

MINUTES

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649490431

Minutes by Sir Barnes Peacock

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

SIR BARNES PEACOCK

MINUTES

THESE Minutes of the late Sir Barnes Peacock have been collected from the records of the different Departments of the Government of India and are reproduced in the same form as the Collection of Sir James FitzJames Stephen's Minutes.

H. W. C. C.

LEGISLATIVE DEPARTMENT; }
The 21st January, 1901. }

IN
403
PEA

CONTENTS.

Number of Minute.	Subject,	Page.
1	Confiscation of property of Maharanee Junda Kour in connection with Sikh War	1
2	Proposal to legislate to enable the Sudder Court to frame rules of practice	3
3	Construction of 3 & 4 Will. 4, c. 85, ss. 1, 43. etc.	4
4	Public duties incident to landholding	12
5	Alienation of Inams without consent of Government	13
6	Jurisdiction in resumption cases	15
7	Limitation in resumption cases	20
8	Small-pox and Inoculation	22
9	Usury Laws	24
10	Legislation to meet erroneous judicial decisions	25
11	Marriage and Divorce in India	26
12	Admission to practise of attorneys of Supreme Courts	29
13	Place of sitting of Political Courts	30
14	Appellate Procedure	34
15	Special Appeals	36
16	Law of Evidence	40
17	Naval Courts-martial	43
18	Fees claimed by Persian Consul at Bombay	43
19	Volunteer Corps	45
20	Appointment of Mr. Reilly to officiate as Sessions Judge of Dinagepore	46
21	Proposed rules for grants-in-aid of education	47
22	Claims of Mysore Family	47
23	Transit duties in Serf-i-Khas Talooks, Hyderabad	54
24	Government of Oude	55

Number of Minute.	Subject.	Page.
25	Punishment of murderers of alien friends in tribal territory	63
26	Information to Newspapers	65
27	Burial of Roman Catholic Soldiers	66
28	Martial Law	67
29	Ditto	69
30	Appointments to be filled by Covenanted Civil Servants	72
31	Warrant of Precedence	77
32	Mohatarfa taxes	79
33	Trial of offenders belonging to Hyderabad Contingent .	79
34	Government of Oude	80
35	Irrigation Projects	81
36	Union of functions of Collectors and Magistrates . .	82
37	Enactment empowering Legislative Council to disallow bye-laws	84
38	Arrangements during leave of Administrator-General .	85
39	Confiscation of property of Maharanee Junda Kour in connection with Sikh War	87
40	Exclusion of religious subjects from University Examinations	88
41	Government of Tanjore	88
42	Ditto	90
43	Censure of Judicial Decisions	92
44	Limitation of number of officers absent from Regiments	95
45	Emigration to British Guiana under private contracts .	96
46	Appointments to Brigade Staff	97
47	Ditto	99
48	Guarantees for railway construction	100
49	Police and Criminal jurisdiction	101
50	Proclamation of Pardon after Mutiny	106

Number of Muzre.	Subject.	Page.
51	Appointment of day for public prayer, etc.	107
52	Removal of Mr. Tayler from Commissionership of Patna	108
53	Treatment of Regiments disarmed during Mutiny	112
54	Organization of Army	114
55	Appointment of Military Officers to civil posts	115
56	Departmental recommendations for appointments	115
57	Treatment of Regiments disarmed during Mutiny	116
58	Proclamation of Pardon after Mutiny	118
59	Ditto	122
60	Revenues of Hyderabad Assigned Districts	124
61	Punishment of Nawab of Furrukhabad for rebellion	124
62	Ditto	130
63	Obligation on the Government to settle claims against King of Oude	132
64	Proposal to fine the Maharao of Kotah	146
65	Systems of legislation under the Acts of 1833 and 1853	147

12/18/47
Muzre

100

101

102

103

104

105

106

107

108

109

110

111

112

113

114

115

116

117

118

119

120

121

122

123

124

125

126

127

128

129

130

131

132

133

134

135

MINUTES BY SIR BARNES PEACOCK.

No. I.

CONFISCATION OF PROPERTY OF MAHARANEE JUNDA KOUR IN CONNECTION WITH SIKH WAR.*

(22nd April, 1852.)

HAVING given the fullest consideration in my power to the facts relative to this property, it appears to me that it is neither necessary nor expedient to legislate upon the subject.

2. I have read with great care the opinions of the Advocate General of Bengal, and of Mr. Loftus Wigram, and entertaining, as I do, the highest respect for the great learning and abilities of those gentlemen, I cannot but feel distrust in my own opinion when I find it at variance with theirs. I should have been glad, if circumstances would have allowed of my conferring with the Advocate General upon the subject.

3. In my opinion the Government have the right not merely to detain, but to confiscate the property.

4. It seems to be admitted that the property was that of the Maharanee at the time when it first came into the possession of the Government.

5. If the Maharanee assisted the Sikh people in their hostilities against the British, she subjected herself to be dealt with as an enemy, and her property to be seized and confiscated.

6. It seems doubtful, however, whether legal proof to that effect can be adduced, although there is no moral doubt of the fact.

7. But even if such proof be wanting, I think the Proclamation of the 29th March, 1849, is conclusive that a war existed between the Sikh nation and the British.

I find it there stated, "Finally, the Army of the State and the whole of the Sikh people, joined by many of the Sirdars in the Punjab, who signed the treaties, and led by a Member of the Regency itself, have risen in arms against us, and have waged a fierce and bloody war, for the proclaimed purpose of destroying the British and their power."

* See, too, Minute No. 39 post p. 87.

8. The Government of India were, in my opinion, the sole judges whether the *whole* of the Sikh nation were or were not responsible for the hostilities which had been carried on, and by the Proclamation above referred to, it was decided that the war had been waged by the Sikh nation, and that they must abide the consequences.

9. It appears to me that the effect of that Proclamation was conclusively to determine that every subject of that nation was an enemy, for whenever two nations are at war, all the subjects of the one are enemies of the other. *Vattel*, 321.

10. When hostilities have commenced, a State has a right to treat as enemies the subjects of the nation with which it is at war, and, subject to certain exceptions, to detain their persons as prisoners of war, and to seize and confiscate their property, *Grotius B. 3, c. 9, s 4(i)*, and the Municipal Courts have no jurisdiction on the subject. *Elphinstone v Bedree Chand*, 1 *Knapp, Pr. C. Cases* 316.

11. In my opinion, it was not necessary actually to confiscate the property, pending the war, it was sufficient that the property was during the war in the possession and under the control of the Government.

12. It is laid down by Kent "that in a land war moveable property, after it has been in complete possession of the enemy for 24 hours, becomes absolutely his, without any right of postliminy in favour of the original owner," *es. 1, Kent's Commentaries*, 109.

13. This, I think, shows that no actual condemnation or confiscation is necessary in the case of such moveable property.

14. But even if confiscation were necessary, I find it stated in the Proclamation before adverted to—"The few chiefs who have not engaged in hostilities against the British shall retain their property and their rank," and again "The jagheers and all the property of Sardars and others, who have, been in arms against the British, shall be confiscated to the State."

15. If, therefore, the Government of India think proper to confiscate the property, I am of opinion that they have the right to do so, and that no Municipal Court will have any jurisdiction in the matter.

16. It is not necessary to consider whether the Government of India could now seize and confiscate property of the Maharane acquired since the Proclamation of 1849, for the property is actually in the possession of the Government, and was so prior to the termination of the war and prior to the Proclamation of March, 1849.

17. The question, therefore, as to the right to seize does not arise.

The case of Egsodah Bye *vs.* Hon'ble East India Company, is very different. There the property was acquired by Chinna Appa after he was a British subject.