LEGISLATIVE COUNCIL

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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

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1858.

By order of the Right Honorable the Governor-General.

G. F. EDMONSTONE,
Secy. to the Govt. of India, with the Govr.-Genl.

ALLAHABAD,
The 12th March 1858.

SETTLEMENT OF ALLUVIAL LANDS (BENGAL)

On the Order of the Day being read for the second reading of the Bill "to explain Regulation XI. 1825 of the Bengal Code, and to prescribe rules for the settlement of land gained by alluvion"—

MR. CURRIE said, since he had come into the Council Chamber, it had been intimated to him that it was the wish of some Honorable Members that he should postpone his motion. The Honorable Member for the North-Western Provinces, also, who was not present to-day, was desirous of making some observations on the Bill. He should therefore postpone his Motion.

CONCEALMENT OF GOVERNMENT PROPERTY.

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill "for the punishment of persons who knowingly receive or conceal arms or other property belonging to the East India Company;" 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.

The Bill passed through Committee without amendment.

The Council resumed its sitting.

MINORS (FORT ST. GEORGE).

MR. ELIOTT moved that the Council resolve itself into a Committee on the Bill "to extend the provisions of Act XXI of 1855 in the Presidency of Fort St. George to Minors not subject to the superintendence of the Court of Wards;" 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.

The Bill passed through Committee without amendment.

The Council having resumed its sitting, the Bills passed through Committee were reported.

CONCEALMENT OF GOVERNMENT PROPERTY.

MR. PEACOCK moved that the Bill "for the punishment of persons who unlawfully possess or conceal arms or other property belonging to Her Majesty or to the East India Company," 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 above Bill to the President in Council in order that it may be submitted to the Governor-General for his assent.

Agreed to.

IMPRESSMENT OF CARRIAGE AND SUPPLIES FOR TROOPS AND TRAVELLERS (BENGAL).

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 "to amend the law regarding the provision of carriage and supplies for troops and travellers, and to punish unlawful impressment."

Agreed to.

The Council adjourned.

Saturday March 27, 1858.

PRESENT:

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

Hon. J. P. Grant,	E. Currie, Esq.,
Hon. B. Peacock,	and
D. Eliott, Esq.,	H.B.Harington,Esq.
P. W. LeGeyt, Esq.,	

MESSAGES.

The following Messages from the Governor-General were brought by the Vice-President and read.

PORT-DUES (GULF OF CAMBAY).

MESSAGE No. 180.

The Right Honorable the Governor-General informs the Legislative Council

that he has given his assent to the Bill which was passed by them on the 6th instant, entitled "A Bill for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay."

G. F. EDMONSTONE,
Secy. to the Govt. of India with the Govr. Genl.

ALLAHABAD,
The 19th March 1858.

CONFISCATION OF VILLAGES, &c.

MESSAGE No. 131.

The Right Honorable the Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 6th instant, entitled "A Bill to authorize the confiscation of Villages, the imposition of fines, and the forfeiture of certain offices in cases of rebellion and other crimes committed by Inhabitants of Villages or by members of tribes; and also to provide for the punishment of proprietors of land who neglect to assist in the suppression of rebellion or in the apprehension of rebels, mutineers, or deserters."

G. F. EDMONSTONE,
Secy. to the Govt. of India with the Govr. Genl.

ALLAHABAD,
The 19th March 1858.

STAMPS.

THE CLERK brought under the consideration of the Council a Petition of Mahtabchand Bahadoor, Raja of Burdwan.

The Petitioner stated that he "had brought a regular suit in the Court of the Principal Sudder Ameen in Zillah Hooghly" "for the recovery of arrears of rent with interest; and that the case was dismissed on the ground that the names of the parties and witnesses to the putnee lease were not written on the same sheet of paper, but on two different sheets: the whole lease or instrument was, however, written on stamped paper of the full value required by the Law." That it was his intention "to appeal against this decision to the Court of Sudder Dewanny Adawlut, but he was advised by his Counsel that it was useless, as that Court would certainly dismiss his appeal under the authority of two cases." The Petitioner prayed that the Council "will be pleased to pass a declaratory Act to explain or alter the general rule contained in Schedule A Regulation X. 1829, by declaring that it was and is not the intention of Regulation X. 1829 to invalidate any deed, or instrument, or document specified in the said Regulation or in the Schedules thereunto annexed, and on which the full stamp-duties required by Government have been paid, although the seals and signatures of the parties and witnesses thereupon be not contained on one sheet or piece of paper."

MR. CURRIE moved that the above Petition be printed.

Agreed to.

SUBORDINATE CRIMINAL COURT AT OOTACAMUND.

MR. ELIOTT presented the Report of the Select Committee on the Bill "to extend Act XXV of 1855," (to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund on the Neilghery Hills).

ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. PEACOCK moved the first reading of a Bill "to provide for the administration of the Estate, and for the payment of the debts of the late Nabob of the Carnatic." In doing so, he said the Council was aware that, by Act I of 1844, it was enacted "that no writ or process shall at any time be sued forth or prosecuted against the person, goods, or property of His Highness the Nabob of the Carnatic, or of the Nabob Regent for the time being, or of any person whose name shall be included in any list so published in the Gazette as aforesaid, and which for the time being shall be in force and effect for the purpose of this Act, unless such writ or process shall be so sued forth or prosecuted with the consent of the Governor in Council of Fort St. George first had and obtained; and that any writ or process which shall at any time be sued forth or prosecuted against the person

or goods or property of His said Highness," "without such consent as aforesaid," "shall be utterly null and void." There was every reason to believe that the property left by the late Nabob of the Carnatic would not be sufficient to pay the whole of the debts due from him at the time of his death, and it had been decided that the Government should pay in full the amount of their several debts to such of the creditors as would consent to have them estimated, in the case of monies lent, according to the actual sums advanced, with interest at six per cent., and in the case of goods sold, according to the fair marketable value of the goods. It was believed that many of the creditors of the Nabob, partly in consequence of the exemption from process provided by Act I of 1844, and partly from other reasons, had contracted for very exorbitant rates of interest, and for prices considerably higher than would have been charged to other purchasers. When, therefore, it was decided that the Government should pay the Nabob's debts, it was not considered reasonable or just that they should be liable for more than the sums which had actually been advanced, with interest at six per cent., or, where the claim was for goods sold, for more than the fair marketable value thereof. To that extent, and to that only, the Government were prepared to pay the debts of the deceased Nabob in full.

But it was considered that it would be unjust to debar any creditor from insisting upon his strict legal rights, if he wished to do so. If, for instance, a creditor should say:—"I contracted for so much interest; I am entitled to recover it; and I insist upon my right:" well and good, let him pursue his right; but in that case, he must look to the assets of the deceased Nabob's estate; and if they should be insufficient to pay the debts in full, he would recover only so much as a rateable division of the assets among the general body of the creditors would provide for his share. A question might be raised as to whether, under Act I of 1844, an action could be brought by any creditors against the representatives of the Nabob's estate without the previous consent of Government. The Council were aware that the Supreme Court at Madras had decided that that Act was merely personal to the Nabob, and that it ceased to confer any exemption upon members of his family or household after his death; but very great doubts existed whether, if a creditor sued out an execution against his estate, he would not be suing out a writ against his "goods or property" within the meaning of the Act; and if so, it could not be done without the consent of the Government of Madras. The Bill proposed to give any creditor the power of instituting a suit in the nature of an administration suit in the Supreme Court of Judicature. It would also enable creditors to recover who were willing to come in and accept payment of their claims estimated in the equitable manner he had mentioned. It provided that the Government should appoint an Officer to be called the Receiver of the Carnatic Property, whose duty it would be to collect all the assets of the estate, whether real or personal. It gave power to any creditor to institute in the Supreme Court a suit in the nature of an administration suit against such Receiver; and the Court was authorized in such suit to compel all persons holding mortgages, or liens, or other security on any part of the property, to come in and establish their claims. The Court would take an account of all debts due from the Nabob, and of all assets liable for the payment of them. A doubt might exist whether the East India Company was not entitled to all property belonging to the deceased Nabob in the nature of State or public property; but the East India Company was willing to forego any such claim for the benefit of the creditors and of the representatives of the Nabob, if there should be a surplus after payment of the creditors. It had at first been supposed that the most expedient course would be to appoint a Commission to take an account of the debts, to collect the assets, and to pay the creditors; and the Government of Madras had proceeded in the matter so far as to appoint such a Commission; but it had been subsequently suggested that the decisions of the Commission might not be satisfactory to the creditors; and the Government of Madras therefore proposed to leave it to the Supreme Court of Judicature at Madras to as-

certain the amount of the debts. He would read an extract upon this subject from a letter which had been received from the Government of Madras. They said—

"It has been decided that the debts of the Carnatic Sircar shall be liquidated in a straightforward manner, and to the full extent to which they are justly due. It would be deeply to be deplored if any opportunity that could be avoided were given to arouse distrust in, or throw discredit upon the intentions and acts of Government. In proposing a Commission, and nominating the Members who were to sit upon it, this Government believed that they had suggested the most simple and expeditious mode of settling the affairs of the late Prince. Further consideration and recent information have led them to change that opinion, and they are now disposed to concur with Mr. Dale that the decision of the Commissioners would not be viewed with satisfaction."

Again, they say—

"The Government entertain no doubt that the Judges of Her Majesty's Supreme Court would prove a much more satisfactory tribunal to all parties concerned than the present Commission, or than any other that could be appointed."

The Bill, therefore, proposed to allow any creditor to institute a suit in the Supreme Court for the administration of the assets of the Nabob. Any creditor who, on being called upon to prove his claim, should come in and sign an agreement to receive payment of the full amount of his debt estimated in the equitable manner which he (Mr. Peacock) had indicated, would have a right to have his claim heard and decided by the Supreme Court at once, without waiting for the determination of the administration suit; and upon the Court's determining what amount was fairly due to him according to the principle of assessment before mentioned, the creditor would be entitled to recover such amount out of the property in the hands of the Receiver, or, if there should not be sufficient in his hands, out of the Public Treasury. Those creditors, if any, who should stand upon their strict legal rights, and insist upon payment of the whole amount of their claims, would wait until the determination of the suit. If it should turn out that the assets would yield only a dividend to the creditors generally, and that the creditors who had been paid in full under this Bill had received more than they would have been entitled to as their proportion of the assets had they prosecuted their claims, the Government would make good the excess so paid. Thus, if the assets should yield only ten shillings in the pound for division amongst the creditors, taking their claims to be estimated according to the contracts entered into by the Nabob, and a creditor should come in and say—"I am willing to receive payment of my claim in full on the principle provided by the Act," and the amount of the claim estimated in that mode should be equal to fifteen shillings in the pound, the creditor would receive the whole fifteen shillings in the pound. But that would be a larger amount by five shillings in the pound than he could have recovered if he had resorted to the estate; and the Government would make good the extra five shillings in the pound by placing it in the hands of the Receiver for the benefit of the other creditors. Thus, no injustice would be done to the creditors who might stand upon their strict legal rights. They would be paid as far as the assets would go, but they could have no claim against the Government to pay them any thing beyond.

These were the general provisions of the Bill; and it appeared to him that the arrangement proposed was an exceedingly fair and liberal one. He thought it unnecessary to enter into the details of the measure. The Bill would be published for general information; and the creditors of the Nabob and others would have an opportunity of bringing before the Council any objections which they might see against it. But he thought that publication for a month or six weeks would be sufficient for this purpose; and therefore, he should probably move hereafter that the Bill be published for that period only, instead of the period of three months required by the Standing Orders. In the meantime, he should conclude by moving the first reading.

The Bill was read a first time.

SETTLEMENT OF ALLUVIAL LANDS (BENGAL).

MR. CURRIE moved the second reading of the Bill to "explain Regulation XI. 1825 of the Bengal Code, and to prescribe rules for the settlement of land gained by alluvion."

MR. PEACOCK said, though he was not so well acquainted with the Revenue system of Bengal as the Honorable Mover of the Bill, it yet appeared to him that the Bill was objectionable—first, because it was a declaratory Act; and secondly, because it would be an unjust measure, and would injuriously affect private rights and interests.

With respect to the first objection, having given the best consideration that he could to the question, it appeared to him that the Bill called upon the Council to declare the existing Law to be different from that which he really thought it was, and to say that the conclusion to which the Sudder Board of Revenue had come, and the Sudder Court had come, on the subject, was wrong. He thought, however, that before the Legislative Council declared that a decision passed by the Sudder Court, which was the highest judicial tribunal of the East India Company, was wrong, they ought to be clearly satisfied that it was so. If the law, as the Sudder Court laid it down, required amendment, the Legislative Council might amend it; but to declare that the decision of the Court was wrong, would be to act as a Court of Appeal, which was not the constitutional duty of the Legislative Council. The Bill recited that—

"Whereas Section IV Regulation XI. 1825 of the Bengal Code contains provisions for determining the right of property in alluvial land gained by gradual accession from the recess of a river or of the sea, and doubts have been entertained as to the legal effect of certain words in the said Section with respect to the connexion of such land with the estate which it adjoins, and to the conditions under which it is to be assessed for the Government Revenue; and whereas it is expedient that such doubts should be removed; it is declared and enacted as follows."

It then proceeded to declare, not that the law should be altered for the future, but what the scope and object of Section IV of Regulation XI. 1825 were. It said—

"The object and scope of Regulation XI. 1825 of the Bengal Code is merely to lay down rules for determining the right of property in alluvial land; and the declaration in Section IV of the said Regulation, that '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,' and any other words in the said Section, shall not be understood as making the right of property in the said land inseparable from the right of property in the estate which it adjoins, nor as requiring that, in the assessment of the public Revenue upon the said land, it should be treated as if it were inseparable from such estate."

He apprehended that Regulation XI. 1825 was really, in effect, a declaratory Act, because it had been decided, long before that Regulation was passed, that gradual accretions became part of the estate to which they attached themselves. The Board of Revenue, in their letter to the Government of Bengal on this subject, said—

"In the cases noted in the margin" (that was to say, cases decided by the Sudder Court so far back as the years 1811 and 1819), "the Court recognized the principle that lands gained by the gradual retirement of a river were the lawful accession of the estate to which they were so annexed; and in the latter of the two, the principle is referred to as one then '*established*.' There does not appear to have been any case published from 1811 to the end of 1819 bearing upon the point.

"In 1819, the Legislature first alluded to churs; and in Clause 2 Section III Regulation II of that year it is enacted that churs which had formed since the period of the decennial settlement were liable to assessment. Nothing, however, was then said about the parties entitled to these churs."

Then came Regulation XI. 1825, Clause 1 Section IV of which was worded thus—

"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 Zemindar 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."

Now, the question was, whether, when an alluvion took place, and the original

estate which adjoined was thereby increased, the alluvion became an increment to the parent estate, or was so far a separate estate that the zemindar was entitled, without the consent of Government, to have it separately assessed, so that the increment could never be made responsible for the revenue assessed on the parent estate. If it was a separate estate, and not liable to be sold in the event of the non-payment of the revenue assessed on the parent estate, this difficulty would arise. An estate might be granted on the banks of a river, and its value might greatly depend on its having a river frontage; but if an alluvion took place, and such alluvion was to be treated entirely as a separate estate, then the parent estate, which had a frontage on the river, would be entirely cut off from that frontage, and its value might consequently be materially diminished. There were many estates having wharves on the banks of rivers. If an alluvion accrued to any of them, and were not to be subject to the same tenure as that under which the parent estate was held, the wharf on the parent estate would become valueless, for there would be an estate intervening between it and the river. Suppose that, an accretion took place, and that, previously to the assessment of the increment, the revenue of the parent estate fell into arrear. Was it to be said that the parent estate could alone be sold for the non-payment of the revenue, and that the zemindar might hold the increment, and insist upon having it assessed as a separate estate?

If so, the Government might have to sell the parent estate at a very greatly deteriorated value, for it might be cut off from its frontage on the river. He (Mr. Peacock) contended that in such a case the increment became a portion of the original estate, and was liable to be sold as part of that estate for the arrears of Revenue. Now, if the increment ever became a portion of the parent estate and was even liable for the revenue of that estate, the Zemindar could not possibly have the right, which this Bill proposed to give him even without the consent of the Revenue officers, to have it assessed as a separate estate and discharged from such liability.

If the Zemindar should be willing to have the increment assessed as part of his estate, the existing Law would enable him to do so. The revenue of the estate would then be increased, and the increment as well as the parent estate would be liable for the payment of such revenue. If, however, the Zemindar should object to have the increment assessed as part of his estate, the existing law would not compel him to do so. He might say—"I had rather not incorporate the revenue of the new land with the revenue of the old estate, because if the increased revenue be not paid, the whole estate will be sold;" and it would be unjust to compel him, to accept that risk. According to the decisions of the Sudder Court, the existing law would not compel him to do so. He would be at liberty to refuse; and then the increment would be let out on farming lease, and a malikhana would be reserved to him. In that case the increment could not be sold away from the parent estate for the arrears due in respect of the increment.

But there was another view to which he would direct attention. Clause I Section IV of Regulation XI. 1825 declared that the increment should be held by the same tenure as the parent estate. The words of the Clause were—

"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 Zemindar or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever."

Suppose that a Zemindar should grant out a putnee talook to be held at a fixed rent in perpetuity by the lessee and his heirs for ever—that an alluvion should take place—and that the putnee talookdar should fail to pay his rent to the Zemindar, thus rendering his tenure liable to sale. It was clear that the Zemindar would have a right to sell the alluvion as well as the original estate granted out by him, because the alluvion became an increment to that estate. Now, if the Zemindar could sell both the increment and the parent estate for arrears of rent due by his putneedar to him, why should not the Government have a similar right of selling the increment as well as the parent estate for arrears of revenue due from the Zemin-

dar? Was not the increment just as much liable to Government for arrears of revenue payable by the Zemindar, as it was to the Zemindar for arrears of rent payable to him by the putnee talookdar? But in addition to the injury which might be done to Government by giving the Zemindar a right to have the increment assessed as a separate estate without the consent of the revenue officers, thus depreciating the value of the security which the Government had for its revenue, it appeared to him that the Council might very much injure the interests of putneedars and the holders of other under-tenures, if they allowed the Zemindar to have the increment to his estate assessed as a separate estate. The putnee talook might originally have a frontage on the river: the increment might intervene between the whole of the talook and the river. But if the increment could without the consent of the talookdar be converted into a separate estate and be regurded and treated as in all respects separate from and independent of the original estate, it might be sold away from the original estate for the non-payment of the revenue separately assessed upon it, and the talookdar might be altogether deprived of his river-frontage. What would the effect be with respect to estates such as those on the banks of the Mutlah river, the value of which depended upon their abutting on the river; or estates such as those on the Strand Road, the value of which depended upon their having a frontage on the river? Mr. Beaufort, the Legal Remembrancer, said in paragraph 10 of his Letter to the Government of Bengal, "one of the conditions of a settlement is that the land is hypothecated for the revenue assessed upon it." But, under this decree of the Sudder Court, it seems that the chur is also hypothecated for the revenue of the parent estate; and it follows that the latter is also hypothecated for the revenue of the former. Now, it appeared to him (Mr. Peacock) that Mr. Beaufort was correct in saying that the land was hypothecated for the revenue assessed upon it. He thought that any increment by alluvion was also hypothecated for the revenue of the parent estate; but he failed to perceive how it followed that the parent estate would be hypothecated for the revenue of the increment, unless the Zemindar should consent to the terms of a settlement by which the parent estate and the increment should be considered as one entire estate charged with the aggregate increased jumma. If the Zemindar consented to have the increment made a part of the original estate, and the whole estate including the increment made liable for an increased jumma, there would be no hardship upon him, because he would be a consenting party. But if he refused to make the increment a part of the original estate, and the increment was let out on a farming lease, subject to a malikana allowance, the original estate would not become responsible for that malikana allowance, or for the Government revenue assessed upon the increment. It would not, therefore, be hypothecated for the Goverument revenue. Then, again, if the Zemindar consented to make the increment part of the parent estate, no damage would be done to the putnee talookdar, because the putnee talookdar would remain in possession, not only of the parent estate, but also of the increment. The Sudder Court, in the judgment which formed one of the annexures to the Bill, said—

"The right of Government to assess the increment is reserved by the same Clause (Clause 1 Section IV Regulation XI. 1825); and by Section V Regulation VII. of 1822, if the proprietor of the estate refuses to engage for the mehal at the rate of assessment fixed by the revenue authorities, and it consequently remains in their hands, or is farmed by them, he is entitled to receive from them an allowance of malikana, in other words, a percentage on the rent of the mehal representing or assumed to represent the net profit resulting to the proprietor after the payment of the Government revenue and certain customary deductions for the expenses of collection, risk of loss, &c."

It appeared to him that that judgment of the Sudder Court composed of Mr. Trevor, Mr. Samuells, and Mr. Money—gentlemen of great knowledge and experience—followed the decisions which had been passed upon the subject up to the year 1838, when the Circular Order was issued to which reference was made in the annexure. In his opinion that judgment was well-considered, sound, and correct. He thought that the Council ought not to be asked to declare in effect that it was wrong. If the Council should by a legislative enactment de-

clare it to be erroneous, might not the parties to the suit apply for a review of judgment? They might say—"the Legislative Council, placing themselves in the position of an appellate Court, have pronounced that judgment to be founded upon an erroneous construction of the law; and we apply to you to correct that judgment, and to decide upon our rights, not according to the construction which you put upon the meaning of Regulation XI. 1825, but according to the construction which the Legislature has declared that the enactment ought to have received." Then, again, there might be cases of appeal at this moment depending on this very construction of Regulation XI. 1825. Were the Legislative Council to influence the result of those cases, by declaring that the intention of the Legislature of 1825, in passing Regulation XI of that year, was not that which the Sudder Court reading the Regulation had decided it to be? Regulation XI. 1825 spoke for itself; and the proper tribunal for determining its meaning was the Sudder Court, and not the Legislative Council. The Legislative Council did not sit to declare the meaning of laws. They could judge of the meaning of a law passed in 1825 only from its wording. The Sudder Court had the same means as they of judging of the intention of the Legislature of that day; and they had moreover the benefit of mature experience and, what this Council certainly had not, the advantage of hearing the question fully argued on both sides. As a general principle, he thought that laws declaratory of the meaning of former laws were not expedient, especially after the Courts of Justice had put a different construction upon the laws to be interpreted. In this case, the Sudder Board of Revenue and the Sudder Court thought one way; the Lieutenant-Governor, the Legal Remembrancer, and the Honorable Mover of this Bill thought another. The opinion of these three gentlemen was against the opinion of the Sudder Court; but that was no sufficient reason for asking the Legislative Council to declare that the opinion of the former was the correct one. Which was the constituted tribunal for determining the meaning of Acts? He had no hesitation in saying that the Sudder Court was the proper tribunal for determining the meaning of the Regulation in question, and he did not think that it was the part of the Legislative Council to declare in effect that the construction put by a Court of Justice upon a particular law was erroneous. He thought that the decisions of the Sudder Court were entitled to as much respect as the decisions of the Supreme Court; and he did not believe that, if the Supreme Court had put a construction upon an Act of Parliament or of the local Legislature from which particular Members of this Council might dissent, that any Member of the Council, except under some very extraordinary circumstance, would propose to declare that the meaning of the Act was different from that which the Court had held it to be.

It might be said that the declaratory parts of the Bill might be struck out, and the Bill be left so as only to enact what the law should be in future. If the law required amendment, he was prepared to amend it; but speaking with great deference, he did not see that any inconvenience could result from the law as it stood; on the contrary, he thought that, if the law were altered as proposed, not only might the Government be deprived of a security for its revenue which it now had in the case of estates abutting upon rivers, but very great injustice might be done to private individuals who were not before the Council. The Bill provided that—

"If it be so agreed on between the Revenue authorities and the proprietors, the land gained by alluvion may be united with the estate which it adjoins; and in such case the Revenue assessed upon the alluvial land shall be added to the jumma of the original estate, and a new engagement shall be executed for the payment of the aggregate amount."

That was the case at present. If the zemindar agreed, the alluvion might be assessed as part of the parent estate, and there was no hardship upon him, because he was a consenting party; and there was no injury to the putnee talookdar or the holder of any other under-tenure, because he would remain in possession of both the parent estate and the increment. But the new part of the proposed law was contained in the following words:—

"In cases in which such union is not agreed on, the alluvial land shall be assessed and

settled as a separate estate with a separate jumma."

He did not see any sufficient reason for saying that, where the Zemindar did not agree to the union of the increment with the parent estate, the increment should be assessed and settled as a separate estate without the consent of Government or of the holders of under-tenures. At present, if the proprietor of the estate did not consent to the union, the increment was let out on a lease under Regulation VII. 1822, a malikana allowance being reserved to him; but it remained part of the original estate, and could not be sold separately for arrears of revenue—so that the original estate, the value of which might depend on its having a frontage on the river, could never be cut off from that frontage. This certainly seemed to him a just and sound principle.

But the proposed Bill having given the Zemindar a right to have the increment assessed as a separate estate with a separate jumma, proceeded to declare that thenceforward it "shall be regarded and treated as in all respects separate from and independent of the original estate."

If the revenue so assessed should fall into arrear, the alluvion would be sold as a separate estate, and would be taken by the purchaser as such. Then, what became of the river frontage of the putnee talookdar? He thought, it would be doubtful whether the putnee talookdar, even if he deposited the amount of arrear due to prevent the sale of the alluvion, would be entitled to recover it from the Zemindar, because the Bill declared that the alluvion should in all respects be treated and regarded as separate from and independent of the original estate. Section IX of the Sale Law of 1841 said, with respect to deposits made by any person not a proprietor of the estate in arrear,—

"if the party depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made *in order to protect an interest of the said party* which would have been endangered or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit, with interest, from the proprietors of the said estate."

At present the interest of the talookdar depended upon its being an increment to the estate, whereas the Bill declared that it was to be regarded in all respects as separate from and independent of it. By the declaration of this Bill, therefore, that which, by the Common Law, by the Civil Law, by the decisions of the Sudder Court, was a part of the original estate, and an increment to it, might be severed for ever from the original estate and treated as in all respects separate from and independent of it. The Honorable Mover of the Bill gave no sufficient reason in his Statement of objects and reasons to shew that such an alteration of the law was necessary. The Board of Revenue, in their letter to the Government of Bengal, expressed their opinion that, whether regard be had to the law or to expediency, there was no sufficient reason for deviating from the instructions laid down in the Circular Orders of 1833 and 1838, by which they proposed that in future the Revenue authorities should be guided in the assessment and settlement of churs.

They said—

"Whether, therefore, regard be had to the law or to expediency, the Board are of opinion that there is no sufficient reason for deviating from the instructions regarding the settlement of alluvial increments laid down in the Circular Orders of 1833 and 1838, by which in future they propose that the Revenue authorities be guided in the assessment and settlement of churs."

The Circulars of 1833 and 1838 were in accordance with the principle laid down by the Sudder Court.

The Board of Revenue, therefore, did not see any necessity for the proposed change in the law, and said expressly that they did not require it. Then, why should it be made? Was there any sufficient reason given for it? It was true he had the opinion of the Legal Remembrancer? Was this Council to act on that opinion as over-ruling the Judgment of the Sudder Court upon a point of law, and the opinion of the Board of Revenue upon a point of expediency in a matter of Revenue? It appeared to him that the opinion was not correct; and he, for his own part, was not prepared to act upon it. He thought that, in making the change, the Council might be doing injustice to the interests of persons not before them, and would not be treating with proper

respect the opinion of the learned Judges of the Sudder Court who had decided the question upon a different principle,—a principle which had been declared in former decisions and acted upon up to the year 1841. For these reasons he should feel it to be his duty to vote against the second reading of the Bill.

MR. CURRIE said, he rose with great deference to endeavor to answer what had been advanced against the Bill by the Honorable and earned Member. The Honorable and learned Member objected to the Bill—first, because it was a declaratory Act; and secondly, because it was unjust. He had stated some general objections to declaratory legislation, which he (Mr. Currie) did not pretend to contest; but still, it was the fact that declaratory Acts were very frequently passed; and when the decisions of judicial Courts rendered it necessary, in the opinion of the Legislature, to change the practice which they laid down, the Legislature might make the change, either by altering the existing law, or, if they thought the construction of the Courts not to be in accordance with the proper interpretation of the law, by declaring what its meaning really was. It appeared to him that the Legislature which passed an Act was, in the last resort, the proper authority for determining its meaning. He thought that he could not well have framed this Bill except as a declaratory enactment. Still, it was not, perhaps, absolutely necessary that it should be declaratory; and if the Bill were allowed to be read a second time, and the Select Committee to whom it might be referred should be of opinion that it might be altered so as to attain the ends desired in another form, he should have no objection to such alteration being made.

But the Honorable and learned Member had further said that he considered the Bill opposed to the right interpretation of the law. From that view he must entirely dissent.

(MR. CURRIE here read Section I of the Bill.)

The object and scope of a Regulation were to be found in its Title and Preamble. The Title of Regulation XI. 1825 described it as—

"A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion, or by dereliction of a river, or the sea."

The Preamble declared that—

"The lands gained from the rivers or sea by the means above mentioned," (that was by alluvion or dereliction) "are a frequent source of contention and affray; and, although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the Courts of Justice have sometimes found it difficult to determine the rights of litigant parties claiming Churs or other lands gained in the manner above described."

Therefore—

"the Governor General in Council has deemed it proper to enact the following rules for the general information of individuals, as well as for the guidance of the Courts of Judicature."

The object of the Regulation, therefore, was to prevent a recurrence of violent affrays in consequence of opposing claimants taking possession of new alluvial formations, and to provide fixed rules by which all questions relating to the proprietary right in the formations might be determined. In order to the determination of these questions, the Regulation declared that land "gained by gradual accession, whether from the recess of a river or of the sea," "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 Zemindar or other superior landholder, or as a subordinate tenure by any description of undertenant whatever;" and that the right of property in it should correspond precisely with the right of property possessed in the estate to which it had accreted. Surely, the object of such an enactment was to declare who was the rightful proprietor at the time the alluvion formed, or at the time it became valuable. The Regulation did not declare that the new land should be for all future time inseparable from the estate which it adjoined. The law of the Permanent Settlement gave the proprietor of an estate free liberty to dispose of any part of it; and the purchaser, by application to the Collector, might obtain an apportionment of the jumma, and hold his purchase as a separate estate. Why might not the same

thing be done with the alluvial land, supposing it to be the effect of Regulation XI. 1825 to make it a part of the old estate? Why might not the proprietor dispose of his proprietary rights; and if the Collector had assessed the new land with a separate jumma, why was not the purchaser to hold it as a separate estate? The Honorable and learned Member had said that the value of an estate might depend on its river frontage; and that, if an alluvial formation between the estate and the river were settled separately, the value of the estate would be depreciated. But the alluvion could not be settled separately, except with the concurrence of the proprietor himself. It could not be transferred to another person, except by some act of his; and in such case, even though the separation or transfer depreciated the value of the old estate, there appeared to be no reason why any one else should interfere. In support of the view which he took of this point, the Honorable and learned Member had put the case of a putneedar holding a putnee talook in a settled estate, to which some new land had accreted. The Honorable and learned Member had said that the putneedar would be endamaged, if the alluvial land between his talook and the river were settled as a separate estate. But he must remember that the Bill did not in any way interfere with the provisions of Regulation XI. 1825; and Clause 1 Section IV of that Regulation provided that the new land "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 Zemindar or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever."

Of course, then, if the land to which the alluvion accreted was held in putnee, the putneedar would have a right to extend his putnee tenure over the accretion also; and, if the accretion were settled as a separate estate, he would be a putneedar in the new estate precisely in the same manner as he was in the old. That was unquestionably the case. Under Regulation VII. 1822, it was the duty of the Collector, in making a settlement, to take cognizance of all the claims of under-tenants; and in taking an engagement from the proprietor for the payment of the Government revenue, he would provide at the same time for the legal rights of the Putneedar.

So much as to the right of property in the alluvion being inseparable from the right of property in the estate which it adjoined.

Then Section I of the Bill provided that nothing contained in Section IV of Regulation XI. 1825 should be understood as requiring that, in the assessment of revenue, the alluvion should be treated as inseparable from the old estate. Regulation XI. 1825 contained no provision whatever as to the mode of assessing the new land. It left that to other laws. It said expressly that the right to the land "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." Now Regulation II. 1819, Clause 2, Section III, said—

"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 Sunderbuns, 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 introcession of the sea, an alteration in the course of rivers, or the gradual accession of soil on their banks."

The principles referred to were that

"all lands which, at the period of the decennial settlement, were not included within the limits of any pergunnah, mouza, or other divisions of estates 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 XIX 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 mehals.*"

So that the letter of the law certainly authorized the settlement of alluvial lands as separate estates—that was to say, in the same mode as all other unsettled mehals.

It appeared to him, therefore, that the declaration in Section I of the Bill, both as to the right of property not

being inseparable, and as to the mode of settlement, was entirely in consonance with the law.

The Honorable and learned Member had said that the late judgment of the Sudder Court followed the decisions of the Courts from time immemorial. He (Mr. Currie) was not aware of any decisions on the subject other than those quoted by the Board of Revenue, and they only went to declare, in accordance with the rules subsequently laid down in Regulation XI. 1825, that the right of property in alluvial land was vested in the proprietor of the estate to which the land was annexed. Upon this point there was no question: the Bill did not in any way interfere with those rules. He did not wish to discuss the late judgment of the Sudder Court, nor to say more respecting it than was absolutely necessary for the elucidation of the question. That judgment seemed to hold that an alluvion, if the Zemindar would not agree to consolidate it with the original estate to which it had accrued, might be let out in farm, reserving to the Zemindar a malikana allowance; and that, when it was so let out, it necessarily followed the fortunes of the original estate. That was the point on which the judgment appeared to him to be open to question.

With respect to the Revenue Laws, it was precisely the same thing whether an alluvion were separately assessed and let out in farm, or whether it were separately settled with the proprietor; in either case, it became a separate estate. The general principle was that every estate was responsible for the revenue assessed upon it. If an estate fell into arrear, it could be sold; but no second estate belonging to the same proprietor could be sold simultaneously for that arrear. Yet, that was what the judgment of the Sudder Court would seem to affirm; for it laid down that the sale of the old estate for arrears of revenue carried with it the proprietary right in the alluvial land, although that land was entered in the Collector's rent-roll as a separate estate.

The judgment of the Sudder Court seemed to imply that malikana was paid to the proprietors of the alluvial land, because they were the proprietors of the old estate. But that was not the case. Malikana was paid to them because they were the proprietors of the *Chur*, and not because they were the proprietors of the old estate. The right to the *Chur* was indeed derived from the right to the parent estate; but that did not make the one inseparable from the other.

Then, with respect to the point of injustice. The Honorable and learned Member had referred to the Circular Order issued in 1838, and the opinion given by the present Board of Revenue respecting it. It so happened that he himself was Secretary to the Board of Revenue in 1838, and that he had himself written the Circular Order in question. He, therefore, was well acquainted with all the circumstances of the case. The Honorable and learned Member had omitted to notice that there was a later Circular Order issued on this subject—a Circular Order of 1841, which has also been written by him (Mr. Currie). It had been found that the Order of 1838 was not only contrary to what had been the general practice of the Revenue Officers, but that it involved great practical difficulties; and, therefore, by the Order of 1841, the rule enjoined in it was discontinued, and the Revenue Authorities were instructed, whenever the zemindar objected to consolidate the alluvial land with his settled estate, to offer him a separate settlement of the alluvial land. That practice had continued, without intermission, up to the present time. Consequently, this Bill, in prescribing the course to be followed in the settlement of alluvial lands, was merely declaratory of what was the actual practice at the present time. The whole of the correspondence in the annexure arose out of a proposal by the Board of Revenue to the Lieutenant-Governor to rescind the Circular Order of 1841, and to discontinue the established practice. The Lieutenant-Governor, for the reasons given in Mr. Young's letter, had declined to give his assent to that proposal.

He thought he had already shewn that in the case of a Putneedar, to which the Honorable and learned Member had especially alluded, injustice could not occur, since the right of the Putneedar extended to the *chur* as well as to the parent estate. And with respect to proprietors, there could not be a doubt that to change the present practice, would be to subject them to very great hardship;

because they, whom the law declared to be the owners of the land, would, in a vast majority of cases, be shut out from engaging for it; for it would very rarely happen that a proprietor would be willing to give his settled estate as a security for the revenue assessed upon a formation which might be washed away the next year. And there were other reasons, in the peculiar character of alluvial formations in Bengal, why they should be treated as separate estates. At the mouth of the Megna, for instance, enormous *churs* frequently formed in the course of a few years. *Churs* might attach themselves to the mainland ten or twenty times the size of the adjoining estates, and only a small proportion of the whole extent might be under cultivation at the time of the assessment. This point was noticed in Mr. Young's letter, in paragraph 9, which said—

"As regards expediency, the Lieutenant-Governor cannot but think that the Circular Order of 1841 must in practice operate with more fairness and advantage to all parties than that of 1838 would do—to say nothing of the difficulties adverted to in the Sudder Board's letter of the 16th June 1841, as arising out of 'the theory of holding the original estate and the increments to be a single property.'"

(He would remark by the way that the difficulties here alluded to had actually occurred in the case decided by the Sudder Court. The sale of an old estate for an arrear which had accrued upon it had been held to convey the proprietary right, not only in that estate which was sold, but also in the new land which was not sold. If the Revenue Authorities had intended to sell the alluvion with the parent estate, they ought to have stated that intention in their proceedings. But there was no mention of it whatever in them.)

Mr. Young's letter went on to say—

"It is evident that to force a permanent settlement, on either the Government or the Zemindar, of lands of which the capabilities are altogether unknown, is always liable to operate injuriously to either one or the other. As regards the Government on the one hand, take the case, which will frequently happen, of an accretion to an estate of several miles of new *churs*, of which, at the time of assessment, only a few biggahs are under cultivation. How is it possible that a fair permanent settlement should be made in such a case? and yet the Circular of 1838 would require that the jumma of the accretion shall be added to, and included in, the Zemindar's original *tahood*. Again, take the numerous cases, especially in some of the Behar Districts, in which land is formed, washed away, and re-formed almost periodically—is it to be expected that a Zemindar would choose to peril his estate (or subject himself to the risk of heavy loss) by doubling up with it so fleeting a possession? and, in default of his doing what he cannot be expected to do, is it just to refuse him the settlement when the law gives him the proprietary right?"

It appeared to him, therefore, that the objection to the Bill on the score of injustice, had no valid foundation.

In conclusion, he would only repeat with regard to the objection that the Bill was a declaratory law, that he would willingly consent to its being altered in this respect, if the Select Committee to whom it might be referred should consider it expedient to do so. But he trusted that the Council would not refuse to allow the Bill to be read a second time.

MR. GRANT said, he should move as an amendment that this debate be adjourned until the next Meeting of the Council. Very important questions had been raised in it. He did not propose to enter into them to-day. If his Motion were carried, he might perhaps address the Council upon them next Saturday; but he wished now only to state his reasons for moving an adjournment of the debate.

As he had said, the questions raised were very important. The first was the general question of the propriety of this Council passing declaratory Acts. He did not understand the Honorable and learned Member opposite (Mr. Peacock) to have gone the length of contending that the Council had not the power of passing purely declaratory Acts; but the Honorable and learned Member had said—and what he had said was worthy of all consideration—that there were grave objections to the Council passing declaratory Acts, except upon very rare and extraordinary occasions. For his own part, there was a slight doubt in his mind, and he believed that such a doubt had occurred to others much more conversant with such questions than himself, as to the power of the Council to pass a purely declaratory Act. The Council could not proceed in this matter on the analogy of the British Parliament, which had unquestionably the

power to pass declaratory Acts, and exercised that power; but the British Parliament was, not only a Legislature, but a Legislature from its own inherent powers, and included within itself the highest Court of Justice in the Kingdom. This Council was not a Legislature from its own inherent powers, and was in no sense concerned with the administration of Justice. The question, whether it had authority to pass declaratory Acts, had never been raised before in this Council. It was one of very great importance, and ought to be fully discussed, as well as the question which had been raised by the Honorable and learned Member, of the propriety of the Council passing a declaratory Act, except upon very extraordinary occasions. To-day, unfortunately, the Council was deprived of two-thirds of its legal Members. Both the learned Judges of the Supreme Court who sat in it, were unavoidably absent. He thought, therefore, that the Council would take a proper course in postponing the further consideration of this question, in order that it might give a deliberate opinion upon it when it was a little stronger in its legal Members.

The second question raised—the question of Revenue law—was in itself likewise a very important one. He would say at once that, having read the papers annexed to the Bill, and given some slight consideration to the subject, his own opinion at present agreed with that held by the Lieutenant-Governor of Bengal, his Legal Remembrancer, and the Honorable Mover of the Bill. But, at the same time, the Honorable and learned Member opposite (Mr. Peacock) had brought forward arguments on the other side which, like all arguments advanced by him on such questions, were worthy of all candid, full, and deliberate consideration; and he was anxious to give them such consideration. He should be glad, for this reason also, if the debate were adjourned. The Honorable and learned Member opposite had said that, even if the Bill were amended so as not to be declaratory, it would be open to the objection that it would injuriously affect private interests, and had mentioned as an example the case of putnee talookdars. He (Mr. Grant) did not himself, as he then understood the point, see that it would do so. It rather appeared to him that it would leave putnee talookdars, under the supposed circumstances, in precisely the same position in which, in practice, they now were. They would be the holders of one putnee talook, part of which is in one assessed estate, and part in another. This is not an unfavorable position to be in. On the other hand, if the Council should reject this Bill, and give its sanction—which, by the rejection, it virtually would do—to the decision at which certain able Judges of the Sudder Court had arrived, it would injuriously affect the interests of Zemindars. For Zemindars can now, when alluvion grows upon their lands, engage for the revenue of the new soil, paying separately in respect of it a new jumma. If the jumma of the new soil were added to, and became a part of the jumma of the parent estate, each parcel of land, besides being responsible for its own revenue, would necessarily be hypothecated for the revenue assessed upon the other. This, as he understood, was not, in practice, the position of the Zemindars now. But if the Council upheld the views of the Honorable and learned Member, this would become their position.

Without entering into the merits of the questions raised, he would repeat that it did appear to him that both the questions were of such importance that the Council would not be the worse for being strengthened in its legal elements, and for a week's consideration, before it decided upon them.

MR. GRANT'S amendment was put, and carried.

AUTHENTICATION OF GOVERNMENT STAMPS.

MR. PEACOCK moved the second reading of the Bill "to provide for the authentication of Government Stamped Paper."

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

MINORS (FORT ST. GEORGE.)

MR. ELIOTT moved that the Bill "to extend the provisions of Act XXI of 1855 in the Presidency of Fort St. George to Minors not subject to the superintendence of the Court of Wards" be now read a third time and passed.

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

PORT-DUES (ADEN).

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "for the levy of Port-dues in the Port of Aden;" 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.

Sections I to V were pased as they stood.

Section VI was passed after an amendment.

Section VII and the Preamble and Title were severally passed as they stood.

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

MINORS (FORT ST. GEORGE).

MR. ELIOTT moved that Mr. Grant be requested to take the Bill "to extend the provisions of Act XXI of 1855 in the Presidency of Fort St. George to Minors not subject to the superintendence of the Court of Wards" to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

AUTHENTICATION OF GOVERNMENT STAMPS.

MR. PEACOCK moved that the Standing Orders be suspended to enable him to proceed with the Bill "to provide for the authentication of Government Stamped Paper."

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

MR. PEACOCK moved that the Bill be referred to a Select Committee consisting of Mr. Currie, Mr. Harington, and the Mover, with an instruction to present their Report at the end of a fortnight.

Agreed to.

NOTICE OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 3rd of April next, move the third reading of the Bill "for the levy of Port-dues in the Port of Aden."

CIRCULAR ORDERS, &c. (PUNJAB).

MR. HARINGTON moved that an application be made to the Supreme Government, requesting that copies of all Circular Orders and Constructions issued in the Punjab, either by the Chief Commissioner or the Judicial Commissioner, relating to the administration of Civil Justice in that Province, be laid before the Council.

Agreed to.

The Council adjourned.

Saturday, April 3, 1858.

PRESENT:

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

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

REGULATION OF PORTS (FORT ST. GEORGE).

MR. ELIOTT presented the Report of the Select Committee on the Bill "for the regulation of certain Ports within the Presidency of Fort St. George."

LIGHT-DUES (GULF OF CAMBAY).

MR. LEGEYT presented the Report of the Select Committee on the Bill "to repeal the laws relating to the levy of Light-dues at Ports within the limits of the Gulf of Cambay."

SETTLEMENT OF ALLUVIAL LANDS (BENGAL).

On the Order of the Day being read for the adjourned debate on the Bill to "explain Regulation XI. 1825 of the Bengal Code, and to prescribe rules for the settlement of land gained by alluvion"—

THE PRESIDENT said, he had to remind the Council that, according to the Standing Orders, Honorable Members could speak only once to the question; and that therefore those who had already spoken could not address the Council again, except in explanation.

MR. GRANT said, as the Council had been so good as to adjourn the