

Saturday, 10 October, 1857

PROCEEDINGS  
OF THE  
LEGISLATIVE COUNCIL OF INDIA,

FROM

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CALCUTTA:  
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1857.

MR. LEGEYT said that these communications would be printed as annexures to a Bill which he was about to introduce into the Council to-day; and it was, therefore, unnecessary to make a separate motion regarding them.

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

MR. LEGEYT moved the first reading of a Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay." Altogether, there were ten Ports included in the Bill. He had placed them all in one Bill, and inserted in a Schedule the dues which he proposed should be levied at each. These dues had been fixed on a principle similar to that which had been adopted in the construction of the Schedule in the Bills relating to the Ports of Tunkaria and Broach, and provided for the estimated expenses of projected improvements. The annexed papers, which were voluminous, would be printed with the Bill. They showed the circumstances of each Port, and the improvements which were proposed therein by the Bombay Government. As these papers would be placed before the Council with the Bill, he would not take up their time with any further observations.

The Bill was read a first time.

#### MINORS (MADRAS).

MR. CURRIE 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 referred to a Select Committee consisting of the Chief Justice, Mr. LeGeyt, and the Mover.

Agreed to.

#### NOTICES OF MOTIONS.

MR. LEGEYT gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "for the levy of Port-dues and fees in the Port of Bombay."

Also for a Committee of the whole Council on the Bill "for the levy of Port-dues in the Ports of Tunkaria and Broach."

MR. CURRIE gave notice that he

would, on Saturday next, move the first reading of a Bill to amend the Law relating to the recovery of Rent in the Presidency of Fort William in Bengal. The Council adjourned.

*Saturday, October 10, 1857.*

#### PRESENT :

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

Hon. the Chief Justice,	F. W. LeGeyt, Esq.,
Hon. Major General	E. Currie, Esq.,
J. Low,	and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

#### RECOVERY OF RENTS (BENGAL).

MR. CURRIE moved the first reading of a Bill "to amend the Law relating to the recovery of Rent in the Presidency of Fort William in Bengal." The necessity, he said, for the revision and consolidation of the distraint and summary suit Laws which comprised the Law for the recovery of rents, had been long and generally acknowledged. The basis of the existing Law was to be found in the Regulations of 1793 and 1799; but, in the course of sixty years, very considerable alterations, additions, modifications, and supersessions had taken place; so that it was difficult for any person not conversant with the subject, to ascertain what the Law in force really was.

Originally, the summary cognizance of claims to arrears of rent and of complaints of illegal distraint was vested in the Civil Courts. About twenty-six years ago, it was transferred to the Collectors. But no rules for conducting the summary enquiry either before the Civil Courts or before the Collectors had ever been laid down. Sensible of the imperfect and confused state of the Law, the Board of Revenue had undertaken the revision and consolidation of the Regulations and Acts bearing on the subject; and two comprehensive drafts had been prepared, one by Mr. Ricketts, and the other by Mr. Stainforth. Neither of those drafts, however, had been adopted by the Board of Revenue. He had carefully considered both, and found them to be, for the most part, compendiums of the existing Law, the variations from it being principally in matters of detail, although the draft by Mr. Stainforth especially contained several important

modifications of the practice with respect to distraint. It was thought, however, that something more than this was requisite—that, in furnishing landholders with powers to compel the payment of rents, on which their ability to pay the Government revenue depended, sufficient regard had not been had to the protection of tenants from the abuse of those powers. The consequence of this omission had been a large amount of oppression inflicted by the more wealthy and powerful, upon the poorer classes.

Several remedies had been suggested for this evil. Amongst them, the giving of enlarged powers to Collectors for the summary adjudication of all cases of complaint in connection with demands of rent preferred by tenants and cultivators. There was a Law—Section XX Regulation VII of 1822—by which such powers might be specially conferred on particular Collectors. In the North Western Provinces, he believed they had been given, generally, to all Collectors; but in the Provinces under the Bengal Government, this had not been the case. Such power had been given to Collectors in these Provinces with respect to only one particular class of cases, and that had been given only within the last year or two. In the Code of Civil Procedure which had been framed by Messrs. Mills and Harrington, it had been recommended that Collectors generally should have the power of adjudicating all cases of the kind mentioned in Section XX Regulation VII of 1822, and that this jurisdiction should be exercised by them in accordance with the procedure proposed for the Small Cause Courts. In this general principle, he entirely concurred; and he had adopted it, accordingly, in this Bill.

It had been a question whether this jurisdiction might not more appropriately be given to Moonsiffs, especially on the ground that the Courts of the Moonsiffs had a local jurisdiction of limited extent. He thought it absolutely necessary for the efficient working of any measure of relief designed for the poorer classes that the means of redress should be brought near to their doors; and, were the only Revenue Court in a district now, as formerly, the office of the Collector at the Sudder Station, he should have thought the argument in favor of giving

the jurisdiction in question to Moonsiffs very strong indeed. But the Collectors in the Lower Provinces had, within the last few years, been very generally broken up into sub-divisions, and the constitution of new sub-divisions was still in progress; so that, in a few years, it might be hoped, the number of Deputy Collectors located in the interior would hardly be less than the number of Moonsiffs.

With the permission of the Council, he would read the remarks made by Messrs. Mills and Harrington on the subject:—

“We are of opinion that every Deputy Magistrate and Deputy Collector located in the Mofussil should be specially empowered to try summary suits. To the ryot who has been illegally ejected from his lands, or who has paid an unjust demand to avoid the sale of his property, this means of obtaining prompt redress will be an inestimable advantage; to the landlord desirous only that justice should be done between him and his ryot, it cannot prove otherwise than beneficial: and there can be no doubt that it will greatly conduce to the general good government of the district.

“It has been recommended by many Officers that the administration of the Law relating to summary suits for arrears or exaction of rent, or on account of illegal distraint and ousters from holdings, should be transferred from the Collectors to the Moonsiffs. The vicinity of the Moonsiff’s Court to the residence of the cultivator would, as already observed, be a great advantage to the latter; but we think that it is desirable for many reasons to employ the Officers of the Revenue Department in at least the primary administration of the Law.

“The Collector is obviously the most appropriate instrument for the purpose. He is best acquainted with the fiscal state of the district, with the tenures prevailing in it, and with the character of the landlords; and he is the person most deeply interested in promoting this branch of the administration of Civil Justice. Questions between the landlord and the Government respecting the collection and assessment of the Public Revenue may properly be subjected to the cognizance of the established Courts of Judicature, as the Collector may be supposed to be interested in the result; but this is not the case in disputes between the landlord and tenant.

“So far from thinking it advisable to make such a transfer, we have considered whether the cognizance of all controversies between landlord and tenant might not advantageously be left altogether to the Revenue Officers without any appeal to the Civil Court, as is done in the Punjab; but, adverting to the present organization of the Civil Service, and to the uncovenanted agency now available, it would not, we think, be possible to carry out this scheme.”

In these views, he (Mr. Currie) generally concurred. He thought that such cases as complaints of non-delivery of Pottahs, and indeed almost all cases which could arise between landlord and tenant, were best left to the primary cognizance of the Revenue Officers.

But in enlarging the jurisdiction of the Collectors for the trial of these cases, he had thought it necessary to re-enact, in a clear and distinct form, those provisions of the existing Law relative to the respective rights of landlord and tenant with which they would principally have to deal in the discharge of this duty.

The Bill, therefore, commenced with declaring that all ryots of every grade were entitled to receive Pottahs from the landholder declaring the amounts of rent payable by them, and also to have that rent adjusted according to certain fixed rules.

It also declared that all resident ryots or cultivators had a right of occupancy in the lands held or cultivated by them, so long as they paid the rents legally demandable from them.

These Sections contained nothing more than what had been the Law since the time of the Permanent Settlement; but, under that Law, the only remedy open to the ryot was by a regular suit in the Civil Court; and to refer a poor cultivator to a regular suit, against his landlord, under the present practice of the Courts, was almost tantamount to refusing him any remedy at all.

As the ryot was to have the right of demanding a Pottah, it was but just that the landholder should have the right of demanding a *Kubooleeut*, or written engagement for the payment of his rent by the tenant. By the present Law, a condition to the exercise of the powers of distraint or summary suit was that the landlord should have tendered Pottahs to his ryots; and this tender he might make by affixing a general notification in his Cutcherry intimating that the Pottahs were ready for delivery. This Law, which was intended for the protection of the Ryot, he (Mr. Currie) believed had, in practice, been altogether a dead letter. He had provided that, when the landholder tendered a Pottah to a ryot, and the ryot refused to receive it, he might sue him for a *kubooleeut*, and that the pos-

session of a *kubooleeut*, or of a decree adjudging the delivery of one, should be necessary to authorize a landlord to exercise the right of distraint.

The Bill further provided penalties for exactions in excess of rent payable, and withholding receipts for rent paid—and also for extortion of rent by imprisonment or other duress.

It also took away the power now possessed by landholders of compelling the attendance of their ryots for adjusting rents, or for any other purpose. This power had been very generally complained of as being used as a means of oppression; and it seemed to him to be inconsistent with the general principles of our administration.

Then followed rules according to which the landholder was to proceed when he wished to raise his rents, and then a provision allowing ryots to resign their lands when unable or unwilling to hold them any longer. Many Bengal Officers had urged that a provision like this was very much required. From the want of it, an unfortunate ryot might be literally bound to the soil, if it should be the interest of the landholder so to bind him.

These were the principal provisions of the first part of the Bill.

There were rules for the ejection of ryots and the cancelment of leases for arrears of rent, taken from the existing Law; but he had made them subject to the proviso that there should be no such ejection or cancelment otherwise than in execution of a decree or order under the provisions of the Act.

The Bill gave to Revenue Officers exclusively the primary cognizance of all cases of the nature he had described.

It also gave them power to reinstate tenants illegally ousted, and to render assistance to landholders to eject tenants or agents whose tenancies or agencies had determined—or to enforce any attachment or ejection expressly authorized by Law. This provided for all that was contemplated by the Ouster Bill, which had been referred to a Select Committee, but upon which no Report had been made.

He did not think it necessary to detain the Council with any detailed explanation of that part of the Bill which contained the rules of procedure. They had been taken principally from the

Small Cause Courts Bill upon which the Council had bestowed so much pains, with some slight modifications adopted for the most part from the Civil Code prepared by Her Majesty's Commissioners.

By the present Law, when a summary suit for arrears of rent was instituted, the only process against the defaulter was a warrant of arrest. There could be no doubt that the power to obtain such a warrant, had been abused for purposes of oppression. He was not prepared to say that this power should be altogether and absolutely withdrawn; but he did think that it should be restricted as much as possible; and he had, accordingly, provided in the Bill that warrants of arrest should be issued only where special necessity for such process was shewn, and where the party applying made out a good *prima facie* cause of action.

By the present Law, refusal by a landholder to give a Pottah to a tenant was punishable by a fine. It appeared to him that the Collector ought to be authorized to order a delivery of the Pottah; and that, if the landholder refused to obey the order, the Collector should himself grant a Pottah, which should have the same effect as a Pottah given by the landholder.

The Bill also provided that if, on the trial of a suit for the delivery of the Pottah, the parties did not agree as to the term for which the Pottah was to run, the Collector should have power, within certain limits, to fix such term as under the circumstances of the case he should think proper.

The provisions respecting the execution of decrees were taken partly from the Small Cause Courts Bill and partly from the Code of Civil Procedure.

He had not been able to introduce any provisions for regulating the sale of under-tenures in satisfaction of decrees for rent, because the question of the degree of protection which should be afforded to tenures of the second and lower grades had been referred to the Select Committee on the Sale Law Bill. It appeared to him better, however, that the procedure to be adopted on the sale of such tenures, whether in satisfaction of a decree for rent, or for any other demand, might be more conveniently provided by a separate enactment.

The next part of the Bill related to distraint. The Council had, probably, seen a pamphlet called "*Punjum Outrages*"—*Punjum*, or the fifth, meaning, Regulation V of 1812, which was the Law of distraint and replevin. It could not be denied that the existing Law of distraint bore very hard upon the tenant. Unless, within five days from the date of attachment, the tenant gave security that he would bring a suit to contest the demand against him within fifteen days, his property was liable to be sold; and as there was no intervention of any public Officer between the attachment and the sale, it not unfrequently happened that the first intimation which the tenant received of the distraint was on the very day of sale.

Then, the whole business of sale and of taking security to stay the sale was in the hands of certain Commissioners who were paid by a small commission on the proceeds of the property sold. The average receipts of these Commissioners were, in some districts, not more than one Rupee per month, and in none were they more than ten Rupees per month. It was quite unnecessary to say that agency so remunerated could not be depended upon. In any reform of the system, the first thing to be provided for was the transfer of this duty from the Commissioner now employed, to some trustworthy Officer; and it appeared to him indispensable to securing trustworthiness that the Officer should be paid by a fixed salary, and not by a small and precarious commission. In the North-Western Provinces, he believed that the sales were entrusted to Officers in the *Tehseeldar's* establishment. In these Provinces, he did not know of any class of public servants more fit to be employed for the purpose than the Civil Court Ameens appointed under an Act of last year. He had, accordingly, provided by the Bill that the duty should be entrusted to the Civil Court Ameens or to such other public Officers as the Lieutenant-Governor should appoint for the purpose.

The next requisite was that the person whose property was distrained should receive due notice of the distraint. He had provided for this by clauses which required that the distrainer should make a written application to the Civil Court

Ameen for the sale of the property distrained, and that the Civil Court Ameen should transmit a copy of such application to the Collector, and should issue a notice to the holder of the property, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. He had made no provision as to finding security for the institution of such suit. He thought it was better that that part of the existing practice should be discontinued. The holder might, if he pleased, give security, and obtain the release of his property; otherwise, the property would continue under distraint until the case was decided.

These were the principal changes made by the Bill, in respect to Procedure; and, he thought they would have the effect of doing away with most of the objections which were felt to the existing Law. But he would also greatly abridge the power of distraint. At present, a tenant of any grade—the proprietor of a putnee talook, for instance—might have his household goods distrained if he happened to be in arrear. For this, there was no possible necessity. He had restricted the liability to distraint to the case of actual cultivators, and the subject of distraint to the produce of the land in respect of which the arrear was due.

The only remaining portion of the Bill to which he need advert, was that which related to appeals. He thought that, when the matter in dispute was merely a question of the payment of a certain sum either as damages or as arrears of rent, and the amount did not exceed fifty Rupees, no appeal at all should be allowed. But when cases of this kind were decided by Deputy Collectors, he would allow the Collector to revise and set aside the judgment of his Deputy upon grounds of substantial defect of procedure involving denial of justice. Cases of this kind *would*, for the most part, be decided by Deputy Collectors; and, therefore, would generally be open to this revision. When any such cases should be decided by Collectors who were always Officers of standing and experience, he did not think that any such revision would be necessary. But he had provided, as in the Small Cause

Courts Bill, for the rehearing of a case, whether it had been tried by a Collector or by a Deputy Collector, whenever new evidence or matter was discovered material to the issue.

In other cases which might involve any more important interest than a simple question of the payment of money, or the payment of a larger sum than fifty Rupees, an appeal must, he thought, be allowed; and he had provided that such appeal should lie to the Zillah Judge. In this, he had followed the suggestion of Messrs. Mills and Harrington.

There was nothing more in the Bill which appeared to him to call for remark. He thought it proper, however, to observe that the Bill, as drawn, extended to the North Western Provinces as well as to Bengal. It had been prepared, and actually in print, before the outbreak of the lamentable disturbances which had involved in anarchy and disorder so large a portion of those Provinces. The introduction of the Bill had been delayed for some months in consequence of that outbreak. But the Bill had been designed primarily and chiefly for the correction of abuses which, under the operation of the existing Law, had sprung up in Bengal, and the correction of which was loudly called for. It did not appear to him necessary to defer any longer remedial measures in this division of the Presidency because of the present unsettled condition of the other. If it should be thought proper, the operation of the Bill might be limited in the first instance to Bengal, and extended to the North Western Provinces at some future period, with any modifications which the circumstances of those Provinces might be thought to require.

In conclusion, he begged to apologize to the Council for the length of time he had occupied in explaining the objects and tenor of his Bill, and to thank them for the patience with which they had listened to him.

The Bill was read a first time.

#### CALCUTTA PORT-DUES.

MR. CURRIE moved that the Bill "for the levy of Port-dues and fees in the Port of Calcutta" be now read a third time and passed.

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

## BOMBAY PORT-DUES.

MR LEGEYT moved that the Council resolve itself into a Committee upon the Bill "for the levy of Port-dues and fees in the Port of Bombay;" and that the Committee be instructed to consider it in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to IV were passed as they stood.

Section V provided that steamers employed only in the coasting trade, belonging to the Port of Bombay, should be liable to the Port-due specified in Section I (namely, at a rate not exceeding two annas for every ton of burthen); and that such duty should be chargeable in respect of every such steamer once between the 1st of January and the 30th of June, and once between the 1st of July and the 31st of December in each year.

MR CURRIE said, in the Report of the Select Committee, he had stated his opinion to be "that steamers in the coasting trade should be liable to the same provisions in respect of Port-dues as other coasting vessels." It seemed to him that that ought to be the rule. He could see no reason why a steamer should have privileges over an ordinary coasting vessel. Section III made the Port-due in respect of each vessel payable not oftener than once in the same month; and it seemed to him that this provision ought to apply to steamers as well as to coasting vessels.

MR LEGEYT said, the objections which he felt to render coasting steamers liable to the same provisions respecting Port-dues as other coasting vessels were that the voyages made by them were of very frequent occurrence—very often, four in a month. The voyages which they made were to Surat, and they ran for ten months in the year. If, therefore, Section III should be applicable to them, they would be called upon to pay ten times a year. A steamer had to incur very much greater expense than an ordinary coasting vessel, and did not carry much freight. Among the papers which had been sent up to the Government of India in connection with the general Ports Bill, was a Petition, from owners

of steamers to the Bombay Government complaining very much of the frequency of the levy of these dues.

The Section in question had been before the Bombay Government. He had called their attention to it by letter, and they had not suggested any alteration. On the contrary, the only communication which they had made was one forwarding a Report by the Commander-in-Chief of the Indian Navy, in which that Officer stated that he had no objections to offer to the Bill.

For these reasons, he should vote that the Section be passed as it stood.

MR. CURRIE said, as a matter of principle, he should vote against the Section. If a coasting steamer ran four times a month between Surat and Bombay, she would, under Section III, have to pay only once; and surely, it would be no hardship to pay once for four voyages.

He might add that this Section had been taken from a Section in the Calcutta Act, which referred to an entirely different class of vessels. It referred to tug steamers and inland steamers. Inland steamers, although they benefited to some extent from the harbor arrangements, derived no benefit whatever from the lights and buoys maintained out of the Port-dues; and tug steamers never made any trips without vessels in tow, and those vessels were themselves charged with the Port-dues.

THE CHIEF JUSTICE said, he should vote for the omission of the Section. He had agreed to its retention in Select Committee, because he had thought that that would be the more convenient mode of bringing before the Council the question which the Honorable Member for Bengal had raised. He had also been moved to that course by the consideration that the Section had been published in Bombay, and had not elicited any remonstrance from the Government or the Public of that Presidency. But in reality, the question had been put before them in a form somewhat different from that in which it now stood in the Bill. The original Section, which was the only one published in Bombay, included Tug steamers, which, it now appeared, did not exist in Bombay, and exempted them, as also coasting steamers, from the provisions of Section XLVI of Act

XXII of 1855—provisions now admitted to be inapplicable to anything at Bombay. It was, therefore, possible that the provision had not received that consideration at Bombay which might have been given to it if it had been put nakedly, and as it now stood, as a proposal to give a privilege to steamers over other coasting vessels. He did not see upon what principle the granting of the privilege was to be justified. To his mind, no satisfactory reason had been given why steamers should have a larger immunity from Port-dues than was given to all coasting vessels by Section III. Every time they entered or went out of the Port, they would enjoy all the advantages derivable from lights, buoys, and other useful purposes to which Port-dues were to be applied—advantages which were of greater consequence to them than to many other kinds of coasting vessels: and if they made more frequent voyages, they would presumably make larger and more frequent profits. He should, therefore, vote with the Honorable Member for Bengal against the motion.

The Section was put and negatived.

Section VI was passed as it stood.

Section VII was passed after the insertion of the words and figures “the first day of January 1858” in the blank reserved for the date on which the Act was to commence.

Section VIII and the Preamble and Title were passed as they stood.

The Council having resumed its sitting—

#### PORT-DUES (TUNKARIA AND BROACH).

MR. LEGEYNT moved that it resolve itself into a Committee on the Bill “for the levy of Port-dues in the Ports of Tunkaria and Broach;” 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.

MR. CURRIE said, he did not think that this Bill ought to be proceeded with. It appeared to him that the principle which the Council ought to follow in dealing with these supplementary Bills, was to pass separate Bills for the Presidency Ports, and to provide for the subordinate Ports by arranging them in groups according to their geographical position, or other circum-

stances of similarity. It could not be desirable that the Council should swell the bulk of the Statute Book by a large number of Acts all in the same terms, except as to the names of the Ports. The Ports of Tunkaria and Broach provided for by this Bill were two out of twelve Ports in the Gulf of Cambay, the circumstances of the whole being precisely the same. The Honorable Member for Bombay had brought in, last Saturday, a Bill for the other ten Ports: and he (Mr. Currie) could see no reason why these two should not be included in that Bill. The Report of the Select Committee stated that the majority of the Committee were of opinion, with reference to Act XXIV of 1857, “that this course might cause inconvenience in respect to the Ports to which this Bill relates; and prefer that other Bills should be presented, when ready, for the remaining Ports in the Presidency of Bombay.” But the Bill for these ten Ports might be read a second time next Saturday, and there would then be four months during which the existing dues might be collected; and within that period, a consolidated Bill might be passed without difficulty.

Another reason why he objected to the Bill being proceeded with was that all the twelve Ports in the Gulf of Cambay were chargeable with the expenses of Light-houses which were maintained, under Regulation VII of 1831, for vessels navigating the Gulf. He was very strongly of opinion that, in imposing Port-dues in these Ports, it was desirable to abolish the fixed duty of eight annas on every vessel entering the several ports of the Gulf which was now levied. When the Council made an assessment of Port-dues for the Ports, the expenses of the lights maintained for the Ports should be paid out of those dues, and not by a separate charge. Section XLI of the Harbor Act had, indeed, expressly reserved the light duties leviable under Regulation VI of 1831; but he thought this reservation unnecessary; and before the Honorable Member for Bombay submitted a Motion for the second reading of the Bill he had introduced last Saturday, he intended to bring in a Bill for the repeal of Regulation VI of 1831.

THE CHIEF JUSTICE said, on this question, he could not agree with

the Honorable Member for Bengal. He thought that the Council should recollect what it was that they were doing in the matter of these Bills. They were not Bills for the entire regulation of Port-dues in particular Ports. They were simply subsidiary to Act XXII of 1855, which was a general Act passed for the regulation of all Ports. It would be in the recollection of the Council what extreme difficulty they had had in obtaining from the various local Authorities that information which was necessary to enable them to fix the particular rate which was to be levied at each particular Port, and so to enable the local Governments to bring the Ports under them within the operation of the general Act of 1855. The Council had had repeatedly to extend the period during which the existing Port-dues at the different Ports might be collected, because they had been unable to get the necessary data for determining what should be the rates under the system which it was the object of the Act of 1855 to introduce; and this circumstance was neither a satisfactory nor a creditable mode of legislation. They had now got those data as to these two Ports; and the Honorable Member for Bengal called upon them to suspend this Bill, and therefore to suspend the full operation of the general Act in those two Ports, until they were in a condition to embrace in one Bill these two Ports with all those which were in a certain geographical connection with them. He (the Chief Justice) did not deny that it might have been more convenient, if the Government of Bombay had given the necessary information, to embrace in this Bill all the Ports within the Gulf of Cambay. But that Government had not given that information when the Bill was introduced. And he did not see why they should delay legislating for these Ports for the mere convenience of having one Bill instead of two. To his mind, the only plausible reason which the Honorable Member had given for not legislating for the Ports of Tunkaria and Broach until they were included in a Bill relating to the other ten Ports in the Gulf of Cambay, was that a Light-house was maintained at the mouth of that Gulf for the maintenance of which all vessels entering the Gulf had to pay a certain tax. But that

argument entirely failed when it appeared that Act XXII of 1855 expressly reserved the dues payable in respect of that Light-house as something distinct from the Port-dues to be levied in the particular Ports under that and the subsidiary Acts. That provision had been inserted on the representation of the Government of Bombay. The Honorable Member for Bengal, no doubt, said he meant to propose a repeal of that provision. Therefore, he not only called upon the Council to suspend legislation as to the Ports of Tunkaria and Broach until he could get a rate of Port-dues fixed for the ten other Ports in the Gulf of Cambay, but to make the Bill something different from a subsidiary Bill to the Act of 1855—to make it a Bill to amend and alter the provisions of that general Act. To that amendment, there were, probably, very substantial objections. Their precise nature was more likely to be known to the Honorable Member for Bombay than to him (the Chief Justice); but he had a clear recollection that that particular provision in the general Act had not been adopted without careful and serious deliberation in Select Committee and in the Council, and on full consideration of the suggestions made through the Bombay Government.

For these reasons, he thought that the Bill should be proceeded with; and he should vote in favor of the motion to go into Committee upon it.

MR. CURRIE said, the Honorable and learned Chief Justice had stated that he had assigned but one plausible reason for including all the Ports in the Gulf of Cambay in one Bill—that, namely, connected with the Light-house. But he (Mr. Currie) had mentioned another reason which the Honorable and learned Chief Justice, in the remarks made by him, had entirely overlooked. His answer to those remarks was that they were not in the least applicable to the case before the Council. As he had said before, the Honorable Member for Bombay had already introduced a Bill for the ten other Ports in the Gulf. There were actually now before the Council two Bills—one for two Ports, and another for ten Ports; and there was plenty of time for including all in one Bill, and passing the Bill, before the period would expire for levying the existing dues.

Therefore, he could see no possible objection to consolidating the two Bills.

It was quite within the scope of the Harbor Act that all buoys, lights, &c., should be paid for out of the Port-dues; and he did not propose that, in the consolidated Bill, any express mention should be made of the Light-dues, or of the repeal of Regulation VI. 1831. It would not differ from the other subsidiary Bills. He could not think, because, when the general Act was passed, the Regulation respecting the Gulf light-dues was reserved, that that was any reason why the Council should not discontinue the levy of a special tax for lights when, on further information, they found it to be unnecessary.

THE CHIEF JUSTICE remarked that the Honorable Member's proposition for throwing the expenses of the light upon the Port-dues would have the effect of disturbing all the calculations on which the estimate of the rates at which Port-dues were to be levied in the different Ports had been framed.

MR. PEACOCK said, the expense of keeping up the Light-house in the Gulf of Cambay was not intended to be paid out of the Port-dues to be levied under this Act. In the Statement of objects and reasons, it was expressly said:—

“The sums received at both these Ports for Light-dues are levied under Regulation VI of 1831 and Act I of 1836; and under the latter Act, the Government may apply the funds to other purposes than the Peerum Light-house, which is the special object of Regulation VI of 1831; and therefore to defray the charges of the Ports of Tunkaria and Broach. The object, however, of the levy of these Light-dues was undoubtedly to improve the navigation of the Gulf of Cambay; and it seems desirable not to divert those funds to the benefit of any particular Port within it.”

Consequently, the estimate upon which these Port-dues were to be levied, excluded altogether the Light-dues, which were to be continued to be levied in addition. He, however, thought that it would be more convenient to include the Ports of Tunkaria and Broach in the Bill for the ten other Ports in the Gulf of Cambay which was read a first time last Saturday. He did not see any necessity for passing this Bill before that which provided for the other ten Ports; and, as the Honorable Member for Bengal had stated that it was his intention to bring in a Bill to repeal

Act I of 1836, he thought that it would be better to postpone the consideration of this Bill, and to consolidate it with the Bill relating to the other Ports in the Gulf of Cambay.

MR. LEGEYNT said, he did not deny that this course might be more convenient in appearance; but from what the Honorable Member for Bengal himself had stated to-day, it was evident that its adoption might result in considerable delay. The Bombay Government were likely, as it was, to suffer a very serious loss of revenue with regard to these Port-dues, because, besides these twelve Ports of which they had forwarded particulars, there were thirty-eight Ports of which they said they had no data, adding that there was no possibility of stating what their requirements would be unless a survey of them was made. He did not believe that that survey could be completed in less than three years. For his own part, he could not see any great objection to passing this Bill, which would form probably a useful guide as to what should be done with other Ports at a future time. He should, therefore, press his motion that the Council resolve itself into a Committee upon the Bill.

MR. CURRIE moved as an amendment “that the Bill should not be farther proceeded with, until the Bill ‘for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay’ should be read a second time.” In moving this amendment, it was his intention, if it was carried, to move, after the other Bill was read a second time and referred to a Select Committee, that the present Bill be referred back to that Committee, with instructions to consolidate both into one Bill.

The amendment being put, the Council divided:—

<i>Ayes.</i>	<i>Noes.</i>
Mr. Currie.	Sir Arthur Buller.
Mr. Peacock.	Mr. LeGeyt.
—	General Low.
2	The Chief Justice.
	The Vice-President.
	—
	5

The amendment was, therefore, negatived, and the original motion carried. Sections I to III were passed as they stood.

Section IV was passed after the insertion of the words and figures “the

first day of January 1858" in the blank reserved for the date on which the Act was to commence.

Section V and the Preamble and Title were passed as they stood.

The Council having resumed its sitting, both Bills were reported.

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

MR. CURRIE moved that a communication which he had received from the Government of Bengal be laid upon the table and referred to the Select Committee on the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta and in the Station of Howrah."

Agreed to.

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

MR. LEGEYNT gave notice that, on Saturday next, he would move the second reading of the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay."

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

MR. CURRIE moved that General Low be added to the Select Committee on the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta, and in the Station of Howrah."

Agreed to.

The Council adjourned.

*Saturday, October 17, 1857.*

**PRESENT :**

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

Hon. the Chief Justice,	P. W. LeGeyt, Esq.,
Hon. Major General	E. Currie, Esq.,
J. Low,	and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

**THE ESTATE OF THE NUWAUB OF SURAT.**

THE CLERK presented a petition from Meer Jafir Ali Khan Behadoor, of Surat, on the part of himself and the widow and grand-daughters of the last Nuwaub of Surat.

The Petitioner stated that by Act XVIII of 1848 special provision was made for the administration of the late

Nuwaub's estate, and that the Petitioner having appealed to the Privy Council against an order made by the Government of Bombay in the matter of the administration, it was determined by the Privy Council that, upon the true construction of the Act, this order of the Government was not a judicial act and that the appeal could not be entertained. The Petitioner further stated that, for reasons which he alleged, it was not contemplated that the Act would have the operation ascribed to it by this interpretation; and he prayed that an Act might be passed to amend Act XVIII of 1848 so as to allow a right of appeal to the Privy Council.

MR. LEGEYNT moved that this Petition be printed.

Agreed to.

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

The Order of the Day being read for the second reading of the Bill "for the levy of Port-dues in certain Ports within the limits of the Gulf of Cambay"—

MR. LEGEYNT said, before moving the second reading of the Bill, he wished to mention that, in the course of this week, he had received a communication from the Government of Bombay respecting these Port-dues; and he would endeavour to explain, in a few words, how the matter now stood.

The Government of Bombay were originally desirous that the Port-dues for all the minor Ports of that Presidency should be provided for in one Bill at a uniform rate. In answer to this suggestion, he had told the Government that he thought that their proposition was opposed to the spirit of Section XLIV of Act XXII of 1855 (which provided that "for every Port at which Port-dues shall be levied under this or any subsequent Act, a distinct Account of the Port-Fund of the Port to which it relates, shall be kept by such Officer as the Local Government may appoint for that purpose"); and he wrote to the Government that, in the face of that Section, and also of the discussion which had taken place on Schedule C. of the Ports Bill in July 1855, he saw no chance of passing such a Bill through the Council, and recommended that a separate Bill should be framed for each Port. Subsequently, the Honorable Member for Bengal brought forward a Bill "for