

**LEGISLATIVE COUNCIL
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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858

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1858.

give effect to an agreement between the Government of Bombay and Her Majesty's Justices of the Peace for the Town and Island of Bombay and Colaba in relation to certain Water-works in the Islands of Salsette and Bombay."

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT also presented the Report of the Select Committee on the Bill "for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in the Town of Bombay."

PORT-DUES (GULF OF CAMBAY).

MR. LEGEYT also presented the Report of the Select Committee on the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay."

PORT-DUES (FORT ST. GEORGE).

MR. ELIOTT moved that the Bill "for the levy of Port-dues and fees at Ports within the Presidency of Fort St. George" be now read a third time and passed.

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

MR. ELIOTT moved that the above Bill be sent to the President in Council in order that it may be submitted to the Right Honorable the Governor-General for his assent.

Agreed to.

NOTICE OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 27th instant, move the first reading of a Bill to repeal Regulation VI. 1831 of the Bombay Code and Act I of 1836.

LUNACY (SUPREME COURTS).

MR. CURRIE moved that a communication received by him, from the Government of Bengal be laid upon the table and referred to the Select Committee on the Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature."

Agreed to.

The Council adjourned.

Saturday, February 27, 1858.

PRESENT:

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

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

PATENTS FOR INVENTIONS.

THE CLERK reported that he had received from the Under-Secretary to the Government of India in the Home Department, a copy of a Despatch from the Honorable the Court of Directors with respect to the Patents Act, in which the Court desire that no time be lost in laying before the Council the Draft of an Act for the protection of Inventions, and that, when the same is approved of by the Council, it be forwarded to the Court, in order that the necessary steps may be taken for obtaining thereto the sanction of the Crown.

BOMBAY LIGHT-DUES.

MR. LEGEYT moved the first reading of a Bill "to repeal the Laws relating to the levy of Light-Dues at Ports within the limits of the Gulf of Cambay." These were enactments for the levy of Light-house dues by which Light-houses were maintained in and near the Gulf of Cambay. Provision for the future levy of these dues had been made in the Bill now before the Council for the levy of Port-dues in the Gulf of Cambay; and if that Bill passed, of which there was every probability, the enactments he now wished to repeal, would be useless. The Honorable Member concluded by reading the Preamble to the Bill and the enacting Clause.

The Bill was read a first time.

MARINE POLICE (MADRAS).

MR. ELIOTT moved the first reading of a Bill "for the maintenance of a Police Force for the Port of Madras." The Bill, he said, was intended to provide for the maintenance of an additional Police Force at Madras for the purpose of protecting goods in transit between the shore and the shipping. For many

years, the depredations committed in the boats employed in the conveyance of cargo in the Madras Roads had been a subject of grave complaint. In 1854, the Grand Jury made a presentment on the subject, and the Chamber of Commerce addressed to the Government a letter complaining that an organized system of robbery had grown up among the boatmen, which the existing Police Force was insufficient to repress. The Chief Magistrate, having been referred to by Government, admitted the evil; and, acknowledging it to be beyond his control with the means at his disposal, proposed as a remedy the establishment of a Marine Police, to be employed partly afloat and partly ashore. The Government of Madras submitted this proposal to the Government of India, with an intimation that the Merchants of the Port were ready to contribute towards the expenses of the establishment by paying the peons of the Force while engaged in guarding goods in course of importation and exportation. A good deal of correspondence ensued between the local Government and the Government of India, and the latter finally authorized the Government of Madras to apply to the Legislative Council for an Act to provide for the maintenance of the required Force by the imposition of a tax to be levied in addition to the hire on every boat employed in the conveyance of goods to and from the shipping in the Madras Roads, provided the Government were satisfied that the sum of one thousand Rupees a month could be raised thereby.

The Government of Madras, after consultation with the Madras Chamber of Commerce, being satisfied "that the estimate given by that body at three annas the trip, is within the mark, and will suffice to meet all ordinary demands for the purposes of a Marine Police," determined to propose that the tax should be fixed at that rate, and directed the Government Law Officers to prepare the Draft of an Act to sanction the imposition of such a tax.

The Draft of an Act for this purpose, prepared and finally settled by the Advocate General at Madras, having been sent to him by the Government of Madras, he had framed from it the Bill which he now presented.

The Madras Law Officers, being of

opinion that the present Police Act for Madras did not give either the Commissioner of Police or the Police Force established under its provisions any jurisdiction beyond low water-mark, their Draft was framed so as to remedy this supposed omission, and accordingly contained provisions to make it lawful for the Commissioner and the Police Force to exercise within the limits of the Port of Madras, all such powers as were vested in them by the Police Act within the limits of the Town. It appearing to him, however, that the Law Officers were mistaken on this point, and that by the existing Law the Commissioner of Police and the Police Force were virtually vested with the powers necessary to enable them to act within the limits of the Port as well as within the limits of the Town, the Magistrate, of Police being expressly vested with jurisdiction over offences committed within the limits of the Port, and the Commissioner and the Police being charged by the Act with the duty of bringing before the Magistrates all offenders subject to the jurisdiction, and the power given to the Commissioner generally for the prevention of crimes and the detection and apprehension of offenders necessarily extending as far as the jurisdiction to which the offenders were amenable, he had omitted those provisions. The Bill, therefore, as altered by him, contained only the provisions which appeared to be necessary to legalize the proposed tax intended to raise a Fund for the maintenance of the additional Force to be employed under the Commissioner for the purposes of the Act, assuming that such additional Force would be merely an extension of the Police Force constituted under Act XIII of 1856, and to direct how and under what check the tax was to be levied, and accounted for; to indicate the manner in which the Force was to be employed, and to prescribe penalties for hindering Officers in the performance of their duties; also to prescribe penalties for breach of the rules regarding the levy of the tax, and the returns to be made by the persons receiving it.

The tax, proposed was three annas for every trip made by a boat carrying goods, to be paid by the person engaging the boat, in addition to the hire, to the owner of the boat, who was to ac-

count for his receipts to the Commissioner of Police; and every boat so employed was to carry in it an Officer of the Police.

It was stated that the Draft Act having been fully discussed at a Meeting of the Chamber of Commerce, at which the Honorable Company's Solicitor had attended, its several provisions had met with the entire approval of the Meeting.

The last Section of the Bill provided that the Act should take effect from the day in which it should be notified in the Official Gazette that the Police Force had been increased for the purposes of the Act.

The Bill was read a first time.

CONCEALMENT OF GOVERNMENT PROPERTY.

MR. PEACOCK moved that the Bill "for the punishment of persons who knowingly receive or conceal arms or other property belonging to the East India Company" be now read a second time.

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

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA, AND HOWRAH).

The Order of the Day being read for the third reading of the Bill "for raising Funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah"—

MR. CURRIE said, before moving the third reading, he wished to recommend the Bill, for the purpose of making an addition in one of the Sections. Since the Bill had passed through Committee—indeed, within the last week—he had received a communication from the Lieutenant-Governor of Bengal, with a letter from the Magistrate of the Twenty-four Pergunnahs, in reference to it. Mr. Fergusson said:—

"There can be no doubt that the proceeds of the carriage-tax will fall far short of the amount required for the annual repair of the suburban roads, and I regret that a portion of the difference is to be levied from the inhabitants in the form of a house-tax under the provisions of the Chowkeedary Act XX of 1856."

Mr. Fergusson went on to remark on the unpopularity of that tax, and rather deprecated any addition to it, at least at present, the tax having been very recently introduced. He said:—

Mr. Elliott

"It is probably too late to regret the form in which this tax is to be raised. In my letter to the Commissioner dated the 4th of April 1856, I suggested tolls as the fairest mode of raising funds for repairing roads. I am still of opinion that by means of tolls a larger sum would be raised, in a fairer way, and with less dissatisfaction, than by the proposed Bill."

Upon that, the Lieutenant-Governor remarked:—

"Mr. Fergusson appears to be mistaken in speaking of the levy of tolls as barred by the proposed Bill. Tolls may still be levied under existing Acts of the Legislature, and the words 'proceeds of tolls' might conveniently be added in Section XXI of the bill, as a source of income to be taken into account before recourse is had to an increase of the assessment under Act XX of 1856."

Of course, in the preparation of this Bill, the question of raising funds by means of tolls had been taken into consideration; but there had appeared to be a difficulty in the establishment of toll-bars in the suburbs,—about Bhowanipore and Bullygunge especially—and the Government of India had expressed a doubt as to the expediency of levying tolls within the limits of the suburbs. He himself was still of opinion that there were considerable difficulties in the way of levying tolls on these roads; but he agreed with the Lieutenant-Governor in thinking that the question of the expediency of raising some part of the funds necessary for the repair of the roads by the levy of tolls, might be considered an open question. It was doubtful, he thought, whether, under the Law by virtue of which tolls were at present levied, it would be legal, if this Bill should pass, to levy tolls upon the roads to which the Bill referred. For Act VIII of 1851 authorized the levy of tolls only on roads which were made and repaired at the expense of Government; and by Section I of this Bill, the roads to which the Bill related were to be repaired from funds contributed by the inhabitants of the suburbs. Still, it was quite possible that it might be thought advisable to levy tolls at points in the immediate neighbourhood of these roads—as on the bridges, which were repaired at the expense of Government, or on the public roads leading into the suburbs—in which case it might be considered right that some portion of the proceeds of the tolls should be appropriated to the repairs of the adjacent suburban roads. To provide for

such a contingency, he proposed to insert words in Section XXI. which would enable the Lieutenant-Governor to assign any portion, which he might think proper, of tolls levied under Act VIII of 1851 to the repair of these roads.

With these observations, he begged to move the recommittal of the Bill.

Agreed to.

MR. CURRIE moved that the words and figures "out of the proceeds of any tolls levied under Act VIII of 1851 or" be inserted after the word "purpose" in the 24th line of Section XXI.

THE CHIEF JUSTICE said, he presumed that this Bill did not touch Act VIII of 1851, and that it left the Government the power of establishing tolls in certain localities. If they exercised that power so as to raise a double tax—that was to say, if they raised a tax from owners of horses and carriages on the ground that it was they who wore out the roads, and a further tax on the same class of persons by establishing toll-bars on roads where none existed now—they would be rather smiting the public on both cheeks. If the funds for the repairs of suburban roads were to be raised by means of tolls, one did not see why horses and carriages should be taxed more than any other property for the purpose.

MR. CURRIE said, this Bill gave Government no power which it did not now possess under Act VIII of 1851. On the contrary, it rather limited the powers which that Act conferred; because, as he had endeavored to shew, by the Act, it was only roads that were constructed and maintained at the expense of the Government that could be repaired from the proceeds of tolls, and the Bill took the roads to which it referred out of that category by declaring that they should be repaired at the expense of the inhabitants. The principle which he contended for was simply this, that, if toll-bars should be established under the powers given by the Act, in places leading to the suburbs, it was no more than just that some portion of the proceeds should be applied to the repair of the suburban roads.

MR. PEACOCK said, Section VIII of Act VIII of 1857 declared that "the tolls levied under the Act shall be deemed public revenue; but the net proceeds thereof shall be applied wholly to the

construction, repair, and maintenance of roads and bridges within the Presidency in which they are levied." He apprehended that, under this provision, the Lieutenant-Governor had already the power of applying any portion of the proceeds of tolls levied under the Act to suburban roads; and he did not, therefore, see any greater necessity for inserting the amendment proposed in this Bill than in the Bill for Calcutta. If tolls were established on bridges, part of the proceeds ought to be applied to the repairs of roads within the Calcutta district; for as, on the one hand, persons would pass over the bridges for the purpose of using the suburban roads, so, on the other, would persons pass over the bridges for the purpose of using the Calcutta roads.

MR. CURRIE said, if, without any special provision, the Lieutenant-Governor had the power of his own authority to assign any part of the proceeds of tolls levied under Act VIII of 1851 to the repairs of suburban roads, the addition which he proposed might not be absolutely necessary, and he would not press his motion to a division.

The Honorable Member's amendment was put, and negatived.

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

MR. CURRIE moved that the Bill 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 Council resolve itself into a 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;" 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 was passed as it stood.

MR. LEGEYNT said, before Section II was put, he begged to propose the introduction of a new Section. It had occurred to him that this Bill would be, as far as the confiscation of villages went, inoperative in a great measure where villages were held under *Khalsa* tenure. Almost

all the villages in the Bombay and Madras Presidencies were *Khalsa* villages: and as to them, of course, the provision for confiscation would be a dead letter. But in these villages, there were two classes of Officers denominated *Wutundars*, who enjoyed certain rights and lands free of all rent, in consideration of performing certain village duties, the chief of which were connected with Police and Revenue. The collection of revenue was generally entrusted to them. They were called respectively *Patells*, a sort of Deputy Magistrates, and *Cool-kurnees*, or Clerks. These Officers held lands, and their tenures were of very ancient date. The offices were very much prized, and many of the Officers would rather part with their lives than with the lands they so held. These persons had considerable influence over their fellow villagers; and it was to them, assisted by the village Police, that the good order and well-being of the villages were entrusted. It appeared to him that it would be very proper to make these Officers responsible for any of the offences specified in Section I, and to provide that, if they should fail to shew that they had used all the means in their power to prevent their commission, their hereditary offices and rights should be forfeited. The risk of losing what was prized so highly, would be a strong additional incentive to these men to exert themselves and perform duties in times of trouble and disturbance. At present, the law would confiscate the offices and rights if the holders were convicted of any offence before the Sessions Judge; but there was no provision for such confiscation unless a conviction was recorded in the Sessions Court. He therefore moved that the following be inserted in the Bill as a new Section after Section I:—

"In like manner, if any hereditary Village Officer employed in the collection of Land Revenue, or in the Police, should not prove to the satisfaction of a Magistrate that he used all the means in his power to prevent the commission of any of the offences mentioned or referred to in the preceding Section by the Inhabitants of any Village in which he holds such hereditary office, the Magistrate may declare such hereditary office to be forfeited, and may confiscate any land or rights held by him in virtue of such office."

The Section was agreed to.

Mr. LeGeyt

Sections II to IV were passed as they stood.

Mr. CURRIE said, he had to propose the insertion of a new Section after Section IV. Since the Bill had been settled in Committee, he had received a communication from the Bengal Government, which was to the following effect:—

"With reference to the Bill 'to authorize the confiscation of, or the imposition of fines on Villages or other places for offences committed by the inhabitants,' at present under report of the Select Committee, I am directed to forward to you the accompanying copy of a letter addressed to the Secretary to the Government of India in the Home Department on the 5th August last, No. 1163, and to state that the Lieutenant-Governor is of opinion that the Bill should be made applicable to individuals in the manner suggested in that communication."

The communication here mentioned referred to certain cases which it was unnecessary to specify, and proceeded to say:—

"There are not a few potential Zemindars in the Province of Behar who, though they notoriously possess power and influence, will probably omit to use them for the service of lawful authority, and will yet escape all punishment for this passive countenance of rebellion, because they will not be proved to have done anything actively towards its furtherance."

"It appears to the Lieutenant-Governor that the state of public affairs is such as would justify the enactment of a Law to meet such cases; so that persons known and proved to have possessed influence and power to control or prevent rebellion among their followers and dependents, and to have failed to use that influence and power in aid of lawful authority when duly called upon to do so, should be made liable to fine or forfeiture."

Now, there could be no doubt that the Zemindars referred to in this letter would have it in their power to render most material assistance to Government when the collection of sepoy attacks at Lucknow and other places was broken up, and the men returned to their villages. Large numbers of sepoy attacks had their homes in some of the districts of Behar, especially Shahabad; and without the active aid of the Zemindars, it would be extremely difficult to apprehend them, or to preserve the peace of those districts. It was especially with reference to that particular contingency that he thought it desirable that some such provision as that indicated by the Lieutenant-Governor should be made; and it seemed to him that it might not inappropriate-

ly be made in this Bill. He, therefore moved that the following be inserted as a new Section after Section IV :—

"If any zemindar or other proprietor of land, when duly called on by the Magistrate to render assistance in the suppression of rebellion or the arrest of rebels, mutineers, or deserters, shall refuse or neglect to use all the means in his power for rendering such assistance, the Magistrate, on proof of such refusal or neglect, may impose a fine on the person so offending, or may confiscate his estate."

MR. GRANT said, this was a very serious clause. He did not object to it; but he would put it to the Honorable Member whether it was advisable that so very important a provision should be introduced without being before the Public in time to give those whom it would affect, an opportunity of expressing their views regarding it. There were some very valuable estates in Behar, the province which had been especially alluded to; and it seemed inexpedient that they should be made liable to confiscation by an act of legislation of which the Public would have no notice.

THE CHIEF JUSTICE said, the Section proposed did not appear to be exactly within the purview of this Bill, which was to render a community answerable for the murder of Europeans and for other offences which had actually been committed by individuals who could not be identified. The words of the proposed Section included, not only every Zemindar, or person holding landed property paying revenue direct to Government, who was liable by the terms of his tenure to give notice of the resort of criminals to his estate—but also holders of subordinate tenures, upon whom, he believed, the same obligation did not now lie, and who had had no notice of the proposed change. He thought it would be rather better not to legislate on such a subject so hastily, or by this Bill.

MR. CURRIE said, with reference to the remarks which had fallen from the Honorable Member opposite (Mr. Grant), it was to be observed that the matter was one of the utmost urgency. If any provision was to be made for it at all, it must be made without delay. The contingency against which the Section he had proposed was intended to provide, was one which might occur immediately. It did seem to him that the obligation which the Section would im-

pose on zemindars was, under the circumstances of the country, a manifest and imperative duty, the neglect of which should be punished with the utmost severity. There could be no doubt of the power of zemindars to render efficient service to Government in the cases adverted to; and it was also certain that, if they remained passive, the Government would have the greatest possible difficulty in preserving the peace of the district.

He was quite aware that the introduction of the Section was open to the objection suggested by the Honorable and learned Chief Justice that the purview of the Bill was to provide for cases in which offences had been committed by bodies of persons, and the individuals could not be identified. But the Bill also provided for the punishment of owners of villages in certain cases; and he thought that the punishment of Zemindars in the case against which his proposed Section was directed might also, not inappropriately, be provided for in this Bill. The Preamble and Title of the Bill might be slightly altered hereafter, to meet the addition.

With respect to the Honorable and learned Chief Justice's objection that the Section as worded would impose liabilities upon certain classes of landed proprietors to whom no similar liability at present attached, that was a mistake; for the Law as it now stood rendered it incumbent on landed proprietors of all classes, whether superior or subordinate, to render assistance to the Government by giving notice of the resort of criminals to their estates.

The Honorable Member here read the Section of Regulation VI. 1810 to which he referred.

MR. GRANT said, he wished to explain that he took objection, not to the principle of the measure, but to the suddenness with which it was proposed to pass it. The Council would remember that the only occasion on which a veto had been put upon an Act passed by it was in a case very inferior in importance to this, when a Clause had been inserted at the very last stage of the Bill, and it was held that it ought to have been published before it was passed, in order that those whom it would affect might have had an opportunity of making their views respecting it known to the Coun-

cil. The present was a much stronger case; and it appeared to him that the Council would do wisely to bear in mind what had occurred before, and not to pass the proposed Section without having previously published it for general information.

MR. PEACOCK said, it was not his intention to carry the Bill through the third reading to-day; but it was important that its progress should not be delayed, and he therefore proposed to proceed with it on Saturday next. It might be published in the interim with the new Section proposed by the Honorable Member for Bengal; but he did not think that one week would be sufficient time if it were necessary to promulgate the proposed addition to the Bill.

With respect to the suddenness with which the provision, was proposed, he would observe that Act XVII of 1857, which imposed upon Zemindars the liability to communicate early intelligence of the resort to their estates of mutineers and deserters, had been passed by the Council without any previous publication, the Standing Orders having been suspended in regard to it. The Bill had been introduced and carried through all its stages, and had received the assent of the Governor-General, the same day; Section VI provided as follows:—

"That all Zemindars, talookdars, and other persons who, by Regulation VI of 1810 of the Bengal Code, are declared to be accountable for the early communication of intelligence respecting the resort to their estates of the classes of offenders therein specified, are hereby declared to be accountable for the early communication of intelligence of the resort to any place within the limits of their estates of any person against whom there shall be reasonable suspicion of his having been guilty of mutiny or desertion; and all the provisions of the said Regulation shall have the same force and effect as if persons guilty of mutiny and desertion had been specially included in the classes of offenders specified in that Regulation."

By that Bill, passed very hastily by this Council, this new obligation had been imposed upon Zemindars. The Section proposed by the Honorable Member for Bengal required Zemindars, when called upon by Government, to render assistance in the apprehension of mutineers and deserters. Seeing that they were already bound to give notice of the resort of mutineers and deserters to their estates, he did not think that it was going too far to

provide that if they should refuse to assist in apprehending them when called upon to do so by Government, they should be liable to certain punishment, and that that punishment should be fine, or confiscation of their estates. He should, therefore, vote in support of the Section.

THE CHIEF JUSTICE said, he was not prepared to object to the principle of the Section, but he did object to the suddenness with which it was proposed. He could not but think, with reference to the date of the letter which the Honorable Member for Bengal had read, that it was unfortunate that some such provision as this had not been suggested in time for the consideration at least of the Select Committee.

With respect to what had been said by the Honorable Member to his right (Mr. Grant), the Council could hardly fail to recollect that, since the Act upon which the Governor-General had put his veto, it had been called upon, owing to the circumstances of the country, to pass very many Acts hastily. Hasty legislation was very much to be deprecated if it could be avoided; still, he felt the force of the Honorable Member for Bengal's argument that the occasion for acting upon the proposed Section, if it occurred at all, would occur very shortly; and he therefore would not vote against the amendment.

MR. PEACOCK said, speaking from recollection, he believed that the veto referred to had been put, not from any objection to the principle of the provision inserted without previous notice to the Public, but upon the ground that the provision affected certain religious views and prejudices of the Natives. The present was a question, not of religion at all, but of property. If a new Act were to be passed imposing the obligation created by the Section before the Council, and it was to be of any benefit at all, it would be necessary to suspend the Standing Orders in respect of it.

MR. CURRIE'S new Section was then put, and agreed to.

Section V provided that the Magistrate's order for the confiscation of a village or the imposition of a fine should be subject to revision by the Commissioner.

After an amendment to meet the ad-

Air. Grant

ditional Section introduced on the motion of Mr. LeGeyt—

MR. ELIOTT moved that the following Proviso be added to the Section :—

“ Provided also that, if the order of a Magistrate for the confiscation of any rights, land, or estate be confirmed by the Commissioner, the confiscation shall not be carried into effect without the express sanction of the Government.”

MR. HARRINGTON said, he thought it would be hard to call upon Government to go into every case in which an order for confiscation might be made. At present, although the order of the Commissioner was final in law, the Government had the power, since the confiscation would be for its own benefit, to review his proceedings on a petition from the party against whom the order went, and to remit or disallow the confiscation if it thought fit to do so.

THE CHIEF JUSTICE said, he was rather surprised at the late light which had broken in upon the Honorable Member for Madras and the Honorable Member for Bengal on the question involved in this amendment. This Bill, which, as it stood, involved in certain cases the confiscation of villages, seemed to have been very maturely considered by the Select Committee; and they, for reasons which it was to be supposed were satisfactory to the minds of all the Members who had put their names to the Report—and he perceived that the Honorable Member for Madras and the Honorable Member for Bombay were of the number—had come to the conclusion that, in respect of these confiscations, the order of the Commissioner should be final. If the principle for which the Honorable Member for Madras now contended was a good one, he could not see why it should not be applied to an order for the confiscation of a village just as much as to an order for the sale of a Zemindary under the Clause proposed by the Honorable Member for Bengal, or the forfeiture of an hereditary right under the clause proposed by the Honorable Member for Bombay. The proprietary right in a village which it was proposed to confiscate seemed very much in the nature of a Zemindary right; that particular village might be the whole property of which the owner was possessed; and he

(the Chief Justice) could not see anything in the argument advanced by the Honorable Member for Madras that the Council ought to be more careful of the larger, than it was of the smaller right. As far as the offence was concerned which was to entail the confiscation of a Zemindary, he thought that the offence of the zemindar who refused, when called upon, to give the Government all the assistance that was in his power, was more direct and personal than the offence which was to entail the confiscation of a village. The Act, as it stood, was in some measure retrospective. It was to take effect in those cases in which Europeans had heretofore been murdered; and it cast upon the proprietor of the village the burden of proving that he had done all in his power to prevent that atrocity; that he had been guilty of no negligence in the matter. That was in a manner to call upon him to prove a negative; and his laches, or whatever it might be that would entail the confiscation of his village, might be of a much more doubtful character, and the accusation against him one which it would be far more difficult to meet, than the offence and accusation with respect to which the Sections introduced by the Honorable Member for Bengal was to operate—namely, a refusal to do a specific thing which the law called upon the party to do.

Then, again, he could not distinguish between the case of the proprietor of a village and the inhabitant of a village holding an hereditary right, which latter was the class of persons contemplated by the Section proposed by the Honorable Member for Bombay. These were persons who were inhabitants of villages in which the crime had been committed, and who had therefore incurred with the ordinary inhabitants a liability to assessment for a fine, and further to forfeiture of their hereditary offices. In respect of these hereditary offices, they seemed to stand very much on the same footing as proprietors of a village; and he (the Chief Justice) did not see why, if the principle was good that the order of the Commissioner should be final in one case, the order of the Commissioner should not equally be final in the other. All the rights now affected by the Bill in-

volved so much knowledge of the social condition of these villages—a knowledge to which he, probably, had less pretension than any whom he was addressing—that he did not feel competent to say whether the principle of the Honorable Member for Madras was in itself a good one or not; but it did appear to him that, if it was good in one case, it must be good throughout the Bill. He thought, however, that there was weight in what had been said by the Honorable Member for the North-Western Provinces, to the effect that in all these cases, although the orders of the Commissioner might be final in law, yet in such as the confiscation would ensure to the benefit of the Government, the Government would always have the power to remit the confiscation on the petition of the persons affected by it if upon a review of the proceedings of the Commissioner, or for any other reason, it saw fit so to do.

Mr. ELIOTT'S amendment was put and negatived, and the Section was carried as previously amended.

Section VI was passed as it stood.

Section VII authorized the Collector to sell a village for the amount of the assessment remaining unpaid.

Mr. CURRIE said, before the Collector proceeded to sell the village for the amount of assessment remaining unpaid, it would be advisable that he should obtain the sanction of the Commissioner. The Commissioner had the right of revision over all his Collector's proceedings; but in cases of sale, his previous sanction should be declared necessary. He therefore moved that the words "with the consent of the Commissioner" be inserted after the word "Magistrate" in the 10th line.

Mr. PEACOCK said, he did not see any necessity for the amendment. The Collector must refer his order for the assessment of the fine to the Commissioner. If the Commissioner confirmed the order, and the assessment remained unpaid, the sale of the village ought to follow without any further reference to him.

Mr. CURRIE said, he had proposed his amendment because the Bill provided two modes for the recovery of fines assessed under it—namely, distress and sale of the property of the parties liable for the fine, or sale of the village. The

parties primarily liable would be the inhabitants of the village on whom the fine would be assessed; and it was but a rough sort of justice, at the least, to sell the property of another person if they failed to pay the sums assessed upon them. It might be allowable, with reference to the relations existing between landed proprietors and their tenants in this country, that recourse should be had to the land in the last resort; but still, the sale of the village was a harsh measure, and it seemed to him that the order of the Collector to sell should have the previous sanction of the Commissioner.

Mr. PEACOCK said, it did not appear to him that it was necessary for the protection of the proprietor that the express sanction of the Commissioner should be obtained for the sale of the village after the confirmation by him of the assessment of a fine. The more references that the Bill would allow from one Officer to another, the greater would be the delay.

Mr. CURRIE'S amendment was put and negatived, and the Section passed after some verbal amendments.

Sections VIII, IX, and X were passed as they stood.

Mr. CURRIE said, with respect to what had been observed as to the interference of Government in cases of confiscation, it was very true that the Government had the power of remission or pardon; but where a confiscation took place, certain consequences followed upon it, and a mere remission would not have the effect of remedying them. If a village was confiscated, would the remission place it in the same position in which it had stood previously?

Mr. PEACOCK said, if a village was confiscated, all the under-tenures were destroyed. Where the confiscation was remitted, the under-tenures ought to be restored. It might be as well to insert a new Section expressing that this would be the effect of a remission of the confiscation, and he therefore proposed that the following be inserted as a new Section after Section X:—

"If the Governor-General in Council or the Executive Government shall see fit to remit any confiscation under this Act, all persons affected by such confiscation shall be restored to their rights as if no such confiscation had ever taken place."

The Section was agreed to.

Section XI was passed as it stood.

Section XII was passed after verbal amendments.

The remaining Sections, with 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, as settled in Committee of the whole Council, be referred back to the former Select Committee, with an instruction to consider the Bill and to report whether any further alterations therein are necessary.

Agreed to.

Mr. GRANT said, he would suggest that the Committee also take into consideration the propriety of making the Act apply to houses as well as villages and estates.

CORPORAL PUNISHMENT.

Mr. PEACOCK moved that the Council resolve itself into a Committee on the Bill "to authorize the infliction of Corporal Punishment in certain cases;" 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 and II were passed as they stood.

Section III declared that nothing contained in the Act should be held to render "any European" liable to corporal punishment.

Mr. GRANT moved that the words "or American" be inserted after the words "any European."

The amendment was agreed to, and the Section then passed.

Section IV defined the meaning of the word "European" as used in the Bill. It was passed after an amendment by which the word "European" was declared to include any person usually designated "a European British subject."

The remaining Sections, with 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 accordingly.

Mr. PEACOCK moved that General Low be requested to carry the Bill to the President in Council, in order that it might be forwarded to the Governor General for his assent.

Agreed to.

MUNICIPAL ASSESSMENT (BOMBAY).

Mr. LEGEYT moved that the Council resolve itself into a Committee on the Bill "for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in the Town of Bombay;" 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; and, the Council having resumed its sitting, was reported.

PORT-DUES (CAMBAY).

Mr. LEGEYT moved that the Council resolve itself into a Committee on the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay;" 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; and, the Council having resumed its sitting, was reported.

BOMBAY WATER-WORKS.

Mr. LEGEYT moved that the Report of the Select Committee on the Bill "to give effect to an agreement between the Government of Bombay and Her Majesty's Justices of the Peace for the Town and Island of Bombay and Colaba, in relation to certain Water-works in the Islands of Salsette and Bombay," be adopted.

Agreed to.

AFFIDAVITS, AFFIRMATIONS, AND SOLEMN DECLARATIONS.

Mr. PEACOCK moved that Mr. Currie be substituted for Sir Arthur

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,