departure from Bombay (vide appendix C.)

10. Your Petitioners would therefore, upon the grounds and under the circumstances hereinbefore represented, humbly but firmly protest against the continuance of Act III of 1858, and pray for its rescission at least as regards the Presidency of Bombay.

And Your Petitioners as in duty bound shall ever pray.

BOMBAY.
5*th August* 1860.

(Signed) JUGONNATH SUNKERSETT.
and 27 other Signature.

APPENDIX A.

Lord Elphinstone's reply to the address of loyalty from the Bombay Association.

GENTLEMEN,

THE expressions of loyalty and attachment to the British Crown, conveyed in your address, are most gratifying, but they were not needed to convince me that these were the genuine sentiments of your Association.

In common with all those who have the true interests of the country and the improvement of its people at heart, you deplore the sad events which have taken place in Upper India. The patriotic objects of your Society are furthered by internal peace and tranquillity and hindered by disturbance and insurrection. Independent of the moral evil of the acts of violence and rapine which have been perpetrated by the mutineers, and by those who have availed themselves of the opportunity for licence which their faithlessness has afforded, the amount of internal injury which has been inflicted upon the country is very great. Every treasury which has been pillaged may be set down as so much lost to the cause of peaceful improvement. Every additional Regiment which is raised in this country or imported from England is a charge against the Fund which Government was able to devote to Public Works.

I trust that by the mercy of Providence this Presidency will be continued to be spared the calamities to which so many places in the North of India have been exposed. Should it become necessary for the sake of affording assistance to our neighbours, or for any other cause, to weaken our Garrison, I should gladly avail myself of your spontaneous offer of assistance. In the meantime I beg you to accept my best thanks for it, as well as for the loyal spirit and language of your address.

I am,

GENTLEMEN,

Your faithful Servant

(Signed,) ELPHINSTONE.

BOMBAY,
25*th June* 1857.

Lord Elphinstone's reply to the address of loyalty of the Native Community of Bombay.

GENTLEMEN,

I THANK you cordially for your excellent address.

I have not forgotten, and can never forget, the loyalty and attachment to the British Government evinced by the inhabitants of Bombay at the commencement of the late war with Russia, and from the first I relied with perfect confidence upon the continuance of those sentiments during the present crisis. The connexion between this Island and the Crown of England has now subsisted for nearly two centuries, and during this long period the growth of your prosperity and wealth and enlightenment has been coincident with the growth of the power and the greatness and dominion of England. You justly feel that any attack upon the power and dominion of England is a blow aimed at your prosperity, at the development of your trade, at the true interests of your country. If proof were needed that you appreciate this fact, your present address affords convincing evidence of it.

It is gratifying to all real friends of this country to observe that the Princes of Upper India, far from sympathizing with the revolted Troops, have done their utmost to prove their attachment to our Government.

It is satisfactory also to reflect that the delusion which has led to these deplorable events is confined to a portion of the Native Army, an important portion it is true, but still only a portion. The Armies of Bombay, Madras, and the Punjab have not allowed themselves to be seduced from their duty. Even in the Bengal Army, we hear of Regiments asking to be led against their rebellious comrades. Let us hope that this proof of their devotion will not be necessary. Already we have received Official accounts which leave no doubt that the mutineers of Meerut and Delhi, who originated this sad contest, have met with their doom. The head of the serpent has been crushed, for a time some spasmodic motion may be observable in the body, but this is no sign of prolonged vitality but rather of approaching death.

Like you, gentlemen, I have no fears for Bombay. With a humble trust in the protection of the Almighty, I rely under Providence upon the hitherto unshaken fidelity of the Bombay Army, and upon the loyalty and enlightenment of the Citizens of Bombay.

I am,

GENTLEMEN,

Your faithful Servant,

(Signed) ELPHINSTONE.

BOMBAY,
26*th June* 1857.

APPENDIX B.

Lord Elphinstone's Speech delivered at the dinner given by the Native Community to the European Soldiers. (1858).

Lord Elphinstone, after thanking the company for the kind manner in which his health had been received, spoke as follows:—

Under ordinary circumstances and in ordinary times, I should have contented myself with saying thus much, and cordially thanking you for the great honor you have done me, but the circumstances under which we have met tonight are not ordinary circumstances, nor are these ordinary times. I therefore feel myself called upon to make a few observations on the cause of our meeting here, and to enter more at length into the effects of feelings which our meeting is calculated to produce. Many of those present here tonight have only just arrived in this country, and have come to enter at once into a fierce contest; all have been filled with horror and disgust at the atrocities which have been committed against our defenceless countrymen and countrywomen, and these have excited throughout the civilised world the deepest execration, and feelings of bitterness and aversion have arisen in our minds which are not to be winked at, but which are unfortunately not always confined to the guilty, but are extended to the whole people of India. I venture to think that this is undeserved, and not only undeserved, but I think it is most unfair to a large class of people who are as anxious for our success as we can be ourselves, whose interests are as much bound up with ours as if they were of the same creed and the same nation, and whose lives and fortune would not be worth an hour's purchase were our enemies to triumph over us. I will not detain you by reviewing the terrible events of the last eight months: amid much that is dark, much that is inexplicable, are things which are quite clear, that with very few exceptions, the revolt has been purely military; the great body of the people has had nothing to do with it. In Oude only, the country of the mutinous Sepoys, has there been anything like a popular adhesion to their cause. In Rohilcund, close by Oude, the feeling was decidedly in our favor. In many parts of the country, even close to Delhi, many of our Officers and their families were sheltered and helped to escape by the village people. Even those who owe us no good will, whose greatness has been extinguished by us, and whose power has been reduced or nullified by our successes, view with indignation and disgust the conduct of the mutineers and their associates. You all know or have heard of and respect my friend, Mr. Frere, the Commissioner in Sind, and on his authority I have it that Shere Mahomed, one of the ex-Ameers, talking of the mutiny, said "that this was not like meeting the English in the field, and that the fiends who murdered women and children deserve the punishment of Sodom and Gomorrah." This is the feeling of a high spirited and chivalrous enemy, and it is more pleasing to dwell on these parts than on the other side of the picture, and I will add, and I do so most emphatically, that it is neither just nor Christian to look only upon one side, and that the unfavorable one, and that it is most unfair to condemn a whole

nation because some of its people have acted like fiends. Now I have made these remarks because I know it has been said that, as the gallant men who are assembled here to-night are part of the Army which has been sent to re-establish our dominion, and to avenge the wrongs done to our countrymen, it was not fitting that they should accept an entertainment given by the countrymen of the miscreants whom they are come out to punish. It has been said that the welcome given is insincere and hollow, and that, had the natives wished to show their good will to us, they should have come forward in the time of our distress and difficulty, and not have waited until they saw that our empire was re-established and our success certain. I cannot assent to this view, nay I protest against it most decidedly and emphatically. If I could for a moment believe that our entertainers had any sympathy for those miscreants, I should be unworthy of the position I hold, and of the country to which I belong, if I consented, I will not say to accept their hospitality, but to meet them with the ordinary courtesies of life. But how stand the facts? Let us look to the position in which we stand in this great city, and to the conduct of our hosts of this evening. I would remind those who have just arrived, that this is one of the oldest British possessions in the East; for 200 years this Island has been under the sway of Great Britain, and during that long period no attempt has ever been made by the inhabitants against their English rulers. It cannot be said that we have governed them by physical force. I do not allude merely to the infancy of our rule; but for many years past the ordinary European Garrison of this town, which contains a population considerably over half a million, has not exceeded 500 men, and during the late crisis it was reduced to 200, and I hesitate not to say that if the only elements of danger here had been those which were native to the place, this small Garrison would have been ample. But to come to those who are our hosts to-night. The first intimation I had of their intention was from my friend, Mr. Cursetjee Jamsetjee, the eldest son of that venerable and excellent man, whom our Sovereign has on more than one occasion delighted to honor. When he informed me of the anxiety which he and his friends and fellow citizens felt to do honor to our brave Soldiers, was I to reject this testimony of loyalty and good will? Was I to cast a doubt on the sincerity with which it was offered? In the course of the dreary months which have just passed over us, this is not the first cheering evidence that I have had, that those of the natives of this country with whom we have had the longest acquaintance are not the least favorably disposed towards us. I believe that at the darkest time of those dreary months every one of those whose guests we are, has signed loyal addresses to me protesting devotion to the Government, and detestation of the base and cowardly conduct of the Bengal Sepoys. Long before the fall of Delhi, there was a great meeting in the Town Hall to form a Fund for the sufferers. With whom did the idea originate? It is true that it was first suggested to me by my Right Reverend friend, the Lord Bishop, but at that time I did not think it would be advisable to accede to the proposal, and it was only when I found that many of the Native Gentlemen of this place were not only most anxious to see such a scheme set on foot, but had actually formed themselves into a Committee to collect subscriptions, that I felt myself called upon to give it such assistance and support as I could. I do not wish to carry you very far back, but the Russian War is not very distant, and in the presence of so many Officers who wear the Crimean medal on their breasts, I may be allowed to allude to the conduct of the

Natives of this place during that struggle. It ought certainly not to be soon forgotten that the day which was set apart by our Church to implore the blessing of heaven upon our arms, was observed also by natives of every creed, and prayers were offered for our success by Hindoos, Jains, Parsees, and Mussulmans. The liberal subscriptions of the wealthy natives of this place to the Patriotic Fund were probably not exceeded by those of any other Town in the British Empire. I hope that I have said enough to show that I was not guilty of truckling to any notion of expediency when I accepted on behalf of the gallant Soldiers the invitation which was given to them, and they will accept it in the same spirit in which I am assured it has been offered. If any thing that I have said has removed from the mind of any one of my hearers a false impression or an unjust prejudice, I shall not regret having detained you so long. Before I set down, however, I will ask you to fill your glasses, and if you agree with me in what I have said, you will cordially join with me in drinking the toast which I have to propose "Our hosts". The Band played, "Money in both Pockets."

APPENDIX C.

Lord Elphinstone's reply to the address voted by the European and Native inhabitants of Bombay on the eve of his departure to England.

I receive with deep gratitude this farewell expression of your regard for me, and your approbation of my conduct during the six years and a half that I have been among you.

In closing an important chapter in my life, nothing could be more gratifying to me than to receive this assurance that I possess and carry away with me the esteem and good wishes of so many of the most respected and influential members of this great and flourishing community.

Looking back, as every one at such a period, I cannot but be painfully conscious that much I had hoped to have done is still unaccomplished, and that of those works which have been undertaken, some have not been completed in the manner which both the public and the Government had a right to expect. While I admit the facts, I cannot take the blame to myself of all that has been left undone, or that has been badly done, since I came to this Presidency. Thus it will be found that this Government has advocated many important reforms, amongst which I may mention the appointment of a public prosecutor, a final and summary settlement on the basis of a compromise with the holders and claimants of alienated revenue, and, to come to more immediately local topics, that we have devoted much time and attention to municipal matters, to the thorough drainage and sewerage of this city, to the formation of docks and wharfs, to the reclamation of land for building purposes, &c., and to the embankment and drainage of the extensive mangrove swamps permeated by the slimy creeks which divide this island and Salsette from Trombay and the main land.

Circumstances over which we have had no control have impeded the progress of these and other useful measures, but the generous manner in which you have given me credit for the little that has been done, assures me that you will be equally generous in making allowances for the many things which have been left undone.

It is gratifying to turn to the exertions which have been made, and are still being made, by the community, and more especially by the native portion of it, to establish an Economical Museum, to be named after our Gracious Queen. I could not but take a warm interest in an undertaking which, originating in a feeling of loyalty to the Queen, and of attachment to the British Government, was calculated to promote the ends of science, and to subserve the material interests of India, and, perhaps, of England.

You are pleased to allude to the interest which I have taken in the cause of education, and to the circumstance that it was first taken up in this

Presidency by my late revered relative, Mr. Mountstuart Elphinstone. I may here mention that to the very end of his life he continued to take the same lively interest in this cause, and that this alone would have sufficed to inspire me with a similar feeling.

I regret that here also the restrictions upon expenditure, necessitated by the mutinies, have cramped and impeded our endeavours, but in some important particulars I venture to hope that considerable improvement has taken place within the last few years.

You have been pleased to allude in far too flattering terms to the part taken by this Government during the crisis of 1857-58.

The other Members of Government and myself only did our duty to the best of our ability, and we feel that, humanly speaking, we owe our exemption from disturbance far more to those who had to confront and put down actual mutiny where it showed itself, or to watch an excited and misguided population, than to any measures we may have adopted.

I should be ungrateful if I did not allude to the behaviour of the native inhabitants of this island, not one of whom, I believe, was implicated in treasonable designs, though doubtless many were beset by those emissaries of Delhi and Cawnpore, who unfortunately succeeded in gaining over a few sepoys of the garrison. But now, and at all times, I would express my grateful conviction that in this Presidency we owe our deliverance solely to the interposition of a gracious Providence. If in 1857, the tide of rebellion had been permitted to cross the Nurbudda, there is no saying where it might have stopped.

It is in the highest degree gratifying to my feelings that you should intend to perpetuate the remembrance of my administration by some work of public utility or ornament. I have no words to express the sense which I shall ever entertain of this proof of your regard, or of the honor you have done me in presenting me with this most gratifying and flattering address.

It only remains for me to pronounce a word, which your kindness has perhaps rendered more difficult to utter—"Farewell".

11*th May*, 1860.

Legislative Council of India.

State Prisoners.

PETITION

OF

The Bombay Association, dated 5th August 1860, against the continuance of Act III of 1858 (to amend the law relating to the arrest and detention of State Prisoners).

Ordered by the Legislative Council, on the motion of Mr. Erskine (2nd February 1861) to be printed.

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Proceedings of the Madras Govt.

Read the following letters—

From the Clerk of the
Crown ——— Inter 21st Feb. '61.
" the Commrs of
Police ——— 6th Mar. '61.
No. 33.

Order— 8 March 1861 No 311

dist

The Superintendent of
Marine will provide
passage to England
for the Convict John
Rankin, H.M. 18th Royal
Irish.

The Captain of Marine
" Commr. of Police.— 8-3-61.

Prov. Secretariat
Judicial 1861 Dispatch 10

From
Major W. F. Wilson
Commissioner of Police
To J. Pyper Esqre
Chief Secretary to Government
Fort St. George

Dated 6th
Rec'd 6th March 1861.

No. 33.
Encls: One

No. 379.

Reports the arrival of a Military Convict from Secunderabad & forwards the original Commitment of the Prisoner.

Prisoner Sept 1861 Act 26.
Sch. 305

Dist of Madras

Judicial Letter to Cuddalore 27th May
No. 11 of 1861 with One Original
Enclosure.

590 61

Witness an Order.