

Saturday, March 6, 1858

LEGISLATIVE COUNCIL  
OF  
INDIA

VOL. 4

JAN. - DEC.

1858

P. L.

# PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

Published by the authority of the Council.

A. RAVINILLE, CALCUTTA PRINTING AND PUBLISHING COMPANY (LIMITED),  
No. 1, WISTON'S LANE, COBBTOLLAH.

1858.

Buller as a member of the Select Committee on the Bill "to amend the law relating to affidavits, affirmations, and solemn declarations."

Agreed to.

#### NOTICES OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 6th of March, move the second reading of the Bill "to repeal the Laws relating to the levy of Light-dues at Ports within the limits of the Gulf of Cambay."

Also that he would on the same day move the third reading of the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay."

Also that he would on the same day move that the Standing Orders be suspended to enable him to carry the Bill "to repeal the Laws relating to the levy of Light-dues at Ports within the limits of the Gulf of Cambay" through its subsequent stages.

#### MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved that the Bill "for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in the Town of Bombay," as settled in Committee of the whole Council, be published for general information, and that it be re-considered after five weeks.

Agreed to.

#### NOTICE OF MOTION.

MR. ELIOTT gave notice that he would on Saturday the 6th of March move the second reading of the Bill "for the maintenance of a Police Force for the Port of Madras."

#### MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA, AND HOWRAH).

MR. CURRIE moved that General Low be requested to take the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah" to the President in Council, in order that it may be submitted to the Governor-General for his assent.

Agreed to.

#### NOTICE OF MOTION.

MR. HARINGTON gave notice that he would on Saturday the 6th of March move the second reading of the Bill "to facilitate the recovery of land and other real property, of which possession may have been wrongfully taken during the recent disturbances in the North-Western Provinces of the Presidency of Bengal."

#### CONCEALMENT OF GOVERNMENT PROPERTY.

MR. PEACOCK moved that the Standing Orders be suspended to enable him to proceed with the Bill "for the punishment of persons who knowingly receive or conceal arms or other property belonging to the East India Company."

MR. GRANT seconded the Motion, which was then agreed to.

MR. PEACOCK moved that the above Bill be referred to a Select Committee consisting of Mr. Elliott, Mr. LeGeyt, Mr. Currie, Mr. Harington, and the Mover.

Agreed to.

The Council adjourned.

—  
Saturday, March 6, 1858.

#### PRESENT:

The Honorable J. A. Dorin, Vice-President, in the Chair.

Hon. the Chief Justice,	E. Currie, Esq.,
Hon'ble B. Peacock,	and
D. Elliott, Esq.,	H. B. Harington,
P. W. LeGeyt, Esq.,	Esq.

#### CONFISCATION OF VILLAGES, &c.

MR. PEACOCK presented the Report of the Select Committee on the Bill "to authorize the confiscation of, or the imposition of fines on Villages and other places for offences committed by the Inhabitants."

#### GOVERNMENT STAMP PAPERS.

MR. PEACOCK moved the first reading of a Bill "to provide for the authentication of Government Stamp Papers." He said, during the recent disturbances,

a large quantity of Government Stamped Paper had been either plundered or destroyed, and there was reason to suppose that a considerable portion of what had been plundered was now in existence. To protect Government from the unauthorized use of such Paper, it was necessary that, in future, all Stamped Paper issued since the 25th of November last should be authenticated; and it was accordingly proposed that all Stamped Paper issued subsequent to that date should bear some stamp in addition to the stamp and counter-stamp which the existing law required to be impressed upon it. This would provide for the authentication of all new Paper that would be issued. But it was necessary also to authenticate Paper that had already been issued, and which might be in the hands of private individuals. It was proposed that such Paper should be authenticated by the Collector or his Covenanted Assistant or Deputy signing his name across the stamp on being satisfied that the paper had been *bond side* purchased.

M.B. PEACOCK then stated the substance of the different provisions of the Bill, and concluded by remarking that they would throw no impediment in the way of the Public in regard to conveyance or documents already in existence, inasmuch as they would apply to no private conveyance or document executed before the passing of the Act, unless it should appear to have been ante-dated for the purpose of avoiding the objects of the Act.

The Bill was read a first time.

#### ALLUVIAL LANDS.

Mr. CURRIE moved the first reading of a Bill to explain Regulation XI. 1825 of the Bengal Code. He said, the title of the Bill he had the honor to introduce was, as it now stood, "a Bill to explain Regulation XI. 1825 of the Bengal Code, and to prescribe rules for the settlement of land gained by alluvion." He would endeavor to explain as briefly and clearly as he could the circumstances connected with the introduction of the Bill; but he feared, from the nature of the details into which it would be necessary for him to enter, that his statement would be somewhat tedious; and

he must bespeak the indulgence of the Council.

Clause 1 Section III of Regulation II. 1819 provided that

"All lands which, at the period of the decennial settlement, were not within the limits of any pargannah, mouza, or other division of estates for which a settlement was concluded with the owners, not being lands for which a distinct settlement may have been made since the period above referred to, nor lands held free of assessment under a valid and legal title of the nature specified in Regulations XI. and XXXVII. 1793, and in the corresponding Regulations subsequently enacted, are and shall be considered liable to assessment in the same manner as other unsettled mohals."

And Clause 2 of the same Section provided that

"The foregoing principles shall be deemed applicable, not only to tracts of land, such as are described to have been brought into cultivation in the Sunderbans, but to all churs and islands formed since the period of the decennial settlement, and generally to all lands gained by alluvion or dereliction since that period, whether from an introgression of the sea, an alteration in the course of rivers, or the gradual accession of soil on their banks."

This, then, was the general law for the settlement of alluvial lands. The detailed rules of settlement were prescribed in Regulation VII. 1822, which had been extended to Bengal by Regulation IX. 1825.

The occupation of newly-formed alluvial lands had always been a fruitful source of disputes and affrays, and no rules had been laid down for determining the proprietary right in them. Regulation XI. 1825 was passed for the declared purpose of supplying this omission, and of enacting rules for the guidance of the Courts of Judicature in determining the rights of litigant parties. Section IV. of that Regulation was to the following effect:—

"When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from Government by a Zamindar or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever. Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed, to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the

payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II. 1819, or of any other Regulation in force."

The Board of Revenue had lately held that the terms of this Section, not only declared and fixed the proprietary right in the alluvial land, but also constituted the land part of the original estate which it adjoined ; and that, when it was assessed with Government revenue, the only condition on which the proprietor of the old estate could be admitted to engage for it was that the revenue of the new land should be added to the revenue of the old estate, and a new engagement be executed for the aggregate increased jumma. The effect of this would be to exclude from the settlement with Government the person who was declared by the law the proprietor of the land, and who, therefore, had the best right to engage ; because these alluvial formations were seldom of such a permanent nature that the owner of the old land would be willing to render his permanently-settled estate liable for the revenue assessed upon the new land.

The idea now advocated by the present Board of Revenue had been put forth by the late Sudder Board some twenty years ago ; but it had never, he believed, been acted upon ; and very shortly after they advanced it, the Sudder Board had seen reason to change their view, and had passed a Rule expressly authorizing Collectors to settle the alluvial land as a separate estate, whenever the proprietor of the adjoining land was unwilling to incorporate it with his original estate. The Members of the present Board held that the practice authorized by this Rule was not warranted by law, and were desirous that it should be abrogated. But in maintaining their theory that the alluvial land became part of the original estate, they fell into embarrassments and inconsistencies. They held that the new land ought to be incorporated with the old estate ; but they could not infringe the right of the proprietor under the permanent settlement —they could not annul his engagement, and require him to enter into a new engagement for an enhanced jumma. They were thus reduced to the alternative either of allowing the land to remain unassessed which would be a dereliction of duty,

or to take an engagement from some other person. In such case, they said that a temporary lease must be given to a farmer, Malikana allowance, or allowance for right of ownership, being reserved to the proprietor. But, in the first place, there was no law which authorized the letting out of a portion of an integral estate ; and, in the second place, the assessing of any land separately, and granting a lease of it to a farmer, did, by express Revenue law, constitute it a separate estate, just as much as if a separate settlement had been made with the proprietor.

Of course, the construction which had been put upon Regulation XI. 1825 by the Board of Revenue might be overruled by the Executive Government ; but, unfortunately, a recent decision of the Sudder Court had given support to it. In the case to which he referred, some alluvial land had been let out in farm, with the usual reservation of Malikana allowance. During the lease, one of the proprietors sold his interest in the alluvial land, and, shortly after, the old estate was brought to sale for arrears of revenue. He (Mr. Currie) forgot what was the precise point upon which the case was taken into Court ; but the Sudder held that the sale for arrears of revenue had conveyed the proprietary right, not only in the original estate which was the subject of sale, but also in the alluvial land which was not the subject of sale and which was held under a different engagement. Now, there was no law by which two estates could be sold simultaneously for arrears of revenue falling due upon only one of them ; and, at the time of this sale, the proprietors were under no liability in respect of the alluvial land which had been leased to another party.

With all respect to the Sudder Court, he ventured to express the opinion that their decision in this case was erroneous ; and he believed that all the difficulty and embarrassment felt in the matter had arisen from the real purpose and scope of Regulation XI. 1825 not having been accurately apprehended and recognized. That Regulation was avowedly a judicial Regulation. It had been passed expressly " for the general information of individuals as well as for the guidance of the Courts of Judicature ;" and its declared object was to fix the Civil

rights of ownership in alluvial lands. When those rights were ascertained, it appeared to him that it was a forced and inadmissible construction to hold that the Regulation went farther, and controlled the proceedings of the Settlement Officer, which were conducted under different laws, as expressly provided in the Regulation itself—or that it had the effect of constituting a single estate of what, by the proceedings of the Settlement Officer under the Revenue laws, had become two distinct estates.

The question was one of considerable importance, and it was very desirable that the law on the subject should be perfectly clear. In accordance with the suggestions of the Bengal Government, therefore, he had prepared this Bill, which declared the object and scope of Regulation XI. 1825 as he had before explained them, and also laid down express rules for the settlement of alluvial lands in accordance with those prescribed by the Board of Revenue in 1841.

The Bill was read a first time.

#### LIGHT-DUES (GULF OF CAMBAY).

MR. LEGEYTT moved the second reading of the Bill "to repeal the Laws relating to the levy of Light-dues at Ports within the limits of the Gulf of Cambay."

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

#### MARINE POLICE FORCE (MADRAS).

MR. ELIOTT moved the second reading of the Bill "for the maintenance of a Police Force for the Port of Madras."

MR. LEGEYTT said, he could not allow this Bill to be read a second time without making some comments upon it. It appeared to him that, in its present shape, it would not be found operative in putting down the evil for the repression of which it was designed. He might mention that he had had considerable experience of this kind of depredations some years ago, when at the head of the Police in Bombay. A similar evil had been in existence in that Port for a great number of years, to a much larger extent, he had no doubt, than had been found to be the case at Madras. In 1842, the whole system was laid bare

by the testimony of approvers, who, with their accomplices, had followed a systematic plan of boat-robbery the disclosure of which astonished the entire mercantile community of the Port. The papers annexed to this Bill shewed that the depredations in Madras had been large; but he had not been able to collect from them that the same organized system of plunder existed there which had existed in Bombay, and the discovery of which resulted in the transportation of fifteen men holding respectable positions in life, and the flight of forty others, on the finding of a true Bill against them by the Grand Jury.

The success in checking these depredations in Bombay, had, doubtless, been owing to the complete development of the details of the system which the approvers had furnished. The precautionary and preventive measures adopted were of a more simple character than those provided in this Bill; and for the last seventeen or eighteen years, had worked, he believed, well. A Marine Police Force was instituted; but it was worked afloat like a division of the Land Police, under a European Superintendent. This Officer was afloat on board a hulk with his policemen, and was accustomed to board any cargo boat carrying cargo between the shipping and the shore. The expense of maintaining this Force did not amount to much more than that which was required for the additional Police Force now proposed for Madras. The Superintendent and his Officers kept a sharp look out on cargo boats conveying cargo: and as the men on these boats knew that they passed to or from the shipping subject to the chance of being boarded by the Police, the effect certainly was to check, in a great measure, the depredations formerly practised.

The first objection which he felt to the present Bill had reference to the provision of Section 11. That Section provided that "no boat shall convey any cargo or goods of any description to or from any ship or vessel in the Port of Madras unless accompanied by an Officer of the Police Force." This provision would be found exceedingly cumbersome, and would render the Bill really inoperative. An Officer of Police might not always be at hand. But even if that were not an objection, he

thought it would be found that the "Officer of Police"—who would be a Peon on a salary of five or six Rupees a month—would be liable to such temptations to join the boatmen in their plunderings that the object of placing him in the boat would be wholly defeated. Very few men receiving salaries of five or six Rupees a month would be able to resist the temptation of a handsome present, or a participation in the profits of the pillage, to keep their eyes shut. In Bombay, books were found belonging to the dispersed gang, in which it distinctly appeared that every Officer of Police and every Officer of Customs who could and ought to have prevented the depredations, were in the regular pay of the gang, their salary from Government, whether it was five Rupees or a hundred Rupees per month, being doubled by the gang. It appeared evident to him, therefore, that there would be very little use in trusting the prevention of these depredations in Madras to single Police Officers of a subordinate class.

Then, he thought that the collection of the tax proposed for the maintenance of the Force would not be found convenient. The Bill provided that every boat-owner should give weekly returns to the Police Commissioner of the number of trips made by each of his boats. It would be exceedingly difficult to obtain correct returns. It would be very easy for an owner to under-state the number of trips his boats had made. He (Mr. LeGeyt) should prefer to see a monthly or yearly charge levied upon owners of boats, or an additional fee levied on licenses granted under Act IV of 1842. This, however, was a question which might be settled in Select Committee.

He did not wish to oppose the second reading of the Bill, if it should be understood that he would not be committed by it to the mode in which Section II proposed to work out the Bill. His opinion was, that no definite restrictions should be placed upon preventive measures taken by the Police; but this Section would restrict the Police to one single mode of preventing the depredations in question; and that mode, as he had endeavored to shew, would be utterly ineffectual.

If the Honorable Mover of the Bill would not object to the points on which he had commented being discussed in

Select Committee, and to the Select Committee having power to abandon the provisions relating to them if, on consideration, they should see fit so to do, he would assent to the second reading. If not, he should feel it his duty to oppose it.

MR. PEACOCK said, he quite agreed with the Honorable Member for Bombay in his observations regarding the provision contained in Section II. It might be very inconvenient if, by legislative enactment, no cargo boat could convey cargo to or from any ship unless accompanied by a Police Officer. The provision might throw great impediment in the way of trade. Suppose a merchant was anxious to take a quantity of cargo from a ship to the shore under his own superintendence, or to send it under the superintendence of a clerk, without waiting for the arrival of a Police Officer: was there any reason why he should not be at liberty to do so? Police Officers might not always be available at the moment they were wanted; and if cargo boats were to wait until they could be got, great impediment would be thrown in the way of trade. He could see no objection to a tax being levied to meet the expense of such an increase to the Police Force as might be necessary for checking the organized system of robbery of cargo in transit between the shore and the shipping which appeared to have grown up in Madras; and it was not his intention to oppose the second reading of the Bill, the provisions of which had been considered and approved of by the Chamber of Commerce in Madras; but he did think that it was objectionable to provide that no cargo boat should carry any cargo, even with the consent of the owner of the cargo, unless it was accompanied by an Officer of Police; and, if the Bill should be read a second time to-day, it should be understood that this point, as also the others to which the Honorable Member for Bombay had adverted, would be open to discussion in Committee.

MR. ELIOTT said, as the Honorable and learned Member opposite (Mr. Peacock) had just observed, the Bill now proposed had been submitted to, and approved, of by the Chamber of Commerce in Madras, who represented the commercial community there; and the

proposal that no cargo boat should convey cargo to or from any ship without having a Police Officer on board, had emanated from themselves. They had tried on their own part a system of watching cargo boats, but had found that they could not control their men sufficiently, and that the only course left was to employ disciplined members of the Police Force, under the strict control of the Police Commissioner. This Bill being the product of the collective wisdom of all persons in Madras concerned in the question—namely, the mercantile community, the Police officials, and the Government,—he thought it might be concluded that it was tolerably well suited to the circumstances of the case. The observations that had been made upon it would be reported; and he would particularly direct the attention of the Madras Government to them. The provisions to which they referred, would also be open to discussion in Select Committee. In the meanwhile, as there was no opposition to the second reading, he should renew his Motion that the Bill be read a second time.

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

#### RESTORATION OF POSSESSION OF LANDS (N. W. PROVINCES).

MR. HARINGTON moved the second reading of the Bill "to facilitate the recovery of land and other real property, of which possession may have been wrongfully taken during the recent disturbances in the North-Western Provinces of the Presidency of Bengal."

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

#### PORT-DUES (GULF OF CAMBAY).

MR. LEGEYT moved that the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay" be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

#### CONFISCATION OF VILLAGES, &c.

MR. PEACOCK moved that the Bill to "authorize the confiscation of, or the imposition of fines on Villages and other places for offences committed"

by the Inhabitants" be re-committed to a Committee of the whole Council; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

#### Section I being read—

MR. ELIOT said, he wished to call the attention of the Committee to the wording of some parts of this Section, which he conceived would make its operation unfair to Defendants. He referred to those places in which it was provided that the inhabitants of villages and others should be liable to certain punishments if they did not prove to the satisfaction of the Magistrate that they had used all the means in their power to prevent the commission of certain offences. This was an *ex post facto* law, and open to the gravest objections on that account; and he confessed he had had great difficulty in reconciling it to himself on the ground of the paramount necessity, under the extraordinary circumstances of the times, of visiting with punishment all persons from whose conduct it might be concluded with moral certainty that they had been directly or indirectly, actively or passively, accessory to, or had countenanced the atrocious crimes referred to in the Bill, or had harbored the offenders. But considering the extreme severity, and the exceptionable character of the proposed law, it seemed to him that there was the more reason why the Council should take care that it should be free from the censure of not affording a fair trial to persons prosecuted under it. He took it to be essentially necessary to a fair trial that it should be distinctly notified to the accused what were the facts and circumstances on which the charge against him was founded. This condition, he submitted, was not fulfilled by the Section as it stood, but would, he thought, be fulfilled if the provisions he referred to required, not that the accused should prove that he had used all the means in his power to prevent the commission of the offence mentioned in the charge, but that it should be proved to the satisfaction of the Magistrate that he had not used all the means in his power. It would then be necessary to state and prove facts and circumstances from which the

alleged omission or neglect was inferred, and the accused would know exactly what he had to meet in his defence. He might exculpate himself by shewing that it really was not in his power to do what it was averred he could and ought to have done. But he (Mr. Elliott) did not see how a man could be ready with proofs to refute an allegation that he had not done all in his power, without any specification of the instances in which he was supposed to have failed. It was unfair, in his opinion, to require it of him; and he should, therefore, move as an amendment that the words "it shall not be proved to the satisfaction of the Magistrate" after the word "and" in the 16th line of the Section be left out.

MR. PEACOCK said, he thought that this question would have been more properly submitted at the last Meeting, because the Council had already decided that the Section should stand in this respect in its original form. The Bill had been referred back to the Select Committee last Saturday for two stated reasons—the first being that the Committee should see whether any further amendments were necessary in consequence of those which had been introduced in the Committee of the whole Council; and the second, that, according to the suggestion of an Honorable Member who was not present to-day, they might consider whether the Bill should not be made applicable to houses as well as to villages. Upon these two questions, they had made their Report. The Honorable Member for Madras was a Member of the Select Committee; but no such point as that which he now raised was suggested in the Report which they had presented. He (Mr. Peacock) did not mean to say that the Honorable Member ought to have suggested it in the Report, or that he was too late in moving his amendment now; but it did appear to him (Mr. Peacock) that this was entirely a new light thrown upon the Bill, and that the Council was now asked to undo what it had done at the last Meeting. For his own part, he could not see that the Section imposed any very great hardship upon owners of villages in requiring them to give the proof to which the Honorable Member objected. As the Bill stood, the offence must first be proved to have

been committed. Where a European or American had been murdered, or subjected to violent personal outrage, in a village, he thought that there was a sufficient presumption against the inhabitants to throw upon them the burden of proving that they had done everything in their power to prevent the commission of the offence. It would be much more easy for the inhabitants to prove what they had done, than for any one to prove that they had not done all in their power to prevent the offence. By the Section as it stood, the inhabitants would have to prove what they had done; and if the Magistrate was satisfied by such proof that they had done all in their power to restrain the criminals, he would acquit them. He (Mr. Peacock) should, therefore, vote against the amendment.

THE CHIEF JUSTICE said, he thought that, if the Council were to adopt the amendment moved by the Honorable Member for Madras, it would entirely alter the principle of this Bill. He admitted that what the Bill provided was of a stringent character; but before the Magistrate could act upon the provision—before he could call upon the Inhabitants of a Village to enter on the proof that they had done all in their power to prevent any of the offences in question, it must be proved to his satisfaction that the offence had been committed. Now, what was that offence? One might omit from consideration the first clause of the Section, because that was wholly independent of the provision objected to. The next clause provided thus:—"If it shall be proved to the satisfaction of a Magistrate that any European or American has been murdered, or been subjected to any violent personal outrage in any such village." These facts, therefore, must be proved to the satisfaction of the Magistrate before he would be in a condition to call on the inhabitants of the village to clear themselves by shewing that they had done all in their power to prevent the commission of the crime or outrage. If such a law as this was necessary to impress upon the inhabitants of these districts the sacredness of the lives of Europeans, against whom the fury of those engaged in the rebellion which had agitated the country, had principally been directed—it was

not unreasonable to provide that, when once it was ascertained that the life of a European had been taken in a village, the proof that they had used all the means in their power to prevent the murder, should be cast upon the inhabitants. All the circumstances attendant on the crime were presumably within their knowledge, and might be in the knowledge of no other person. In many cases, there would be no survivor of the party to which the murdered man belonged. Therefore, if it was necessary to have such a provision at all, it appeared to him expedient that it should be in its present form. If the Council should alter it as proposed by the Honorable Member for Madras, it would go far to render the Bill nugatory altogether.

MR. ELIOTT'S amendment was put and negatived, and the Section then passed as it stood.

Section V, as amended by the Select Committee, empowered Darogahs or District Police Officers, as well as Magistrates, to call on Zemindars or other proprietors of land to aid in the suppression of rebellion, and the apprehension of rebels, mutineers, or deserters.

THE CHIEF JUSTICE said, unless the Select Committee to whom the Bill had been referred back last week, had very good reasons for inserting in the Section the words "or by a Darogah or District Police Officer," which were printed in italics—reasons which they had not fully stated in their Report—he should prefer the Section as it originally stood. The power which the Section gave was a new and very stringent power; and all, he thought, must admit that the class of Officers to whom its extension was now proposed, was not one to which power could be committed with a high degree of confidence that that power would not be abused. He admitted that cases were possible in which Darogahs or District Police Officers, being in search of mutineers, might find it expedient to call upon Zemindars to render them assistance without having time to obtain the previous authority of the Magistrate; but he apprehended that such cases would be of rare occurrence. In most of the cases in which this Clause would come into operation; the Magistrate would be proceeding to

tranquillize the district, and to clear it of mutineers, according to some systematic course of action; and would, either of his own motion, or on the requisition of his subordinates, have time to call on the Zemindars to render them aid. In any case, he thought, it would be safer to run the risk that, in the rare cases in which a reference to the Magistrate would be impossible, Zemindars should escape from the operation of this Clause, than to give this new and extraordinary power to a class which experience had shown was prone to abuse those it already possessed. He should, therefore, move as an amendment that the words "or by a Darogah or District Police Officer" after the word "Magistrate" in the third line of the Section be left out.

MR. HARINGTON said, the words to which the Honorable and learned Chief Justice objected, had been inserted in the Section by the Select Committee upon his Motion. He had proposed them because it appeared to him that, unless the Section as it originally stood were extended to requisitions made by Darogahs and District Police Officers, many cases might occur in which rebels and mutineers would escape merely from the want of a written order from the Magistrate requiring Zemindars to aid in their apprehension. Some of the Districts in the North-Western Provinces were of considerable extent—Goruckpore for instance; and it would frequently happen that the Magistrate was at a great distance from the spot where the aid of the Zemindar was required for the suppression of rebellion, or for the apprehension of rebels, mutineers, or deserters. If, therefore, Darogahs or District Police Officers should be compelled to obtain the written authority of the Magistrate before they could call upon Zemindars to assist them in such cases, the offenders might escape beyond the frontier or into the Lower Provinces before the order of the Magistrate was received. It was to be observed that the Section gave no power to Police Officers to punish Zemindars for refusing to afford assistance. All that they would be able to do upon such refusal would be to report the conduct of the Zemindars to the Magistrate, with whom alone it would rest to convict or acquit. Zemindars were already required to assist the Police in apprehen-

hending offenders in certain cases ; and as, for the reasons he had stated, the power which the Section, as now framed, proposed to give to Darogahs and District Police Officers appeared to him to be really necessary, and he saw no reason to suppose that it would be abused, he should vote against the amendment.

MR. CURRIE said, the words inserted in the Section in Select Committee were not necessary for the particular contingency which he had in his mind when he first proposed the Section ; but having heard the grounds upon which they had been introduced, he thought that it would be better to let them stand.

THE CHIEF JUSTICE'S amendment was put and negatived, and the Section then passed.

Section VI was passed as it stood.

Section VII was passed after verbal amendments.

Section VIII empowered the Magistrate to order the sale of the village for the recovery of fines assessed upon the inhabitants.

MR. CURRIE said, when this Section was under the consideration of the Council last week, he had proposed the introduction into it of words which would render the previous sanction of the Commissioner necessary to the sale of a village ; but objections had been raised, and he had not pressed his Motion to a division. On consideration, however, it appeared to him that the matter was one of considerable importance ; and he proposed to renew his Motion, and, if the objections taken to it on the former occasion were repeated to-day, to take the sense of the Council upon it.

The Section was intended to provide for the recovery of fines imposed upon the inhabitants of villages. The persons to be punished were those inhabitants. If a fine was not paid, the obvious course was to endeavor to recover it from the property of those who were liable for the payment of it. The Section provided this remedy ; but it also provided that the amount might be recovered by the sale of the village—that was, in many cases, by the sale of the property of another person. As he had said before, although, with reference to the relations which existed between landlord and tenant in this

country, the sale of the village might generally be allowable as an ultimate remedy, it would in some cases be a very harsh and severe measure. Where the village was the property of a body of cultivating proprietors who formed a large class of the inhabitants, its sale might be right and proper ; but where that was not the case, it would be extremely harsh to throw the responsibility, in case of the fine assessed on the inhabitants not being paid, upon the owner of the village. He (Mr. Currie), therefore, thought that the power to sell the village should not be left to the discretion of the Magistrate, but that the order of the Magistrate should, in all cases, be subject to the previous sanction of the Commissioner. It had been said that, when the Magistrate imposed a fine, he would have to refer his order to the Commissioner, and obtain his sanction, and that therefore any further reference would be unnecessary. But in sanctioning the order for the fine, the Commissioner would not determine the mode in which payment was to be realized. He (Mr. Currie) thought, therefore, that an express reference should be made to the Commissioner before the sale of a village, and he could see no possible reason why it should not be made. He should, therefore, move as an amendment that the words "with the previous sanction of the Commissioner" be inserted after the word "Magistrate" in the 17th line of the Section.

MR. HARINGTON said, the Motion which had just been made by the Honorable Member for Bengal was identical with the one brought forward by the Honorable Member at the last Meeting of the Council. On that occasion, it was opposed by the Honorable and learned Member opposite (Mr. Peacock) and himself, and it was negatived without a division. He had attentively listened to the observations which the Honorable Member had urged to-day in support of his Motion, but they had failed to convince him that the conclusion at which the Council had arrived on this question at its last Meeting was erroneous, and he saw no reason to alter the opinion which he had then expressed. Section VI of the Bill provided that, whenever a Magistrate might impose a fine under the Act, he should report

his proceedings to the Commissioner. The Commissioner might either confirm, or modify, or annul the order of the Magistrate, as he should think fit. Under this provision, the Magistrate would be able to take no steps towards recovering the amount of any fine which he might impose upon the inhabitants of a village until his order had been confirmed by the Commissioner. When a case was reported by the Magistrate, it was to be supposed that the Commissioner would go through the proceedings with the view of satisfying himself that the order made was a just and proper one. He would be aware that, in the event of his confirming the order, the confirmation might be followed by the sale of the village on the inhabitants of which the fine was imposed; and it appeared to him (Mr. Harington) that if, with this knowledge, he did confirm the Magistrate's order, he must be presumed to look forward to its possible ultimate result, and prospectively and conditionally to sanction the sale of the village, equally with the other processes authorized by the Act for the recovery of fines imposed under its provisions.

Then, again, by Section XI, all the proceedings of the Magistrate, with exception to the assessment of the fine, would be subject to the revision and control of the Commissioner. Under that Section, the Commissioner might always direct the Magistrate to postpone the sale, if he thought that further time should be allowed to the owner of the village, or he might prohibit the sale altogether—though he (Mr. Harington) hoped the instances would be rare in which the Commissioner would exercise that power.

Looking at these two Sections, he thought that the Bill afforded as large a measure of protection to owners of villages as was consistent with its principle and object. He might also observe that the reference for which the Honorable Member for Bengal contended, would not only cause delay, but, in the event of any intermediate change in the office of Commissioner, might give rise to conflicting orders—which it was very desirable to avoid; and he should, therefore, vote against the amendment.

THE CHIEF JUSTICE said, he pre-

sumed that the owner of a village would have time to make a reference to the Commissioner against the Magistrate's order for the sale of the village before the day of sale.

MR. HARINGTON replied that he would.

MR. PEACOCK said, he thought that Section XI provided sufficiently for the protection of owners of villages, and that it would be advisable not to clog the discretion of the Magistrate by making his order for the sale of a village subject to the previous sanction of the Commissioner.

THE CHIEF JUSTICE said, he thought, if the amendment of the Honorable Member for Bengal were carried, the result would be that there would very often be two references to the Commissioner—one from the Magistrate, and the other from the owner of the village; and that it might be inexpedient to commit the Commissioner to the sale of the village on the first reference, before he had heard what could be said against the sale on the second. The answer which the Honorable Member for the North-Western Provinces had given to his question, satisfied him that the owner of a village ordered by the Magistrate to be sold, would always have time to make a reference to the Commissioner before the sale took place. On the other hand, he agreed with the Honorable Member for Bengal that the confirmation of an order for the sale of a village for the non-payment of fines assessed upon the inhabitants might be quite a different question from that of confirming the order for the assessment of the fines. For instance, though the inhabitants of the village might properly be required to pay the fine, the owner of the village might be a very well affected person, whom the Commissioner might therefore be willing to exempt from liability in respect of the default of the villagers to pay that fine. But as the Bill would give the owner time to refer to the Commissioner, and as all orders and proceedings by the Magistrate were expressly made subject to the revision and control of the Commissioner, it appeared to him (the Chief Justice) that the amendment was unnecessary.

MR. CURRIE said, it did not appear to him that Section XI would give

any effectual protection to owners of villages. It said—"No appeal shall lie from any order passed by a Magistrate in carrying out the provisions of this Act." It might be said that, although no appeal would lie of right, the owner of the village might make application to the Commissioner, and the Commissioner might interfere in his behalf; but the Commissioner might be at such a distance that, very possibly, the owner might not be able to obtain an order before the day fixed for the sale. Then, if the sale took place, the Commissioner would be powerless; for he could not reverse the sale. The law allowed the reversal of a sale only where the rules prescribed for conducting sales had been contravened. The sale would, therefore, be final, unless the Commissioner should find the case to be one of such extreme hardship and injustice that he would refer it to the Government for the purpose of obtaining annulment of the sale. The Commissioner might not feel disposed to go so far as to make a reference to Government in every case of hardship; and he (Mr. Currie), therefore, still thought, with submission, that every order of the Magistrate for the sale of a village should be subject to the previous sanction of the Commissioner. The only possible objection that there could be to this was the short delay that would be occasioned by the reference; but that did not seem to him a sufficient objection; and he, therefore, felt it his duty to press his Motion.

MR. HARINGTON said, owners of villages would in every case have at least fifteen days within which to make their references to the Commissioner, and obtain an order from that Officer. This was considered a sufficient time in other cases in which the sale of land was allowed, and he did not see why it should not be sufficient in cases under this Act. He thought it unadvisable to delay the final determination of these cases. The intention of the Bill was that the owners of villages should exert themselves to induce the inhabitants to pay the amount of the fine which might be assessed upon them. If the inhabitants failed to pay, the owners would be at liberty to make good the amount, and to recover it afterwards from the persons liable for the same by distress and sale of their property.

*Mr. Currie*

MR. CURRIE'S amendment being put, the Council divided:—

*Ayes 2.*  
Mr. Currie,  
Mr. Elliott.

*Nos 5.*  
Mr. Harington,  
Mr. LeGeyt,  
Mr. Peacock,  
The Chief Justice.  
The Chairman.

The amendment was negatived, and the Section passed as it stood.

Sections IX and X were passed as they stood.

MR. CURRIE said, it had been mentioned to him by the Honorable and learned Member to his right (Mr. Peacock) that the Bill made no provision for the recovery of fines imposed under Section V. If no special provision were made for the purpose, of course the fines would be recoverable under the general law—namely, by distress and sale of property, or by imprisonment. But that was not a very efficient mode of recovery; and he thought that it would be better if a special provision were made. He, therefore, moved that the following be inserted as a new Section after Section X:—

"Any fine imposed under Section V of this Act, may be recovered in the manner above prescribed for the recovery of assessments, or by sale of the estate of the person liable to the fine; and such sale shall be made by the Collector on the requisition of the Magistrate and shall be subject to all the rules applicable to the sale of estates for demands recoverable by the same process as arrears of Revenue, save that it shall not in any case be necessary to obtain the sanction of the Sudder Board of Revenue or Board of Revenue to such sale."

Agreed to.

Sections XI to XVI and the Preamble and Title were passed as they stood.

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

MR. PEACOCK moved that the Bill be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. PEACOCK moved that Mr. Grant be requested to take the Bill to the President in Council, in order that it might be submitted to the Governor General for his assent.

Agreed to.

#### LIGHT-DUES (GULF OF CAMBAY).

MR. LEGEYT moved that the Bill "to repeal the Laws relating to the levy

of Light-dues at Ports within the limits of the Gulf of Cambay" be referred to a Select Committee consisting of Mr. Elliott, Mr. Currie, and the Mover.

Agreed to.

MR. LEGEYT moved that the Standing Orders be suspended to enable the Select Committee to present their Report within the prescribed time of three months.

MR. CURRIE seconded the Motion, which was then put and carried.

#### PORT-DUES (GULF OF CAMBAY).

MR. LEGEYT moved that Mr. Grant be requested to take the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

#### MARINE POLICE FORCE (MADRAS).

MR. ELIOTT moved that the Bill "for the maintenance of a Police Force for the Port of Madras" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Currie, and the Mover.

Agreed to.

#### RESTORATION OF POSSESSION OF LANDS (N. W. PROVINCES).

MR. HARINGTON moved that the Bill "to facilitate the recovery of land and other real property, of which possession may have been wrongfully taken during the recent disturbances in the North-Western Provinces of the Presidency of Bengal" be referred to a Select Committee consisting of Mr. Peacock, Mr. Currie, and the Mover.

Agreed to.

MR. HARINGTON moved that the Standing Orders be suspended to enable the Select Committee to present their Report within one month.

MR. ELIOTT seconded the Motion, which was then put and carried.

#### MERCHANT SEAMEN.

MR. ELIOTT moved that a communication received by him from the Madras Government, be laid upon the table and referred to the Select Committee on

the Bill "for the amendment of the law relating to Merchant Seamen."

Agreed to.

The Council adjourned.

Saturday, March 13, 1858.

#### PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon'ble J. P. Grant,	E. Currie, Esq.,
Hon'ble B. Peacock,	and
D. Elliott, Esq.,	H. B. Harington, Esq.

#### RECOVERY OF RENTS (BENGAL).

THE CLERK brought under the consideration of the Council a Petition of Protestant Missionaries residing in or near Calcutta in favor of the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal." The Petitioners stated that they

"regard with deep concern the condition of the cultivators of Bengal, and therefore have observed with thankfulness the introduction of a Bill for the recovery of Rents, and the favorable reception by your Honorable Council of that just and benevolent measure."

They then proceeded to suggest the adoption of certain other measures, and concluded as follows:—

"Your Petitioners cherish the hope that the benevolent spirit of modern legislation will animate your Honorable Council in considering these necessary provisions; and they fervently pray that the Rent Bill passed into Law may be the precursor of many other and equally important measures, intended and adapted to prevent the perversion of justice in this Presidency and throughout India, and to establish and secure tranquillity and order."

MR. CURRIE said, as the Petitioners mentioned many measures besides the Rent Bill as being, in their opinion, requisite, he did not think it necessary to refer the Petition to the Select Committee on the Bill, and should therefore only move that it be printed.

Agreed to.

#### PORT-DUES (FORT ST. GEORGE).

THE CLERK reported to the Council that he had received a communica-