PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

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CONTENTS.

Saturday, July 26, 1856.

PRESENT :

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

Hon. Sir J. W. Colvile, C. Allen, Esq.,
Hon. J. P. Grant, E. Currie, Esq.,
Hon. B. Peacock, and
D. Eliott, Esq., Hon. Sir A. W. Buller.

The following Message from the Governor General was brought by Mr. Peacock and read :—

MESSAGE No. 79.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 19th July 1856, entitled "A Bill to remove all legal obstacles to the Marriage of Hindoo Widows."

By order of the Right Honorable the Governor General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 25th July 1856.

HINDOO POLYGAMY.

THE CLERK presented two Petitions from Inhabitants of Santipore and its neighborhood, praying for the abolition of Hindoo Polygamy.

Also a Petition of Inhabitants of Calcutta, with the same prayer.

Also a Petition from Sreemutty Rausmoney Dossee, with the same prayer.

SIR JAMES COLVILE moved that these Petitions be printed.

Agreed to.

REVENUE OF CALCUTTA.

MR. CURRIE presented the Report of the Select Committee on the Bill "relating to the administration of the public revenues in the Town of Calcutta."

OPIUM.

MR. CURRIE moved the first reading of a Bill "to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal."

In doing so, he said this Bill was a kind of supplement to the Abkaree Bill, which he had had the honor to introduce some months ago, and which was now before a Select Committee.

The retail sale of Opium was a branch of the Abkaree Revenue; and, therefore, the Abkaree Laws provided penalties for the illicit possession and sale of Opium. The unauthorized cultivation of the Poppy was closely connected with the illicit possession and sale of its produce; and the same Regulations contained provisions respecting both offences. But, in revising the Abkaree Laws, it was considered desirable to restrict the Abkaree rules to the points of possession and sale, and to treat unauthorized cultivation as a separate subject, in connection with the cultivation of the Poppy and the manufacture of Opium for Government.

The Law, Regulation XIII. 1816, contained very stringent rules for regulating the cultivation on account of Government, and the dealings of the Opium Agents with the cultivators; and these, of course, had no connection at all with the Abkaree. Accordingly, in the repealing Section of the Abkaree Bill, he had refrained from repealing those parts of Regulations which related to cultivation only, and he had made a reference, through the Bengal Government, to the Board of Revenue and the Opium Agents, requesting their opinions as to the necessity or desirableness of remodelling the law on that subject. He had been induced to do this, not only because he thought that a new and complete Opium Law would be far preferable to the retention of scraps of Regulations of which the greater part had been repealed, but also because he knew that the present practice of the Opium Agencies in their dealings with the cultivators was at variance with the provisions of the existing law. In reply to his reference, the Board of Revenue and the Opium Agents had expressed an opinion that it was very desirable that the Law should be remodelled in accordance with the present practice. This Bill has been framed for that purpose, and also for the purpose of throwing together all the provisions respecting Opium which were not embraced by the Abkaree Bill.

The first portion described and authorized the existing practice of the Agencies in their dealings with the cultivators; and the latter portion contained provisions for penalties for the unauthorized cultivation of the Poppy, and for the connivance of Zemindars and officers of Government in such cultivation. He had, in some degree, modified

the penalties prescribed by the existing law; but it was not necessary that he should detain the Council with any detailed explanation of the modifications.

The Bill was read a first time.

LANDHOLDERS' LIABILITY IN RESPECT OF CERTAIN OFFENCES.

MR. ALLEN moved the second reading of the Bill "to extend the provisions of Regulation VI. 1810 of the Bengal Code" (for defining the penalties to which Zemindars and others shall be subject for neglecting to give due information of robberies and for harboring robbers.)

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

ARTICLES OF WAR FOR THE NATIVE ARMY.

MR. PEACOCK moved the second reading of the Bill "to extend the provisions of the 101st Article of War for the Native Army, provided by Act XIX of 1847."

MR. ELIOTT said, he had one remark to make upon this Bill. He observed that it was positively enacted by the first paragraph of the 101st Article of War for the Native Army, that the privilege of claiming to be tried by a European Court Martial should belong only to such Native Troops as had previously enjoyed it. This peculiar privilege had been previously enjoyed for a considerable time by the Native Troops of the Madras Army alone. When it was proposed to extend it to the Native Troops of the Armies of the other two Presidencies, a good deal of discussion took place, and the opinion of the Judge Advocate General of the day was against extending the privilege to Native Troops other than those of the Madras Army—the Army which, at that time, was enjoying the privilege. The Judge Advocate General said:—

"I purposely omitted providing for this measure in the draft of the Articles of War, because, after consideration of the subject, it was omitted in the Draft Articles of 1838-39, because it was altogether unknown in the Native Armies of Bengal and Bombay, and because it appeared to me to have an obvious tendency to lower the Native Officer in the eyes of the men."

The second paragraph of the 101st Article, however, left it to the option of the Governor General of India in Council by a General Order to authorize the Native Troops of any of the Presidencies to claim to be tried in like manner by European Courts Martial. He should like to know whether this privilege ever had been so extended by any General Order by the Government of India. If it had not been, he was inclined to conclude that it had been deemed inexpedient to extend it beyond the Madras Army which had enjoyed it for a period of 29 years at the time when the Act was passed. If it had not been enjoyed for so long a period by the Armies of Bengal and Bombay before the passing of the Act, nor for so many years since, was it expedient that it should be extended to all the Native Troops of the East India Company, whether serving in any of the Presidencies or not? He agreed with the Judge Advocate General, whose opinion he had just read, that such a proceeding would have a tendency to lower Native Officers in the eyes of their men. It also appeared to him that it would be contrary to the spirit of the Council's present system of legislation. The Council was now extending the powers of Native Authorities for the trial of Criminal offences. The proposed Act would have the effect of taking away from Native Military Officers a Criminal jurisdiction which they now possessed. And he did not find that any very strong reason was given for the Act. A question had merely arisen whether it was expedient to extend to the Hyderabad Contingent the privilege of claiming trial by European Courts Martial, and the opinion of the Resident had been requested upon it. The Resident replied that he thought it was expedient, but he did not urge the adoption of the measure in any very strong or pressing language. On the contrary, he suggested that the measure might give rise to difficulties in certain contingencies. To him (Mr. Eliott) it appeared that it would be very doubtful policy to extend the privilege farther than it was at present enjoyed.

MR. PEACOCK said, if the Honorable Member had given notice that he intended to ask the question which he had put, he would have been prepared to answer it; but, as it was, he was not prepared. He believed, however, that the privilege had been extended to Native Troops other than those belonging to the Army of the Madras Presidency. But whether it had been so extended or not, the Governor General of India in Council had, by the Articles of War, been entrusted with the power of so extending it; and the object of this Bill was to put Native Troops which did not belong to, or serve in any of the Presidencies, on precisely the same footing as those which did. The Bill did nothing more. As the Articles of War passed in 1847 now stood, it was

not clear whether the Native Troops of even the Madras Army, when serving in Burmah, were entitled to claim trial by European Courts Martial. The first of those Articles said, in effect, that at any Presidency, whenever any Native Troops who had been entitled by custom to claim trial by European Courts Martial, made that claim, the privilege should be allowed. At Madras, the Native Troops were entitled by custom to claim the privilege; but it was doubtful whether the Troops even of that Presidency, when in Burmah, were entitled to the privilege, unless authorized by a General Order of the Governor General of India in Council. The simple question was whether, having, by the second paragraph of the 101st Article, entrusted the Governor General of India in Council with the power of extending the privilege to Native Troops belonging to, or serving in any of the Presidencies, it was expedient to entrust him with the power of extending it to Native Troops serving out of any of the Presidencies, or not belonging to a Presidency? It appeared to him that it would be a great hardship upon the latter, if the power of extending the privilege to them were not given; for if it were right that the Native Troops of any of the Presidencies when within the Presidency should have the privilege, it was equally right that they should have it when serving out of the Preeidency, and that Native troops not belonging to any Presidency should also have it. It was upon that ground that he advocated the adoption of this Bill.

The Honorable Member's motion was then carried, and the Bill read a second time.

CONSERVANCY (PRESIDENCY TOWNS, &c.)

MR. PEACOCK moved the second reading of the Bill "to amend Act XIV of 1856" (the Conservancy Act for the Presidency Towns and the Straits Settlement).

MR. ELIOTT said, as at present advised, he was not prepared to give his assent to this Bill, which proposed to repeal an important provision of an Act but lately passed by the Council. There was no separate Statement of Objects and Reasons annexed to the Bill; and in the Preamble the Council was barely informed that doubts had arisen as to the legality of Section CXXI of that Act, which Section provided that certain bye-laws, the making of which was authorized by the Act, should be laid before the Legislative Council, and should not have effect if disallowed by an Order of the Council. The grounds of the doubt which had been thus suggested, were not set forth. The doubt itself appeared to be, whether the Legislative Council could legally disallow any bye-laws made under the authority of an Act passed by them, by an Order, or in any other manner than by a Law or Regulation. As he had just observed, the grounds of this doubt were not set forth; but the Honorable and learned Mover of the Bill had fairly told the Council that he did not consider them valid, and that he did not participate in the doubt which was founded upon them. The Honorable and learned Member had also adverted to the significant fact that the Honorable and learned Chief Justice and the Honorable and learned Judge to his right (Sir Arthur Buller) were present when the provision now questioned was inserted in the Act upon his motiou. Thus, the Council had the authority of the three legal Members, to whom it naturally looked for guidance in constitutional questions, for believing that it was not in error in inserting that provision. Each Member, however, must form his own independent opinion upon questions that came before the Council; and, having given to this question all the consideration that he could, aided by the lights which the Honorable and learned Mover of the Bill had thrown upon it when he introduced his measure, he had come to the opinion that the provision now brought into question was legal. What was the opinion according to which the provision was not legal? It was, in effect, that the Council could do nothing except through the medium of a legislative Act. Now, was not this contradicted by the actual practice of the Council? What was the first step which the Legislative Council had taken, on the suggestion of its Noble President? Was it not to frame Standing Orders for the guidance of the Council in the exercise of its legislative authority, and in all matters relating thereto? Those Standing Orders were binding, not only on the Legislative Council, but on all persons having anything to do with it. Were they to be considered illegal because they were not in the form of a legislative enactment? In the present case, what had the Council done that was illegal? It had given power to municipal bodies to make certain bye-laws with the sanction of the local Government, subject to the proviso that those bye-laws should not have effect if disallowed by an Order of the Legislative Council—in other words, the

Legislative Council had delegated a certain legislative power to the local authorities for the regulation of details which it could not itself conveniently deal with, reserving to itself the right of controlling those authorities in the exercise of that power by a veto, the object of which was to ensure that the bye-laws made by virtue of the power delegated, should not go beyond the intentions of the Council. He deemed it inexpedient that the Legislative Council should delegate any legislative power when that could be avoided. But occasions would arise—as in the present case, where it was necessary to give to municipal bodies the power of making bye-laws—when it could not be avoided. When such a case arose, was it not highly expedient that the Legislative Council should adopt precautions with the view of preventing the power which it delegated from being exercised in a manner not in accordance with its own views and intentions? It seemed to him that it, in some degree, obviated the objection against the delegation by the Council of a legislative power when there was a necessity for it to provide that the rules made by virtue of that power might be disallowed summarily by a veto of the Council. Assuming such a veto to be an executive act, he would ask what was there to prevent the Council from giving to itself the power of performing that executive act? Why might it not reserve such a veto to itself, when it could reserve it to the local Governments. Act XIV of 1856 said—first, that no bye-law made under it, should have effect until it should have been confirmed by the local Government; and secondly, that no bye-law should have effect if it should be disallowed by an Order of the Legislative Council. Why was the provision authorizing the local Governments to confirm, legal—and the provision authorizing the Legislative Council to disallow, illegal? Where was it laid down that the Legislative Council could not pass such a Law? The Act made it legal for the Legislative Council to disallow certain bye-laws by an Order. Where was the Law which restricted the Council from passing such an Act? Until it could be shewn that there was some paramount Law which restricted the legislative action of this Council, he could not admit that the power reserved to the Council by the 121st Section of Act XIV of 1856 was illegal. If it was illegal to pass a Law empowering the Council to do an executive act, then it was illegal to pass a Law empowering the Council to summon witnesses. Would the latter position be maintained?

He repeated, then, that he could not yield his assent to this Bill; and he would add that he would be very sorry indeed to see the Council committing itself to a recognition of its principle, which would give to that body a scope of action so limited, upon the vague and unsupported allegation of doubts contained in the Preamble.

SIR JAMES COLVILE said, it had not been his intention to give a silent vote upon this Bill. He had intended to make some observations regarding it in consequence of what had fallen from the Honorable and learned Member opposite (Mr. Peacock) on Saturday last, when introducing the measure. His desire to do so had been strengthened by observations to the same effect which had been made by the Honorable Member who had just addressed the Council—those observations, he meant, which had reference to the presence of the Honorable and learned Judge to his right (Sir Arthur Buller) and himself, when the Section which it was now sought to repeal, was introduced into Act XIV of the present year. He was certainly prepared to admit that the responsibility of having allowed that Section to pass was one which he and his Honorable and learned colleague ought to take upon themselves. He was prepared to admit that, although there was no substantial reason for ascribing to their concurrence more weight than could be ascribed to the concurrence of many other Honorable Members of the Council—although he did not consider that their concurrence imported a higher sanction than the concurrence of many an Honorable Member of the Council whom he could name—still, a peculiar responsibility in respect of the proceedings of the Council did seem to be cast upon the Honorable and learned Member opposite (Mr. Peacock), upon the Honorable and learned Member to his right (Sir Arthur Buller), and upon himself, by that provision of the Statute which made it essential to a quorum of this Council, that one of those three Members should be present.

With respect to the principle of the Section passed, if there were any thing unconstitutional in it, his excuse for having allowed it to pass without objection would be that, if he remembered aright, the amendment which imported it into the Act had been moved at a very late hour of one of those very hot and protracted sittings in Committee which his inexorable friend on the right,

the Mover of the Police and Conservancy Bills (Mr. Eliott), had compelled the Council to hold for the speedy settlement of those measures. But, upon a full consideration of the subject, and having heard the statements which the Honorable and learned Member opposite (Mr. Peacock) had made on Saturday last, he must confess that, if he had ever entertained a doubt of the legality and constitutional character of the enactment in question, that doubt had been very much shaken, if not altogether removed. He did not know exactly in what form the objections against the enactment had been made elsewhere. But he had put to himself all the objections which suggested themselves to his mind as possible, and he could find none which satisfied him that, in doing what it had done, the Council had exceeded its legal powers.

The Council had provided that a certain executive body should have the power of making bye-laws, and that certain penalties should be affixed to a breach of any of those bye-laws. To control in some degree the discretion of that executive body, it had further enacted that the bye-laws which might be made, to have the force of law, should receive the sanction of the local Government; but it had further retained to itself the power of disallowing them by an Order when they should come before it.

The first objection against this enactment with which he would deal, was that which related to the constitution of the Council. This Council was, in fact, the Governor General of India in Council, but subject to this qualification—namely, that the Governor General of India in Council, as so constituted, could meet only for the purpose of making Laws and Regulations. He found no other limitation imposed by the Statute upon the powers of the Members of the Council than this—namely, that no Member, who was not also a Member of the Supreme Government, was entitled to sit or vote at any Meeting of the Supreme Council which was not a Meeting for the purpose of making Laws and Regulations. But there was nothing in the Statute which defined this Council's mode of action. That seemed to have been left to the Standing Orders which the Council had passed, and which it had retained to itself the power of suspending upon occasions. It could not, therefore, be said that there was any thing unconstitutional in this Council passing any Resolution, or doing anything by a Resolution which was connected with its proper business—namely, the business of making Laws and Regulations. So far then as to the *modus operandi* of the Council.

The other objection was, that, if this Council made a Law by a machinery other than that by which its Laws were ordinarily made, it would deprive the Governor General of the power of exercising his veto upon its act, or the Home Government of the power of disallowing it, either of which powers could otherwise have been exercised. The answer to that objection seemed to him to be of a kind different from that of the answer to the first. If the Section which the present Bill proposed to repeal were struck out of the Conservancy Act, there would be no power reserved to the Governor General of putting a veto on any bye-law made by the Municipal Commissioners, nor would that bye-law go home and be subject to disallowance there upon any ground of objection which might be taken to it there. Consequently, if the objection were good for any thing, it was an objection to the delegation of the power of making bye-laws at all. In truth, these were the considerations on which rested the principal objections to the delegation of legislative powers by this Council to any other body—which made such a delegation improper even in cases in which Parliament might see fit to grant powers of legislation. The powers of Parliament were absolute; the legislative functions of this Council were restricted by the Statute which created it, and their exercise was made subject to certain defined checks. Upon the *vexata quæstio* of delegation, he would only say that, in such local matters as those of Conservancy and the like, the Council must, *ex necessitate rei*, give some power of passing rules and making bye-laws to other bodies; and that where the power was confined to the making of such bye-laws as were contemplated by the Act under consideration, and where the penalty for the infraction of any such bye-law was limited by the Legislature, he had never been able to convince himself that the Council was guilty of any delegation of legislative power which was wrong or unconstitutional.

Then, was there any thing unconstitutional in the Council keeping in its own hands the right of saying, that those to whom it had delegated the power of making bye-laws, had gone too far, and of disallowing their acts? It had been said that the act of disallowance would be an executive and not a legislative act,

Sir James Colvile

and that, in reserving to itself the right of doing it, the Council would be assuming executive functions. If that were clear, he should have thought it a very good objection. But the act of preventiug that to be Law which otherwise would be Law, seemed to him to be, in its nature, rather a legislative than an executive act. When the Governor General refused his assent to any Act which was passed by this Council, and submitted to him for approval—when the Sovereign said of any Bill presented by both Houses of Parliament *la Reine le veut*, or *la Reine s'avisera*, each was acting in a legislative, and not in an executive capacity. The Queen was obviously acting as one of the three co-ordinate branches of the Legislature.

It seemed to him to be a fallacy to say that the Council, in the Clause proposed to be expunged from the Conservancy Act, retained to itself the power of altering by a bare Resolutiou any thing that actually was Law. What the Clause did was to import a condition into the creation of the bye-law, and it was only subject to that condition that the bye-law would have any legal being or effect. Of themselves, the Municipal Commissioners would have no power to make bye-laws. The Council had said in the Conservancy Act that, in certain cases, and under certain conditions, the Municipal Commissioners might make bye-laws. The Governor General, by his assent to the Act, had concurred in this, and said that, subject to the limitation and conditions prescribed, the Municipal Commissioners should frame certain Regulations. So long as those Regulations were actually in force, no doubt they would be in the nature of a Law; but they would continue to be so subject to the condition of losing that nature, and all force and vitality, on the exercise of the power of disallowance, subject to which they were created.

Therefore, after the best consideration that he had been able to give to the subject, he was unable to see that there were any grounds for the doubts which some ingenious gentlemen appeared to have suggested respecting the constitutional character of the enactment in question. At the same time, he certainly had no desire to push the powers of the Council to their extreme limit. Had the Bill affirmed, as the Honorable Member for Madras thought it affirmed, that the introduction of the 121st Section into the Conservancy Act was illegal and unconstitutional, he would not have voted in support of it. But from that hypothesis, he had understood the Honorable and learned Mover of the Bill to protect himself. He thought that the machinery which the present Bill provided for the disallowance of any improper bye-law that might be framed by the Municipal Commissioners, would probably be found to be amply sufficient for the protection of the Public. He did not see that, by retaining to itself the power of disallowing such bye-laws by a Resolution, the Council really escaped from the principal objections to delegation, supposing such objections were applicable to such a case as this, because the bye-laws, whether subject or not to disallowance by the Legislative Council, would not be subject to the veto of the Governor General or to that of the Home Authorities. On the other hand, he was ready to admit that to depart without sufficient cause from the Council's ordinary course of proceeding, was inexpedient, and might prove to be inconvenient. Therefore, although not prepared to assent to a measure which should positively say that the powers of this Council were limited in the manner in which those from whom the objections against the Clause in question proceeded might be disposed to limit them, he should certainly vote in favor of the present Bill.

MR. GRANT said, although it was his intention to support the motion for the second reading of this Bill, he was not quite prepared to say that the Preamble was drawn exactly as he would have drawn it; and if the Bill should pass the second reading, and come, in due course, before a Committee of the whole Council, he might, not improbably, move an amendment in the Preamble. But in the substantial part of the Bill, he quite agreed.

The objection taken to it by the Honorable Member who had opened this discussion (Mr. Eliott), was that he conceived the Clause which the Bill would repeal, to be a Clause which it was within the legal right of this Council to pass, and that, as the Bill was founded upon an allegation of doubts as to the existence of that right, it ought not to be adopted. He (Mr. Grant) was not prepared to say that the Council had gone beyond its legal right in passing the Clause which this Bill proposed to repeal. The question was one of difficulty; and he had not thought it necessary to trouble his mind about it, because, whatever might be the opinion at which he might arrive as to the right of the Council to pass this Clause,

he had not the slightest doubt that the Clause in itself was extremely inexpedient.

There was a difference of opinion between the Honorable Members who had just addressed the Council as to the nature of the act which the Clause in question empowered the Legislative Council to do. The Honorable Member who had opened the Debate, and who supported the Clause, admitted that any Order which the Council might pass under the Clause, would be an executive act. The Honorable and learned Chief Justice, if he (Mr. Grant) had rightly understood his argument, would not make that admission, but held that such an Order would be a legislative act. It was very important that the Council should come to an understanding on this point. Would the Order be an executive act, or would it be a legislative act, or would it be an act of some third sort?

The Honorable Member who had spoken first in the debate, denied the assertion that the Legislative Council could do nothing that was not a legislative act. He (Mr. Grant) entirely agreed with the Honorable Member in that opinion. He thought that the Legislative Council could do many things which were not legislative acts; but he did not think that the Legislative Council could do any thing which was not at least subsidiary to the doing of a legislative act. It might pass an Order for the admission or exclusion of strangers; it might pass Standing Orders as to the manner in which its proceedings should be conducted; perhaps even, without any special Law for the purpose, it might call persons before it, to give evidence to assist it in legislating: that was a constitutional question which was at this moment at issue in one of the Colonies. But whatever the limitation upon the power of acting in this mode might be, it was certain that there *was* a limitation.

The question was, what was the class of acts to which an Order of the Council made under the Clause to be repealed by this Bill, could justly be said to belong? The Order might be either an executive act, or a legislative act, or a judicial act. He did not think that there was a fourth class to which it could belong.

He did not suppose that the Clause was supported on the ground that the Order of the Council annulling a bye-law would be a judicial act. That would be a very proper ground for certain Members of this Council to act upon in another place; but certainly it would not be right to proceed upon it here. The Act authorized Municipal Commissioners to pass certain bye-laws within certain limitations and restrictions. If they should pass a bye-law which went beyond those limitations and restrictions, the validity of that bye-law might be questioned in a Court of Law, and it would be for the Court of Law to pronounce that the Commissioners had gone beyond the power which the Act gave them, and that, consequently, the bye-law was invalid. Therefore, he did not think that it would be contended that the Legislative Council, in disallowing any bye-law made under the Act, would disallow it in any judicial capacity.

Then, would the Order be an executive act, or would it be a legislative act? His own opinion was, that it would be an executive act. But let the Council suppose, for a moment, that it would be a legislative act. How did the Council pass its legislative measures? It had framed with great care a body of Standing Orders according to which every one of its Acts must be passed, unless those Standing Orders were specially repealed for the occasion. If an Order of the Council disallowing a bye-law made by the Municipal Commissioners would be a legislative act, was it intended that it should be made in accordance with those Standing Orders? If it was, then he could not see what the Council would gain by an Order, which it would not gain by an Act. The Order would have to be read a first and a second time: it would then have to be referred to a Select Committee, and to be before the Public for three months: it must then be considered by a Committee of the whole Council, and read a third time: and it must, finally, receive the assent of the Governor General. If, on the other hand, it were meant—and he supposed that that really was the meaning—that this process, which was a most wholesome and necessary process for the maturing of all Laws, was not to be gone through, he maintained that the Clause was most inexpedient and improper. He maintained that no legislative Act ought to be passed in a hurry: he maintained that no legislative Act ought to be brought into operation until it should have been fully considered and discussed more than once by the Council; he maintained that, except under some unusual pressure of circumstances, no legislative Act ought to be passed upon which the Public should not have had an opportunity of expressing its opinion. And if, as the Ho-

norable and learned Chief Justice had contended, the Order of disallowance would be a legislative Act, then certainly, being a legislative Act, it could have no force whatever until it received the formal assent of the Governor General.

He believed that the Order would be really and substantially an executive act. He had never felt the strong objections which had been sometimes raised to particular provisions that had been called the delegation of legislative powers by the Council. But he quite admitted that the Legislative Council ought not to delegate, and could not delegate, its powers of legislation to any other body. He denied that giving to a municipal body the power of making certain bye-laws, within certain defined limitations and restrictions, was a delegation of legislative powers. He denied that, if this Council passed an Act by which a Superintendent of Police is able to direct at which end of a street, on some occasion, carriages are to come in, and at which end to pass out, that is the delegation of legislative power. He maintained that it is granting an executive power.

Then, the Order of disallowance authorized by the Clause which this Bill proposed to repeal being, as he contended, an executive act, was it proper—he did not say was it lawful, because the Legislative Council might pass a Law that the door-keeper should have a *veto* upon bye-laws: that would be lawful, but it would be improper—he asked, was it proper to pass a Law which would force this Council to interfere with these bye-laws? The Municipal Commissioners might make a bye-law, and the local executive Government might approve of that bye-law. Would it be proper that the Legislative Council should reserve to itself the right of setting aside the executive act of the Local Government? If the bye-law were *ultra vires*, the Courts of Law would annul it. The local Government, in approving of a bye-law, gave its sanction to its expediency. Was it right that this Council should sit in appeal upon the propriety of the sanction of the local Government? Was it right that the table of this Council should be loaded with Petitions from inhabitants questioning the propriety of the executive acts of Local Governments, and that this Council should take into its own hands the power of deciding upon such representations? He maintained that it was not right, but, on the contrary, most inexpedient and improper, that the Legislative Council should assume this power. He maintained that, if the Council were to err in this direction—if it were to assume to itself executive functions in this manner,—it would do every thing that it could do to cut its own throat. If the Council kept itself within the limits which were prescribed for its duty, it would be one of the most valuable Institutions in India; but if it went beyond those limits, it would bring down upon itself merited censure.

Without at all going into the question of the legality of the Clause proposed to be repealed by this Bill, thoroughly of opinion as he was that it was an inexpedient and improper Clause, he should vote in support of the Bill.

MR. ALLEN said, the principle involved in this Bill was one of so much importance, that he desired to offer a few words upon it. The question appeared to him to be, not whether it was expedient that the Legislative Council should have power to allow or disallow certain bye-laws, but whether it was within their legal competency to make a provision giving them that power—such a one, for instance, as that which this Bill proposed to repeal. The wording of the Preamble was so strong, that if the Preamble were passed as it stood, it might be quoted hereafter as a precedent for saying, that this Council had not the power of passing a Law authorizing it to disallow by *an Order* bye-laws made under an authority delegated by itself. The Honorable Member opposite had asked what sort of an act would a disallowance of such bye-laws by an Order of the Council be? And he had argued that it would be an executive act. He (Mr. Allen) did not think it would be an executive act. The power of making or confirming bye-laws which was given by Act XIV of 1856 to the local Governments, was not a power inherent in them. It was a power derived solely from the Law passed by the Council, and in no way from the position of the local Governments. There was nothing inherent in the position of the local Governments which enabled them to allow or disallow any bye-laws. The power to do so, they derived entirely from this Council, who gave it to them by a legislative enactment. If the Council could give it to them, could it not give it to others?—and if it could give it to others, could it not give it to itself? Could it not say that the power of allowing or disallowing the bye-laws should be vested in the Judges of the Supreme Courts, although they were

judicial functionaries, if it thought that it was expedient it should be vested in them? Would that be beyond its power, or would it be wrong? It would not. He thought that every one who was of opinion, considering the manner in which the Preamble had been framed, that the Council had performed a legal act in passing Section CXXI of Act XIV of 1856, ought to vote against the second reading of this Bill. If it was advisable to repeal that Section for other reasons, let that be done in other words; but if Honorable Members should pass this Bill as it stood, they would be tying up the hands of their successors in a way which they had no right to do. He was far from wishing to usurp the rights of the Executive Government; and if he thought that there was anything that naturally belonged to an Executive Government which gave to it the power of allowing or disallowing bye-laws, he should not have objected to this Bill; but as no such power belonged to their position, and as they derived the power solely from this Council, he could not vote in support of the Bill.

SIR ARTHUR BULLER said, he had not come prepared to discuss this important question, and, thinking as he did that opinions upon such matters should only be given after much care and consideration, he would abstain from giving any opinion upon the question before the Council now, farther than to say that, when the Honorable and learned Mover of this Bill first intimated to him that doubts had been suggested as to the legality of Section CXXI of Act XIV of 1856, his impression certainly was that the Council had the power of reserving to itself the right which that Section gave, and that such imperfect reflection as he had subsequently given to the subject, had confirmed him in that impression; and he, therefore, did not think that the Bill was necessary. He would not now attempt to enter upon the nice question of the precise limits to the powers of the Council, or of the precise nature of the act of disallowing a bye-law by an Order. The Honorable Member to his left (Mr. Grant) had given the Council the choice of three heads under which alone, in his opinion, the act could be said to come:—it could, he said, only be a legislative act, or an executive act, or a judicial act. He (Sir Arthur Buller) was really doubtful whether he could quite bring it under any of those heads. To him, it appeared that the Order would be rather in the nature of an executive act of the Legislature done in the exercise of an authority reserved, and as he thought legitimately reserved, to itself by its own legislative enactment.

He would say no more on the subject now; but before sitting down, he wished to impress upon all Honorable Members the great moral which he drew from the discussion of this question. When he considered what it was that had given rise to the discussion—that the whole difficulty, if any existed, had arisen out of an amendment suddenly proposed, not very well heard, clearly not very well understood, he could not but look upon this as one of the many illustrations they had had of the extreme difficulty of legislating with any thing like accuracy upon amendments so suddenly started; and he did trust that this instance would not be forgotten by those Honorable Members of the Council to whom had been entrusted the preparation of some provision for securing due notice of important amendments, and that it would serve as an inducement to them to accelerate that most desirable and salutary reform.

MR. PEACOCK said, he would, in the first place, ask the Council to allow him to defend himself both with respect to the Statement of objects and reasons, and to the Preamble of the Bill.

The Honorable Member for Madras had said, that the Statement of objects and reasons did not show that any great benefit was to arise from the passing of this Bill, and that it was silent as to the grounds of the doubts which had been suggested respecting the legality of the Section which the Bill would repeal. He (Mr. Peacock) had not thought it necessary, in stating the objects and reasons of the Bill, to go into all the arguments upon which doubts were entertained whether the Legislative Council was competent to pass such a Section. It had appeared to him that it would be sufficient to recite, as the Preamble of the Bill recited, that Section CXXI of Act XIV of 1856 enacted that certain bye-laws made by the Municipal Commissioners should be transmitted to the Clerk of the Legislative Council as soon as conveniently might be after confirmation thereof, and that no such bye-law should have effect if disallowed by Order of the Legislative Council; that doubts had arisen whether the Legislative Council could legally disallow any such bye-law by an Order, or in any other manner than by a Law or Regulation; and that it was expedient to avoid such doubts. The Honorable Member opposite (Mr. Grant) had said, that he thought it would be necessary to make some altera-

tion in the Preamble if the Bill should come before a Committee of the whole Council. The ground upon which he (Mr. Peacock) had introduced this Bill was, that doubts were entertained as to the power of the Council to insert the provision which it was proposed to repeal. On that ground, and on that alone, it was that he had brought in the Bill. He himself entertained no such doubts; but because others entertained them, and because, when doubts as to the power of the Legislative Council to pass a particular Law were entertained, it was inexpedient that the Law should be continued with those doubts hanging over it, if they could be removed without any injury to the public interests, he had thought it proper to bring forward this Bill. He did not believe that any injury could arise to the Public by the repeal of Section CXXI of Act XIV of 1856. If the Municipal Commissioners should make a bye-law, and, after that bye-law should have been published in the *Gazette* and confirmed by the local Government, it should appear to the Legislative Council that it ought not to continue in force, the Legislative Council would still have the power of passing an Act to get rid of it altogether. He did not suppose that there could be any doubt upon that point; and, therefore, he did not see that there was any reason for objecting to this Bill.

With regard to the delegation of powers, the Legislative Council had no right to delegate its powers of legislation. The Act of Parliament under which the Council exercised its functions, said, that the Governor General of India in Council should not pass any Law or Regulation at variance with that Act. If the Statute of the Imperial Parliament gave this Council power to legislate in a particular manner, could this Council say that it would legislate in a different manner? If the Imperial Parliament directed that six Members should form a quorum at a Meeting of the Council, could the Council say that only five Members should be sufficient to constitute a Meeting? If the Imperial Parliament said that the local Governments should not have the power of legislating for themselves, could the Council say that they should have that power? Clearly, it could not. The Council had particular powers given to it, a certain number of Members must be present at each of its Meetings, and it could not delegate its legislative powers either to the local Governments or to any other body.

But he contended that the authorizing of Municipal Commissioners to make bye-laws for the purpose of regulating the mode in which offensive trades were to be carried on, or the mode in which persons should carry filth through the town, and the like, was not a delegation of powers of legislation. The making of a bye-law was not legislation. A bye-law, according to the Law of the land, must be reasonable: if it was unreasonable, it could not be enforced; and if enforced, any person affected by it might appeal to a Court of Law, and the Court of Law would decide whether it were valid or not. If the making of bye-laws was legislation, no Court could entertain the question of the reasonableness or unreasonableness of the bye-laws. Therefore, in giving Municipal Commissioners the power of making bye-laws, the Council had not given them the power of legislating, any more than the Queen of England, who could not legislate for England, gave a corporation the power of legislating if she granted it a Charter with a power to make reasonable bye-laws. What, then, was the nature of the act which Section CXXI of the Act empowered this Council to do? Was it a legislative act, or an executive act, or a judicial act, or was it an act of some other class? He thought that it was not a legislative act, nor an executive act, nor a judicial act, in the sense in which the term "judicial" was ordinarily used.

It was not a legislative act. The making of a bye-law was not a legislative act; and that being so, its disallowance by the Council under a power reserved was not a legislative act. If bye-laws made by the Municipal Commissioners were legislative acts, the Council had no right to confer on the Municipal Commissioners the power of making them. If they were Laws within the meaning of the Charter Act, they must receive the assent of the Governor General of India. If that assent were necessary, and the bye-laws were legislative acts, then this Council had exceeded their power in vesting in the local Governments the power of confirming, or, in other words, of assenting to them.

Next, he contended that it was not an executive act. By the charter under which this Council sat, the administration of the executive Government of the three Presidencies was vested in the local Governments. Suppose that Act XIV of 1856 had said that no bye-law made by the Municipal Commissioners should have effect

until it was confirmed, and that, if confirmed, it should not continue to be in force if it were disallowed, without saying by whom it should be confirmed or disallowed. If the confirmation or the disallowance was an executive act, the Charter under which this Council sat would point out the local Governments to be the confirming or disallowing authority. But if the Act had not expressly said that the local Governments should be the authority, the local Governments, he contended, would have had no power either to confirm or disallow the bye-laws.

Thirdly, it would not be a judicial act. By that, he meant that it would not be an interpretation of the Law by a Court having competent jurisdiction to interpret it. The question at issue was not a question of interpretation. By Section CXXI of the Act, the Council had reserved to itself no right of that kind. All that it had reserved to itself by it was the power of disallowing by an Order a bye-law which should appear to it to be inexpedient. The Honorable Member to his left (Mr. Allen) had said, that the Council might give that power to Courts of Justice. He (Mr. Peacock) had no doubt that it might; but in exercising that power, the Courts of Justice would not be exercising a judicial power. They would merely be carrying out a power that was given to them by the Legislative Council, of saying whether the bye-laws submitted to them were expedient or not. The Waterman's Company in England had the power, by Act of Parliament, of making bye-laws to regulate the mode in which steam vessels should navigate between London and Gravesend, and no bye-law made by it was valid until it was pronounced to be so by one of the Judges. But no one would say that the Judge allowing or disallowing a bye-law under the provisions of an Act of Parliament, was performing a judicial act. If the Judge imposed a penalty for the infraction of any of those bye-laws, he would perform a judicial act; but when he declared that a bye-law was or was not expedient, he did not perform a judicial act, but was simply exercising a power of control which the Legislature had given to him.

It had been contended that this Council could not repeal a bye-law except by an Act, and that if it had reserved to itself the power of repealing the bye-laws in question by an Act, which must receive the assent of the Governor General to have legal effect, there would have been no objection to the provision.

The real question was, was it expedient to repeal Section CXXI of Act XIV of 1856. If any reasonable doubt could be entertained by any one as to the validity of the Section—if any fair and reasonable doubt could be entertained as to the power of the Council to disallow these bye-laws by an Order—was it or was it not expedient that such doubts should be avoided by repealing the Section altogether? He did not see that the Section conferred any very important power upon the Council. Some, indeed, had said that the Legislative Council could not act by an Order at all. But after the debate that had taken place this day, that could not be said again, nor could the present case be cited as a precedent for that position. It could only be cited as a case in which, for whatever reasons, the Council had thought it expedient to remove a Law as to the validity of which doubts were entertained.

It was to be observed that, by the Law, penalties were attached to the breach of these bye-laws. Suppose a bye-law was confirmed by the local Government, and disallowed by the Legislative Council. A person, seeing it disallowed by the Legislative Council, might consider that he might legally do what the bye-law prohibited, and he might infringe the bye-law. He would be summoned before a Magistrate, and the question might ultimately come before the Supreme Court. If that should happen to be the Supreme Court of this Presidency, he (Mr. Peacock) thought he could say, from what had taken place on this occasion, what the decision with respect to the power of the Council to disallow a bye-law an by Order would be: at any rate, he thought he could say that the majority of the Judges would uphold the disallowance. But he could not say what the opinion of the other Judge might be on the point, or what the opinion of the Judges in the Supreme Courts at the other Presidencies might be. Was it expedient, or worth while, or seemly that, for the sake of the trivial point whether such bye-laws as those that were authorized by this Act to be made, should be repealed summarily by an Order, or after three months by an Act, the Council should raise the question whether or not it had the power to pass a Law which it had in fact passed? He had no doubt in his own mind as to the validity of Section CXXI of Act XIV of 1856; but he was not so wedded to his own opinions as to set up his own judgment against the judgment

of every other man. If he found that there were persons for whose opinion he had a respect, entertaining doubts as to the power of the Council to pass a particular Law, he would be one of the first to come forward in this Council, and, though the Law might have been passed upon his own motion, to move that it should be withdrawn, provided the public interests would not suffer thereby. For, was it expedient or seemly that the power of passing a particular legislative Act of this Council should be investigated, argued, and discussed in a Court of Law? It certainly was not; and to avoid these consequences, he proposed to get rid of the Section the validity of which was questioned. He was not one to repeal a Law if he thought that it involved any important principle or any vital right, such as the liberty of the subject. But when he found that the principle involved was the unimportant one of repealing by an Act instead of by an Order some bye-laws made by Municipal Commissioners for the regulation of offensive trades, and of the mode in which dirt should be carried through the streets, and the like, he did think that it would not be right to retain the Section, and so give rise to a question, possibly even before a Magistrate, as to whether it was competent to the Legialative Council to pass it or not.

He should, therefore, press his motion for the second reading; and he did hope that the Council would not be so attached to its own opinions as to refuse to repeal a Law upon which such a question might arise.

The Honorable Member's motion being put, the Council divided:—

Ayes 6.	*Noes* 2.
Sir Arthur Buller.	Mr. Allen.
Mr. Currie.	Mr. Eliott.
Mr. Peacock.	
Mr. Grant.	
Sir James Colvile.	
The Vice President.	

The Bill was then read a second time.

EXECUTION OF CRIMINAL PROCESS.

Mr. CURRIE moved that the Council resolve itself into a Committee on the Bill "to provide for the execution of Criminal process in places out of the jurisdiction of the authority issuing the same."

The question being put——

SIR JAMES COLVILE said, before the Vice President left the Chair, he desired to say, by way of explanation and in order to prevent misconception, a few words with reference to one of the letters which formed part of the annexures showing the objects and reasons of the Bill:—he alluded to the letter from the Magistrate of the Twenty-four Pergunnahs, dated the 13th of January 1855, to the Commissioner of Circuit, Nuddea Division. His observations would refer to the first and the last paragraphs of that letter. The letter appeared to him to be calculated to convey an extremely erroneous impression of the proceedings of the Court over which he had now the houqr to preside, and of its mode of dealing under Act XXIII of 1840, in matters which, by an arrangement between the Judges, was for some time committed chiefly to his personal care and supervision. After what had passed privately between him and the Honorable Mover of the Bill on this point, he did not know that he would have thought it necessary to notice the matter, if it had not been for this consideration—that these papers, though not published to the world, were sent to the Home Authorities; and if the statements in the letter to which he referred were allowed to pass without comment, a very erroneous notion of the proceedings of the Court might be entertained at Home.

In the 1st paragraph of his letter, the Magistrate of the 24-Pergunnahs, objecting to the machinery of Act XXIII of 1840, stated that a delay having taken place in serving processes of his Court within Calcutta under the provisions of that Act, he had requested an explanation from the Company's Attorney, who informed him that the only reason why certain processes had not been endorsed by a Judge of the Supreme Court, was that all the Judges were absent. Mr. Fergusson added that, during this absence of the Judges, a murderer fled from the suburbs into Calcutta; that, in order to take steps for his arrest, he was forced to issue a warrant without a legal endorsement, and thus risk a prosecution; and that some delay had occurred in the case, which might perhaps account for the murderer being still at large. And then, Mr. Fergusson went on to say:—

"I submit that, as long as the present Act XXIII of 1840 remains in force, all the Judges of the Supreme Court should not be absent at the same time."

Why the Magistrate of the 24-Pergunnahs should make this formal submission to the Commissioner of the Division of Nuddea—an Officer who had about as much to do

with the duties and obligations of the Judges of the Supreme Court as the Lord Mayor of London had—it was not easy to see. A representation to the Judges of the inconvenience supposed to exist would have been more proper. But the imputation which the paragraph was calculated to convey was, that the Judges of the Supreme Court were in the habit of all going away from Calcutta at the same time, and leaving no one there to perform their duties. Nothing could be more unfounded. He did not believe that that state of things had ever happened—certainly, it had never happened within his knowledge. Of course, he fully believed that the Magistrate of the 24-Pergunnahs *had* received from the Company's Attorney the information which he professed to have received; but he believed that, if a Judge was not found on the particular occasion referred to, it was because, during the holidays, the Company's Attorney did not give himself the trouble to look for one where he might be found. Except on the rare occasions when the offices of the Court were closed, such a thing could not happen. The offices of the Court were closed during the Doorgah Poojah holidays, for a few days at Christmas, and for a few days at Easter; but still, it had never happened to his knowledge that Calcutta had been left without a Judge even upon those occasions. It was very unfit that this should happen, since, although the general business of the Court was suspended, there might be a sudden demand for the interference of a Judge in a matter which could not be postponed. On such occasions as those of which he had last spoken, the Judge, no doubt, would not be found at the Court House, but he would be found in his own house; and he did not admit that a Judge might not have been so found on the occasion, whenever it was, on which Mr. Fergusson's warrant remained unendorsed. Mr. Fergusson's letter was dated the 13th of January 1855: the absence complained of, if it happened at all, probably happened either during the Doorgah Poojah holidays, or during the Christmas Holidays, of 1854. His recollection served him accurately as to the Doorgah Poojah holidays of 1854. He remembered that, in that year, for his misfortune, he was ordered to undergo a slight surgical operation, which he deferred until the Doorgah Poojah vacation, when he would have leisure for the purpose. While suffering from the effects of the operation, he was confined to his house, and to his couch; but he certainly was quite able to sign or endorse Mofussil writs or warrants if they were taken to him, and he believed that he did put his name to several. But even if he were unable to do this, he was visited every day, he believed, by Sir Lawrence Peel during his illness; and Sir Lawrence, therefore, was in Calcutta, capable of doing whatever a Judge was required to do. When he became convalescent, and went to the Sand Heads, he left Sir Lawrence Peel here; and on his return, he found Sir Lawrence holding the Sessions. During the Christmas holidays, he was for a few days at Barrackpore, and he believed his learned colleague, Sir Arthur Buller, was also in that neighbourhood. But Sir Lawrence Peel remained; and if the Company's Attorney did not find him in his chambers, he would have found him at his house in Cossipore, had he taken the trouble to go or send to him there. He (Sir James Colvile) did not, therefore, think that the absence complained of had happened at all.

The last paragraph of the Magistrate's letter proceeded upon an entire misconception. How the preposterous notion expressed in it had ever got into Mr. Fergusson's mind, he was unable to conceive. Mr. Fergusson said—

> "It is true that, as suggested in the Advocate General's opinion, from which I have already quoted, the Magistrate of the Twenty-four Pergunnahs can, in urgent cases, send his process direct to a Judge; but, as mentioned in the commencement of this letter, all the Judges *may* be absent; and when the prescribed course is departed from, *it is considered necessary for the Magistrate personally to take the process to a Judge.*"

The course originally prescribed by the Nizamut Adawlut, with the concurrence of the three Judges of the Supreme Court—namely that of sending Criminal process for endorsement by the Judge through the Company's Attorney, and then to a Justice of the Peace for execution—always seemed to him (Sir James Colvile) a very round-about and unnecessary mode of proceeding, and he was glad that it was to be altered by this Act; but he had never heard of any case in which, when that course was departed from, it had been considered necessary for the Magistrate personally to take the process to a Judge; and he, certainly, should never have entertained the notion of putting any Magistrate to the inconvenience of bringing his own process to him for endorsement. That very active Chief Magistrate, Mr. Eliott, might occasionally have brought to him (Sir James Colvile), not his own warrants, but the Warrants of Mofussil Magis-

trates, which, in urgent cases, he was anxious to keep secret, and to execute without delay; and once, if he recollected rightly, he knocked him (Sir James Colvile) up from bed, that he might endorse such a warrant. But Mr. Elliott did this of his own will; and he (Sir James Colvile) would equally have endorsed the process had it come to him in any other way. How little disposed he was to interpose idle formalities in the execution of Criminal process, the Council would see from the anecdote he was about to relate. There was lately a very active young Magistrate at Howrah, who constantly used to send to him process for endorsement, without the intervention of the Company's Attorney. On one occasion, when he was sitting in Court, a *chuprassie* put into his hand an envelope containing a warrant, with a letter from that Magistrate, which, as far as he could remember just now, ran thus :—

"Dear Colvile,—Will you do the needful to this?"

That, certainly, did seem to him rather a free-and-easy mode of asking a Judge to back a process; and he recollected that he then wondered whether the Magistrate would have approached the Nizamut Adawlut in the same off-hand manner; but nevertheless, he either did endorse the process, or wrote a note to clear up some doubt which he entertained of its regularity. He certainly did not call for the attendance of the Magistrate.

He made these observations, because he thought it was due to the Supreme Court and the Judges that they should be made; and he must add that he was sorry that this letter, which did not appear to be a necessary annexure to the present Bill, should have been amongst the printed papers. It was, in his opinion, unnecessary, because it related principally to warrants of arrest, and Act VII of 1854 provided for process of that class. Mr. Cockburn, when Chief Magistrate of Calcutta, had brought that Act to the Judges of the Supreme Court, and they concurred with him in thinking that it gave him the power of endorsing and executing the warrants of Mofussil Magistrates for the arrest of offenders in Calcutta, without the interposition of the Judges; and that construction had since been acted upon.

As far as the general objects of the Bill were concerned, he could have no objection that the Supreme Court should be relieved from a troublesome duty, and the administration of justice from forms which sometimes impeded it. His experience, however, taught him that some kind of supervision over these Mofussil warrants, which he had sometimes had occasion to return for irregularity, was necessary. But he believed that an officer such as was ordinarily selected for the office of Chief Magistrate, was fully capable of exercising that supervision; and he should therefore concur in passing this Bill.

MR. CURRIE said, he must take upon himself the responsibility of the printing of the letter upon which the Honorable and learned Chief Justice had remarked; and he further admitted that he owed the Judges of the Supreme Court an apology for having had it printed. Had he adverted more attentively to the tenor of the first paragraph, he would not have inserted the letter amongst the annexures to the Bill. Of course, any expressions which the Magistrate of Allipore might have made use of in a letter addressed to his Commissioner, were not intended for general circulation. There were some passages in the letter, however, which bore strongly on the subject of the Bill—passages which referred to difficulties that had occurred with respect to the execution of search warrants, and which proved the expediency of extending to that class of processes the law now in force as to warrants of arrest.

There could be no question that inconvenience was experienced from the mode of proceeding which Act XXIII of 1840 prescribed. Some part of this inconvenience might probably be owing more to the fault of the Company's Attorney, than to any real difficulty in finding a Judge to endorse process. But amongst the papers connected with the Bill, he had just laid his hand on a note from Mr. Sandes in which, referring to the non-endorsement of certain Mofussil process, he said—"The Supreme Court is shut, and therefore I cannot get the warrants endorsed."

SIR JAMES COLVILE remarked that that only proved what he had said, namely that Mr. Sandes did not choose to take the trouble to go and look for the Judge where he was to be found.

MR. CURRIE'S motion that the Council resolve itself into a Committee on the Bill, was then carried.

Section I provided that any Criminal process whatever, including summonses, subpœnas, and search warrants, as well as warrants of arrest, issued by any Magistrate having jurisdiction in any part of the East India Company's territories, might be exe-

cuted within the jurisdiction of any other Magistrate having jurisdiction in any part of those territories, whether in the same Presidency or not, upon having a written authority from the Magistrate within whose jurisdiction it might be executed, endorsed thereon.

MR. PEACOCK said, by this Section, Magistrates might be led to suppose that the issuing of subpœnas for the attendance of witnesses from any place beyond their jurisdiction was a matter of ordinary jurisdiction and routine. It appeared to him that this ought not to be the case, and that witnesses residing at a distance from the jurisdiction of a Magistrate should be subpœnaed only when there was some special reason that made their attendance necessary. It would be a very great hardship upon persons if they were compelled, without a sufficient reason, to come as witnesses from one Presidency to another, or from remote parts within the same Presidency. In England, Magistrates could not compel persons to come as witnesses from Ireland or Scotland. He should, therefore, propose that the following proviso be added to the Section :—

"Provided that no subpœna shall be issued by a Magistrate for the attendance of a witness from any place beyond the local limits of his jurisdiction, unless special grounds shall be proved to the satisfaction of the Magistrate in support of the applications, which reasons shall be recorded before the subpœna is issued."

At Mr. Allen's suggestion, the Honorable and learned Member altered his amendment so as to include summonses.

MR. CURRIE said, he was willing to insert the Proviso if it were limited to subpœnas ; but he thought it would be better not to include summonses in it. The Bill had been reported upon by the Sudder Courts, and they had expressed their entire satisfaction with its provisions as they stood. He should, therefore, move, as an amendment, that the word "summons," and the word "defendant," be left out of the motion.

The amendment was negatived, and Mr. Peacock's motion then carried.

Section I, as amended by Mr. Peacock, at Mr. Allen's suggestion, was agreed to.

The remaining Sections, with the Preamble and Title, were passed as they stood.

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

LANDHOLDERS' LIABILITY IN RESPECT OF CERTAIN OFFENCES.

MR. ALLEN moved that the Bill "to extend the provisions of Regulation VI. 1810 of the Bengal Code" be referred to a Select Committee consisting of Mr. Eliott, Mr. Currie, and the Mover.

Agreed to.

ARTICLES OF WAR FOR THE NATIVE ARMY.

MR. PEACOCK moved that the Bill "to extend the provisions of the 101st Article of War for the Native Army, provided by Act XIX of 1847" be referred to a Select Committee, consisting of His Excellency the Commander-in-Chief, Mr. Eliott, and the Mover.

Agreed to.

CONSERVANCY (PRESIDENCY TOWNS, &c.)

MR. PEACOCK moved that the Bill "to amend Act XIV of 1856" be referred to a Select Committee, consisting of Mr. Grant, Mr. Allen, and the Mover.

Agreed to.

The Council adjourned.

Saturday, August 2, 1856.

PRESENT :

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

Hon. Sir J. W. Colvile,	D. Eliott, Esq.,
His Excellency the Commander-in-Chief,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq., and
	Hon. Sir A. W. Buller.

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition from residents of Dacca in favor of the Bill "to remove all legal obstacles to the marriage of Hindoo widows."

Also a Petition from residents of Tanna, addressed to the Government of Bombay and forwarded to the Clerk, against the Bill.

HINDOO POLYGAMY.

Also a Petition from Rajah Prosunnonath Roy Bahadoor, of Nattore, praying for the abolition of Hindoo Polygamy.

Also a Petition from Inhabitants of Rajshahye, with the same prayer.

Also two Petitions from Inhabitants of the district of Hoogbly, with the same prayer.