

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1916	Press
		Mis.
176-177		
Dated	25-11-1918	

9/9

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
25th November 1862.*

No. 176. Read the following letter from E. C. BAYLEY, Esq., Secretary to the Government of India; to A. J. ARBUTHNOT, Esq., Acting Chief Secretary to the Government of Fort Saint George, dated Fort William, the 13th August 1862, No. 4,187.

Home Department.
Legislative.

With reference to the 2nd paragraph of my letter No. 3,192, dated 14th June last, I have the honor to forward, for communication to His Excellency the Governor of Madras, a Minute recorded by His Excellency the Viceroy and Governor General, under the provisions of the 24 and 25 Vic., C. 67, Section 40, signifying his reasons for withholding his assent from the Bill "to prevent damage to the Pier, to regulate the Traffic, and to provide for the levying of Tolls upon the same," passed by the Madras Council for making Laws and Regulations, and assented to by His Excellency the Governor on the 8th May last.

2. I am desired also to point out that some of the details of the Bill require fuller explanation. For example, the latter part of Section VII, which gives power to a *Magistrate* to levy the amount of damage done to the Pier *accidentally*, and to award a month's imprisonment in default of payment, seems at first sight harsh, and no explanation of it is given in the Statement of Objects and Reasons.

3. It is not impossible that good reasons exist for this provision; but some statement of them should have accompanied the Bill when sent up for the assent of the Governor General, who is, of course, not aware of the local circumstances which may render the provision necessary.

MINUTE BY HIS EXCELLENCY THE GOVERNOR GENERAL, dated the 13th August 1862.

I am unable to give my assent to this Bill to prevent damage to the Pier, to regulate the Traffic, and to provide for the levying of Tolls upon the same. Bill in its present form, for the following reasons:—

1stly. Because it makes certain acts offences which are already punishable under the Indian Penal Code, and provides punishments for the offences so created different from the punishments provided for the same offences by the said Code.

2ndly. Because the previous sanction of the Governor General to these alterations of the Penal Code was not sought or obtained as required by the Act of the Imperial Parliament 24 and 25 Vic., Cap. 67, Section 43.

3rdly. Because no subsequent explanation has been furnished to show that these deviations from the Penal Code are necessary, or that the importance of adhering to its provisions received from the Government of Madras, when this Bill was under discussion, the consideration which it deserves.

(Signed) ELGIN AND KINCARDINE,
Viceroy and Governor General.

No. 177. To the Secretary to the Government of India, Home Department, dated Fort, Saint George, 25th November 1862, No. 1,916.

I am directed to acknowledge the receipt of your letter, under date the 13th August last, No. 4,187, forwarding a Minute recorded by His Excellency the Viceroy and Governor General signifying his reasons for withholding his assent to the Bill, "to prevent damage to the Pier, to regulate the Traffic, and to provide for the levying of Tolls upon the same," passed by the Madras Council for making Laws and Regulations.

2. The grounds upon which the Bill has been disallowed by His Excellency the Viceroy and Governor General are—

1st. That it makes certain acts offences which are already punishable under the Indian Penal Code, and provides punishments for such offences different from those provided for the same offences by the Penal Code.

2nd. That the previous sanction of the Governor General to these alterations of the Penal Code should have been obtained.

*Proceedings of the Madras Government, Judicial Department,
25th November 1862.*

3rd. That the reasons which are considered to have rendered the alterations in question necessary are not stated.

3. It is also observed in your letter that the provisions in Section VII which gives power to a Magistrate to levy the amount of damage done to the Pier accidentally, and to award a month's imprisonment in default of payment, require explanation.

4. With reference to the first and second of the objections raised in the Governor General's Minute, I am directed to observe that in the opinion of the Madras Government the Bill in question is such a "Special and Local Law" as is excluded from the operations of the Indian Penal Code by Section V of that enactment. It cannot, the Governor in Council apprehends, have been the intention of the Legislature that the Section in question should have reference only to existing special and local laws, and that it should afford no sanction for the introduction of new laws of a similar character, which, as in the case of the Bill under notice may be rendered necessary by local circumstances arising subsequently to the passing of the Penal Code. Entertaining this view as to the intent and meaning of Section V of the Penal Code, the Governor in Council did not deem it necessary to apply for the previous sanction of His Excellency the Viceroy and Governor General, to the introduction of the Bill in question.

5. As to the reasons which were considered to render it necessary that penalties differing from those prescribed in the Penal Code for the same offences should be provided for in the Bill, I am directed to remark that in every case in which the penalty provided in the Bill differs from that provided for the same offence in the Penal Code, the penalty allowed by the former is less than that sanctioned by the latter. In all these cases it was considered by the Madras Council that summary powers of punishment should be vested in the Town Magistrates, to whom however it would be competent in any case in which they might consider a more severe punishment requisite, to commit the accused for trial under the provisions of the Penal Code. As has been pointed out in my letter of this date No. 1915 the Code of Criminal Procedure not having been declared applicable to the Town of Madras, the powers of the Town Police Magistrates are limited to those conferred on them by the Madras Police Acts No. XIII of 1856, and XLVIII of 1860.

6. With reference to that part of Section VII which gives power to a Magistrate to levy the amount of damage done to the Pier accidentally and to award a month's imprisonment in default of payment, I am directed to say that this provision was introduced into the Bill as the most simple and effectual manner of recovering prompt payment for damage done to an important public work and of preventing carelessness on the part of Boat owners and their crews.

7. Under this explanation the Governor in Council trusts that His Excellency the Viceroy and Governor General will give his assent to the Bill in question.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMeotry.

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Minute by His Excellency the Governor General
dated the 13th August 1862 -

Bill to prevent damages to
the Pier, to regulate the traffic
and to provide for the levying
of Tolls upon the same. I am unable to
give my assent to this

Bill in its present form for the
following reasons:

1st Because it makes certain acts
offences which are already punishable
under the Indian Penal Code, and
provides punishments for the offences
so created different from the punishments
provided for the same offences by the
said Code.

2nd Because the previous sanction
of the Governor General to these alterations
of the Penal Code was not sought
or obtained as required by the Act of the
Imperial Parliament 24 & 25. Vic. Cap. 67 Sec. 4

1862/10/23/25

Small

On 23/10/1862. Memo in 14 Oct 1862
in reference to the Privileges of the
Government of India upon the
Pir Bill.

The general observations made
upon the Boat Bill apply equally to
the present act.

The provisions of this act which ^{impose} ~~constitute~~
^{penalties} ~~offences~~ unknown to the Penal Code are
contained in sections 4. The first and
last clauses of s. 6, the last clause of
s. 7, ss. 10, 14, and the matters in respect
of which by laws made under
s. 16.

In cases already provided for, the
following table will show the differences
between the two acts.

Offence	Pir Act	Penal Code
Obstruction of the by unauthorised persons, or excessive demand by authorised person, or cultivation under act 18	Six months imprisonment or fine up to Rs 200 S. 5	These offences would generally, but not always, be cheating, imprisonment for one year and fine S. 417 or acceptance of illegal gratification, three years imprisonment, or fine. S. 161 or extortion. Else punishment S. 384. But in many cases punishment under S. 5 of Pir Act would not be the offence of all under the Penal Code.
Assaulting or obscuring the Ruler.	R 50 or fine & imprisonment not exceeding two months in default of payment. S. 6	imprisonment of either description up to 3 months, fine up to Rs 500, or both. ss. 186. 352
Inducing damage to pier or its appurtenances	Imprisonment up to 6 mths with or without fine up to Rs 300 also damage done S. 7	imprisonment up to two years or fine ss. 427

acts

Offence Pier Act Penal Code
 Cutting boats Sum penalties Sum penalties
 adrift from S. 8 S. 426-427
 pier de

17th October 1862.

Received of the
 Vice-Chief of the
 30th April
 9th May

[Faint handwritten notes and signatures, including "R. H. C." and "J. H. C."]
 [Faint printed text, possibly a receipt or acknowledgment]

dec'd 25th per steamer "Nubia"

Judicial Department
 No. 1916

To

The Secretary to the Government
 of India.

His majesty's Department

Sir,

I am directed to acknowledge
 the receipt of your letter under
 date the 13th August last No. 4187
 forwarding a Minute recorded
 by His Excellency the Viceroy
 and Governor General signifying
 his reasons for withholding his
 assent to the Bill "to prevent
 damage to the Pier, to regulate
 the Traffic and to provide for
 the levying of Tolls upon the same"
 passed by the Madras Council
 for making Laws and Regula-
 tions.

2 The grounds upon which
 the Act has been disallowed
 by His Excellency the Viceroy
 and Governor General are
 1st that it makes certain

[Signature]

[Signature]

[Signature]

acts offences which are already punishable under the Indian Penal Code, and provides punishments for such offences different from those provided for the same offences by the Penal Code.

2nd that the previous sanction of the Governor General to these alterations of the Penal Code should have been obtained.

3rd that the reasons which are considered to have rendered the alterations in question necessary are not stated.

3 It is also observed in your letter that the provisions in Section VII which gives power to a Magistrate to levy the amount of damage done to the Pies accidentally, and to award a month's imprisonment in default of payment, requires explanation.

4 With reference to the first ^{and summary} of the objections raised in the Governor

Governor General's Minute, I am directed to observe that in the opinion of the Madras Government the Act in question is such a "Special and Local Law" as is excluded from the operations of the Indian Penal Code by Sec. V of that enactment. It cannot, the Governor in Council apprehends, have been the intention of the Legislature that the Section in question should have reference only to existing Special and Local Laws, and that it should afford no sanction for the introduction of new laws of a similar character, which, as in the case of the Act under notice may be rendered necessary by local circumstances arising subsequently to the passing of the Penal Code. Entertaining this view as to the intent and meaning of Section V of the Penal Code the Governor in Council

did

24 Nov

did not deem it necessary to apply for the ^{previous} sanction of His Excellency the Viceroy and Governor General, to the introduction of the Act in question.

5 As to the reasons which were considered to render it necessary that penalties differing from those prescribed in the Penal Code for the same Offences should be provided for in the Act, I am directed to remark that in every case in which the penalty provided in the Act differs from that provided for the same Offence in the Penal Code, the penalty allowed by the former is less than that sanctioned by the latter enactment. In all these cases it was considered by the Madras Council that summary powers of punishment should be vested in the Town Magistrates, to whom however it would be competent in any case

Bill

Fort St George
25th November
1862

P. H. G.

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in which they might consider a more severe punishment requisite, to commit the accused for trial under the provisions of the Penal Code. As has been pointed out in my letter of this date No. the Code of Criminal Procedure not having been declared applicable to the Town of Madras, the powers of the Town Police Magistrates are limited to those conferred on them by the Madras Police Act No. XIII of 1856. & XLVIII of 1860.

6. With reference to that part of Section VII which gives power to a Magistrate to levy the amount of damage done to the Person accidentally and to award a month's imprisonment in ^{default} of payment, I am directed to say that this provision was introduced into the Bill as the most simple and effectual means of recovering prompt payment for damage done to an important public work of preventing carelessness on the part of Boat Owners and their crews.

7. Under this explanation the Governor in Council trusts that His Excellency the Viceroy and Governor General will give his assent to the Bill in question —

W. H.

Proof Read

Received 1012 & Grant

W. J. P. B.

To the Secretary of the
Board of Directors

Stone Island

Dec 20 1863

of 25 Nov 2/62

Submitting an explanation
touching the Bill to prevent
damage to the Stone Island
the traffic and to provide
for the laying of tolls upon
the same and hoping that
it will elicit the consent
of the Board to the
Governor's proposal to the
Bill.

50 4/10

176 4/10