

Saturday, 20th September 1856

PROCEEDINGS



OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1856.

VOL. II.

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Published by the Authority of the Council.

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175

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of Mr. Elliott, Mr. LeGeyt, Mr. Currie, and the Mover.

Agreed to.

#### NATIVE PASSENGER SHIPS.

MR. ELIOTT moved that the Bill "for the regulation of Native passenger Ships" be referred to a Select Committee consisting of Mr. Allen, Mr. LeGeyt, and the Mover.

Agreed to.

#### BOMBAY CENSUS.

MR. LEGEYT moved that the Bill "for taking account of the population of the Town of Bombay" be referred to a Select Committee consisting of Mr. Elliott, Sir Arthur Buller, and the Mover.

Agreed to.

#### MESSENGER.

MR. PEACOCK moved that the Vice-President be requested to take the Bill "to enable the Governor General of India in Council to suspend the operation of certain Acts relating to the Emigration of Native Laborers," to the Governor General for his assent.

Agreed to.

#### MUNICIPAL ASSESSMENT (MADRAS).

MR. ELIOTT moved that a communication received by him from the Madras Government, be laid upon the table, and referred to the Select Committee on the Bill "to comprise in one Act the provisions necessary for the assessment and collection of municipal rates and taxes in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca" and the Bill "for appointing Municipal Commissioners, and for levying rates and taxes, in the Town of Madras."

Agreed to.

#### NOTICES OF MOTIONS.

MR. PEACOCK gave notice that he would, on Saturday the 20th instant, move the second reading of the Bill "to authorize the arrest and detention, within the Ports of the Settlement of Prince of Wales' Island, Singapore, and Malacca, of Junks or Native Vessels suspected to be piratical."

MR. LEGEYT gave notice that he would, on the same day, move the second

reading of the Bill "to provide for the taking of Evidence by the Legislative Council of India."

The Council adjourned.

Saturday, September 20, 1856.

#### PRESENT :

The Honorable J. A. Dorin, Vice-President, in the Chair.  
His Excellency the Com- D. Elliott, Esq.,  
mander-in-Chief, C. Allen, Esq.,  
Hon. J. P. Grant, and  
Hon. B. Peacock, P. W. LeGeyt, Esq.

The following Message from the Governor General was brought by the Vice President, and read:—

#### MESSAGE No. 83.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 13th September 1856, entitled "A Bill to enable the Governor General of India in Council to suspend the operation of certain Acts relating to the Emigration of Native Laborers."

By Order of the Right Honorable the Governor General.

CECIL BEADON,  
*Secretary to the Govt. of India.*

FORT WILLIAM, }  
The 19th Sept. 1856. }

#### BANKS.

THE CLERK presented a Petition signed by the Secretaries and Managers of the European Banking Institutions in Calcutta, stating that instances had occurred in which some of the Petitioners, notwithstanding every possible precaution, had been obliged to pay a second time the amounts of cheques drawn payable to order, by reason of one endorsement having been forged; and praying for the passing of an Act to secure to the Banks of this country similar protection to that afforded to Bankers in the United Kingdom by the Statute of the 16 and 17 Vic., c. 59, s. 19.

MR. PEACOCK moved that the above Petition be printed.

Agreed to.

**REMEDY FOR WRONGFUL ACTS OF PUBLIC OFFICERS.**

THE CLERK presented a Petition of the British Indian Association, praying, with reference to the mischief which the Petitioners state must otherwise ensue from the principles judicially declared in the series of decisions referred to in the Petition, that a Law may be passed to declare that a wrongful act committed extra-judicially, with or without the forms of office, by a Judicial Officer, need not be treated as an official act, and may be made the subject of an original action or remedy.

MR. GRANT moved that this Petition be printed. After it was printed, it would, perhaps, be for consideration whether it should be referred to a Select Committee or not.

The Motion was agreed to.

**SALES OF LAND FOR ARREARS OF REVENUE.**

THE CLERK presented a Petition of Raja Sutt Shurn Ghosal concerning the Bill "to improve the Law relating to sales of land for arrears of revenue in the Bengal Presidency."

MR. GRANT moved that this Petition be referred to the Select Committee on the Bill.

Agreed to.

**HINDOO POLYGAMY.**

THE CLERK presented the following Petitions, praying for the abolition of Hindoo Polygamy:—

Four Petitions of Hindoo Inhabitants of Jehanabad in the Hooghly District.

A Petition of Hindoo Inhabitants of Calcutta.

A Petition of Hindoo Inhabitants of Midnapore.

Four Petitions of Hindoo Inhabitants of Krishnaghur.

A Petition of Pundits and other Hindoo Inhabitants of Nuddea.

MR. GRANT moved that these Petitions be printed.

Agreed to.

**PORT-DUFS AND FEES (RANGOON AND BASSEIN).**

THE CLERK reported that he had received from the Officiating Secretary to the Government of India in the Home Department, a copy of an Extract from the Pro-

ceedings of Government in the Foreign Department, containing information relating to the collection and charges of the Ports of Rangoon and Bassein.

MR. GRANT moved that this communication be printed, as also certain papers which had been presented to the Council on the subject of the Port charges of Singapore and Penang on the 29th of February and the 13th instant.

Agreed to.

**STRAITS FERRIES.**

THE CLERK reported that he had received, by transfer from the Officiating Secretary to the Government of India in the Home Department, a copy of a communication from the Straits Government submitting the Draft of an Act for establishing and regulating public Ferries, and for levying tolls thereon.

MR. ALLEN said, it was his intention to introduce a Bill on this subject to-day, and to have the communication reported by the Clerk printed as an annexure to it.

MR. ALLEN moved the first reading of a Bill "for regulating Public Ferries in the Settlement of Prince of Wales' Island, Singapore, and Malacca." He said, some months ago, the Governor of the Straits Settlement, in a communication relative to the Municipal Bill, before that measure was passed, recommended that a clause should be inserted in it for the establishment of Ferries in the Straits, and the regulation of the details thereof. He also expressed a wish that the revenue derived from Ferries should be carried to the Municipal Fund. In a demi-official communication having reference to this suggestion, he (Mr. Allen) had stated that in the Straits Municipal Bill, it would be quite right to introduce a clause providing that the revenue derived from Ferries should be made over to the Municipal Fund, but that the establishing and regulating Ferries should be the subject of a separate Bill. The Governor had, accordingly, sent in a draft Bill for the establishment and regulation of Ferries in the Straits. The draft was founded on Act XXXV of 1850, which was the Act for Bombay. He (Mr. Allen) had revised it, and now brought it forward, with some few alterations.

The power of establishing and discontinuing Ferries had been given by Regulation XVI of 1825 in Bengal, and, by Act XXXV of 1850, in Bombay; and he saw

no reason why it should not also be given to the Straits.

This Bill enabled the Government of the Straits to regulate the tolls to be levied on all passengers, cattle, and goods carried over any Public Ferry, and it ensured good and serviceable boats for crossing at all seasonable times.

It had struck him, at first, that it would be right to annex to the Bill a Schedule of the tolls to be levied. But he found that such a Schedule formed no part of the Bengal and Bombay Laws; and, moreover, he had no means at hand for preparing the Schedule. If it should hereafter be thought necessary, a Schedule might be appended to the Bill.

The Bill was read a first time.

#### PIRATICAL VESSELS (STRAITS SETTLEMENT.)

MR. PEACOCK moved the second reading of the Bill "to authorize the arrest and detention, within the Ports of the Settlement of Prince of Wales' Island, Singapore, and Malacca, of Junks or Native Vessels suspected to be piratical."

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

#### TAKING OF EVIDENCE BY THE LEGISLATIVE COUNCIL.

MR. LEGEYT moved that the Bill "to provide for the taking of evidence by the Legislative Council of India" be now read a second time.

MR. PEACOCK said, no one could be more anxious than himself that this Council should be assisted by every external aid that was available, in considering subjects on which it was called upon to legislate. No one could receive the opinions which were, from time to time, expressed to the Council by Petitions, with greater deference than he did, or feel more in need of such assistance. He, therefore, trusted that, when he opposed this Bill, it would not be thought that he was moved by any feeling of self-sufficiency. He would oppose the Bill on the ground that, by it, the Legislature would be assuming to itself powers which were not required, and which it had shewn no sufficient ground for assuming.

The Honorable Mover of the Bill had, in his Statement of objects and reasons, mentioned two grounds upon which he supposed the taking of evidence orally from witnesses summoned for that purpose to be

necessary—first that the Council might obtain particular knowledge of local and peculiar matters respecting which it might have to legislate; and secondly, that it might ascertain the feelings and views of the people who were to be affected by its measures. The Honorable Member said:—

"We do receive the opinions of public Officers—some of these are, no doubt, highly valuable—but still they may not, and I think generally do not, enlighten us much on the state of public feeling as to a proposed law. They are, as such papers must be, confined to the abstract merits of the measure proposed; whereas I certainly hold that one of the elements of legislation should be as accurate a knowledge of the feelings and wishes of the people to be affected by it as it is possible to attain."

Now, he (Mr. Peacock) did not think that the Legislative Council ought to call before it witnesses for the purpose of examining them compulsorily as to the feelings and views of the people. The abstract merits of a particular measure were another matter; but the feelings and views of the people at large upon that question were matters upon which the Council had no right to call witnesses.

Upon the abstract merits of a question, this Council had less need of any power to compel the attendance of witnesses than any other Legislature whatever. It was constantly assisted in its labors by the opinions and suggestions of all the Officers under Government. The Judges of the Sudder Court, the Members of the Board of Revenue, Collectors, Judges, Magistrates,—in fact, every Officer under Government, whenever called upon, and often even when not called upon by Government, favored this Council with their views respecting the abstract merits of Bills under consideration, and also, as far as they could, with the views and feelings of the people generally regarding them. But there were others who were not Government Officers; and the question was whether this Council ought to compel them to attend as witnesses. Out of doors, there were several Associations from whom the Council constantly received communications respecting contemplated measures. There were the Chamber of Commerce, the Indigo Planters' Association, and the British Indian Association—all composed of gentlemen of energy and local experience; and they, like the Officers of Government, sent in to the Council their views and feelings respecting Bills, and, as far as they could, the views and feelings of

the different sections of the community which they severally represented. As far, therefore, as these public Associations were concerned, the Council did learn the views and feelings of the people respecting intended measures.

But this Bill went farther. It enabled the Council to bring witnesses from any distance whatever. Under its provisions, the Council might compel a person to travel from any part of the most distant Presidency, for the purpose of giving his opinion upon the abstract merits of a question. He had always thought that one of the greatest inconveniences in this country was the great distances which witnesses had to travel to Courts of Justice ; and this Council would be doing an intolerable injury, if it should compel persons to come from any distance whatever in order to be examined as witnesses before it. The Bill made no exception as to persons and assigned no limit as to distance ; therefore, any one, from a Lieutenant Governor to the humblest individual, might be compelled to attend before the Council from any distance whatever. It might be said that the Legislative Council would never exercise the power of compelling attendance in such a way. If it would not, then why give the power ?

Under the Bill, there were to be three classes of persons who would have the power of compelling the attendance of individuals from any distance whatever. First, the Council itself. Then, the Council might depute the power to a Select Committee. And thirdly, it might issue Commissions, and invest the Commissioners with the power. The power of issuing Commissions was exercised by the House of Commons in only very special cases, such as those of controverted elections, bribery, and others in which the House would be acting in matters which were, in their nature, judicial. But the House of Commons had no power to issue Commissions for the purpose of taking the opinions of persons upon the abstract merits of a question ; and he apprehended that the taking of opinions upon the abstract merits of questions was the only object for which this Bill was designed. He did think that it would be going a great way that this Council, which had been constituted by the House of Commons, should assume to itself a greater power than the House of Commons possessed.

Then, the Commissioners might call for any information they pleased. Any book, any record, any public document, whether

it affected a State question or not, they might compel the production of, without the consent of the Governor General of India in Council, or of the local Government. This was a power which might be properly exercised by the House of Commons, because the House of Commons sat in judgment upon Her Majesty's Ministers. But for the Legislative Council of India, it appeared to him to be a very great power, and one which the Council ought not to assume to itself. It might be said that there was a Section in the Bill (Section VII) which limited the power.

The Section would, doubtless, apply to the papers or records which the officer might be required to produce ; but it would not apply to the answers which he might be required to give. How was he to know what questions would be asked of him ? The summons would not shew the questions.

The effect of the 8th Section would be that, if a Secretary should refuse to produce a document, or give evidence upon any subject the particulars of which he thought ought not to be disclosed, then it would be competent to the Legislative Council to compel him to produce such document, or give such evidence. He did think that this would be a much larger power than was necessary for the objects for which this Council had been established.

The Select Committees and the Commissioners who were to be appointed to examine witnesses, were to have the same power. But if a witness produced a certificate from the authority to whom he was subordinate, stating grounds of objection to the production of the evidence or the disclosure of the contents of documents required, they were not to compel the witness to produce the evidence or disclose the contents, but to report the objections to the Council, who were to consider and determine upon their validity. It did not appear what was to be done with the witness in the meantime. If he had travelled sixty miles, what was to happen to him while the Council should be considering the validity of the objections ? Was he to go home, and then return upon another summons ? If a witness, objecting to give certain evidence, could produce no certificate from the authority to whom he was subordinate stating the grounds of the objection, the Select Committee, or the Commissioners, might immediately compel him to give the evidence under pain of committal. But the summons would only state that the witness was required to attend

for the purpose of giving evidence ; it would not shew the questions which were to be put to him ; the authority to whom he was subordinate, therefore, could not know to what it was that he should object : and yet, if the witness should refuse to answer a question which he considered it his duty not to answer, and did not produce a certificate, the Select Committee or the Commissioners would have the power of immediately compelling him to answer it, or sending him to prison for a period of six months !

Then, under the Bill, if a witness should object to give evidence or to produce documents "without due cause," a warrant was to be issued for his arrest. He (Mr. Peacock) had no doubt that, if any officer of Government resident in the neighbourhood were asked to attend and give his evidence orally, he would not object to do so, provided there were no reasons of State policy to prevent him. He believed the Chamber of Commerce and the other Associations to which he had referred before, would also agree to attend and be examined. But suppose that a witness should refuse to give evidence ; this Council was to compel him : and what was the good of compulsory evidence of that kind ? If a witness should go before Commissioners appointed to investigate a particular matter, and should refuse to answer their questions without due cause, then he was to be sent down to the Legislative Council. This would be to place the Council in a very ridiculous position. If, for instance, the Secretary to the Government at Agra were to be brought down before Commissioners appointed under this Bill, and refuse to give evidence "without due cause," the Commissioners would send him to the Council for its censure, or the President might issue a warrant for his arrest and imprisonment. But who was to decide the question whether he refused to give evidence without due cause or not ? Was the President to sit in judgment upon that question ? He (Mr. Peacock) should have thought that the Legislative Council should be the body to determine it ; for in the House of Commons it was not the Speaker, but the House itself, that decided such questions. But supposing that the question of sufficient cause did arise, or even of corrupt evidence, was the Council to sit the whole day for the purpose of trying the witness for contempt or perjury ?

He would now go to the Section under which the warrant for arrest and imprisonment was to issue. It ran thus :—

" It shall be lawful for the President, by a warrant under his hand, to authorize the arrest and detention of any witness or other person offending against this Act ; and the warrant shall be a sufficient authority for the arrest of the person therein named, and for holding such person in confinement in the prison or place therein mentioned, for such term (not exceeding three months) as shall be specified in the warrant, or until such person shall sooner comply with the order of the Council."

Had this Council the Staff to carry out the provisions of this Section ? It had no Sergeant-at-arms, no Tipstaff, for taking persons into custody. Or was it intended that the arresting officer should be the Police Constable who was paid to stand outside the door ?

If a Member of the Chamber of Commerce, or of the Indigo Planters, Association, or of the British Indian Association, attended upon a summons from the Council, and objected to answer a question, he (Mr. Peacock) thought it would be extremely hard to hand him over to a Police Officer for the purpose of being led off to a criminal, or even a civil gaol.

These matters were not to be treated lightly. He thought that the better course would be, where evidence was found to be necessary, to do as the House of Commons had done in the case of the Irish Fisheries. There, no power was given to the Commissioners to compel the attendance of witnesses ; but they were only authorized to receive the evidence of such persons as chose to present themselves.

This Council might be invested with a similar power for the investigation of such matters as the mode in which Planters treated ryots, or the mode in which Magistrates treated Planters. But why the Council should be empowered to compel a Planter to attend, or to criminate himself by describing his individual dealings with ryots, instead of asking him what the general practice was, which would be what the Council would really want to know—he could not see. Committees of the House of Commons had the power of compelling a witness to criminate himself ; but this was only in a certain class of cases. An Elector, for example, was liable to punishment for bribery. If any Elector received a bribe, a Committee of the House of Commons would have the power of compelling him to disclose the fact. But this and the other cases in which Committees of the House exercised that power, were quite different from compelling a person to come and criminate himself in connection with the

subject matter of an intended general measure. In the investigations which had preceded the new Indian Charter Act, no person had been compelled to attend and give evidence. A Committee had been appointed, and persons voluntarily attended and gave their evidence on one side or the other.

Then, how were the expenses which must be incurred under the Bill, to be provided for? If the Council made persons come from a considerable distance, it must pay them their expenses. It must also pay the Commissioners whom it would appoint, and who would have to go to a distance to carry on their investigations. Who was to pay them? Was the Legislative Council to issue orders on the Sub-Treasurer for the expenses of witnesses, and send in to the Treasury the Salary Bills of roving Commissioners at the end of their term of appointment?

With respect to the witnesses, the Council was to tax the amount of expenses.

That would entail the necessity of appointing another officer on the establishment of the Council; independently of which, it would be very inconvenient that the Legislative Council should assume to itself the power of issuing orders on the Treasury.

Then, with respect to witnesses who criminated themselves, he did not know whether it was meant that persons were not to use the evidence which the witness gave, or not to prosecute the offence which he disclosed. He apprehended that the latter was the meaning intended. The Section said that all proceedings in any Court against a witness examined under the Act should be stayed upon the production of a certificate from the President of this Council, stating that such proceedings were instituted in respect of evidence given by him under the Act. But how was the Council to ascertain that the proceedings had been instituted in respect of evidence given under the Act? The prosecutor might say, "I knew that the Defendant had committed the offence before he disclosed it to the Council, and I would have prosecuted him even if he had not disclosed it."

Under all the circumstances he had stated, he thought that this Bill went a great deal too far—much farther than was necessary. No sufficient reason had been shewn for so stringent a measure. He had at one time thought that the Bill might be referred to a Select Committee with special instructions to report upon it, and suggest such amendments as they might consider expedient; but, upon

further consideration, it appeared to him that this was a skeleton of a Bill which a Select Committee never would be able to fill up so as to render it useful; and that, therefore, it ought to be thrown out altogether.

He did not think that the Council had experienced much difficulty from want of a power to compel persons to attend as witnesses; and he had no doubt that gentlemen resident in the neighborhood would willingly attend and assist the Council with their opinions and advice if asked to do so. With respect to public officers, it would be unnecessary to call upon them, for they had always furnished to the Council information and suggestions respecting Bills, and in many cases had done so without any requisition from the Council or the Government.

He could not agree with the Honorable Mover of the Bill that verbal answers to questions asked of witnesses at a *tria voce* examination would be less hastily and more considerately given than written statements. He should rather think that the fact was precisely the other way.

It was only, therefore, with regard to persons who were not officers of Government that the power proposed to be given by this Bill was wanted; and with regard to them he thought it was not necessary.

The Honorable Mover of the Bill said, in his Statement of objects and reasons:—

"Men able to give clear and good opinions, when they feel that what they are about to state is to be taken down with care and probably to be submitted to the criticism of the Press and the Public, will weigh carefully what they are about to say; and such evidence will, I submit, be of a much more weighty and important character than the prayer of a Petition concurred and framed, it may be, under an impulsive feeling of a desire to obtain any particular object, or of hostility towards a measure which may be obnoxious to the feelings of an individual."

Now, he (Mr. Peacock) could not agree in this. He could not see that an individual who expressed an opinion in a Petition, would not give the same opinion if he were examined orally before the Council. He did not think that an oral examination would shake his opinion. What a man put down in writing in a Petition was as much open to the criticism of the Press and the Public as his oral evidence would be. The Honorable Member proceeded, in his Statement of objects and reasons, to say,—

"Nor can the Council, in the present state of things, ascertain, with any degree of satisfactory accuracy, the feelings and wishes of the masses in regard to existing defects and proposed amendments of our laws."

"It is all very well to say that every one has an opportunity of making his sentiments known by petitioning the Council, and that such petition will be attentively considered. I do not deny that this theory is correct, but what is the practical state of the case? How few petitions come up, except on peculiar subjects! and when they come, they are more of a suggestive character than any thing else, and I have felt that evidence of the assertions they contain is necessary to give them weight; but the natural disposition of the people of India is not to be roused even to contemplate the effects of a new law, until they find it in action."

He (Mr. Peacock) confessed he could not agree in that. He could not see that, merely because a person gave his evidence orally before the Council, his opinions should be entitled to greater weight than if he had calmly and considerately put them into writing. As to the feelings of the masses, the Council had already the means of becoming acquainted with them just as much as the Press and Public. And, after all, the feelings of the masses were not what the Council wished to ascertain so much as facts upon which it might determine whether a particular measure was good for the people or not.

In conclusion, considering as he did that the power which this Bill proposed to confer, was not necessary, and that it would be much too large for the objects for which this Council was constituted, he should oppose the motion for the second reading.

MR. LEGEYT said, the Bill had been so severely criticized by his Honorable and learned friend opposite, for whose opinion he must always feel the greatest respect, that he felt considerable diffidence in pressing it farther on the notice of the Council. But, notwithstanding what his Honorable and learned friend had advanced against it, he was so persuaded that it was advisable to invest this Council with the power of informing itself in matters before it by obtaining the opinions of non-official persons, that he was unwilling to abandon it.

What his Honorable and learned friend had stated regarding the facility of obtaining the opinions of official men, he was willing to acquiesce in, though he confessed he would still prefer, in many cases, to have the power of examining those Officers and, to a certain extent, discussing the subject with them. But it was the information to be obtained from non-official persons which he desired to obtain, and which, with deference to his Honorable and learned friend, he contended was not to be procured except by some such measure as that now proposed.

It was to this that he intended his State-

ment of objects and reasons should mainly point. His Honorable and learned friend had pointed out how easily the opinions of official men, and the opinions of Indigo Planters and other gentlemen resident in Bengal, might be obtained at present. But there were other parts of India to be legislated for, and in the Presidencies of Bombay and Madras, the same non-official material did exist—and if knowledge on any particular subject was desired from thence, and from non-official persons, the Natives of the country must be resorted to, and it was from them that he would desire to obtain information. He believed that any valuable information would not be obtained save by question and answer.

He would not contend with his Honorable and learned friend's objections on the details of the Bill. His Honorable and learned friend had observed upon the difficulties into which he thought the provisions might lead the Council. He (Mr. LeGeyt) did not participate in those fears; nor did he think that the difficulties which he had suggested were likely to arise. But he had no objection whatever, if the Council should allow the Bill to be read a second time, and refer it to a Select Committee, that the Committee should be instructed, under Section LXX of the Standing Orders, to report on the Bill, and propose any amendments in it, previously to its publication in the *Government Gazette*.

MR. GRANT said, there were two matters very distinct from each other which had been discussed; the principle of the measure, and the details of the measure. Of the details of the measure, which the Honorable and learned Member opposite (Mr. Peacock) had discussed at great length, with his usual ability, he confessed he was almost entirely ignorant, for he had not had time to give any attention to them. And he had hardly gathered from the Honorable and learned Member's speech, whether he objected entirely to the principle of the measure. He (Mr. Grant) himself did not object to it. He himself had always been of opinion that, by whatever means it might be conferred, the Government of India did want the power of issuing effectual Commissions of enquiry. The Honorable and learned Member had said that this Council obtained the information it required from written communications, and had spoken rather disparagingly of *vicâ voce* information. He (Mr. Grant) thought that there was a great difference between opinions given upon paper,

and opinions given *viva voce*. In the one case, we have barely the opinions and belief of the person addressing us : in the other, we have the grounds upon which he has formed those opinions and that belief ; and having those grounds, we can judge of the value of what he says.

In the objections taken, it had been almost presumed, he thought, that the Bill would be pushed to an absurd extent. It had been observed, and he presumed correctly observed, that the Bill would give authority to this Council to summon even a Governor to attend and give evidence before it. But what was this Council ? He thought that the Honorable and learned Member had drawn too wide a distinction between the two phases of the Government of India ; its legislative and its executive phase. In reality, this Council was the Governor General of India in Council, sitting for the purpose of making Laws and Regulations. All the absurdities, therefore, which it was presumed might be committed under the Bill, if committed, would be absurdities committed by the Governor General of India in Council. But could it really be presumed that the Governor General of India in Council would commit such absurdities ? Could it be presumed that he would compel a man at Peshawur to come before this Council for the purpose of giving evidence in some trumpery matter ?—or that the Governor General in Council would order a Secretary to produce public papers in evidence, which the Governor General in Council thought ought not to be produced ? Although it was very convenient to speak of the Legislative Council as distinguished from the Executive Council, and these expressions were adopted in the Standing Orders, yet both Councils were, as he was sure the Honorable and learned Member would admit, the Governor General of India in Council. In the one case, the Council consisted of certain Members : in the other, of those very same Members, with the addition of other Members.

It seemed to have been forgotten, in the arguments urged against this Bill, that this Council itself had already passed an Act of the same nature. In 1854, it had passed an Act which empowered the Madras Torture Commissioners to summon witnesses. The only difference between the principle of this Bill and the principle of that Act was, that the one was a general, and the other a special measure. The Torture Commissioners' Act enabled Commissioners appoint-

ed by the Governor of Fort St. George in Council to make an inquiry relating to the practice of torture in that Presidency, and to summon and examine witnesses for that purpose ; and this Bill would enable the Legislative Council, without the necessity of passing a special Law for the purpose, to summon witnesses in order to make an enquiry in any matter connected with its business which it should think important enough to demand enquiry of such a nature. In the absence of some such enactment as this, the Government of India, both in its legislative and its executive capacities, was quite without the power of making any effectual enquiry whatever. It might make enquiry of its own officers ; but that was not an effectual enquiry—not such an enquiry as might be instituted by a Committee of the House of Commons. In this country, there was no such power, and no such power could be exercised without coming up to this Council and asking it to pass a special Law for the purpose, on each occasion.

He would not advert, at present, to the details of the Bill—nay, he would admit that the Honorable and learned Member had shown that many of the details were objectionable. But saying nothing of the details, he would repeat that he approved of the principle of the measure. He thought that there ought to be a general Act which would empower the Government, whenever it thought fit to make a formal enquiry in any matter of importance, to summon witnesses who, by their oral evidence, might assist the object of that enquiry ; and upon that ground, however the vote upon this particular Bill might go, he wished to give his opinion in favor of the principle of the measure.

MR. PEACOCK said, he would offer a few words in reference to the observations which had fallen from the Honorable Member opposite (Mr. Grant). The Honorable Member had said that this Council was the Government of India—that it was the Governor General of India in Council sitting for the purpose of making Laws and Regulations. He (Mr. Peacock) admitted that, in point of Law, this was correct. But there was a great distinction between the powers of the Governor General of India sitting in Council for the purpose of making Laws and Regulations, and the powers of the Governor General of India sitting in the Executive Council. In the Executive Council, no meeting could be held without

the presence of the Governor General. This Council might, if the Governor General were absent, meet and pass Laws with the Vice-President, or, in his absence, with an Ordinary Member of the Executive Council in the Chair. In this Council, the Governor General had a casting vote where there was an equality of votes, but he had no power to prevent any thing being done by the Council. In the Executive Council, he had that power, for he could put his *veto* upon any measure there which he considered was dangerous to the country.

THE PRESIDENT remarked that he thought the Honorable and learned Member was not in order. Under the Standing Orders, the Honorable and learned Member might speak in explanation, but he could not speak in reply.

MR. PEACOCK said, he had commenced the debate, and he, therefore, thought he was entitled to a reply.

THE PRESIDENT referred to the 18th Standing Order, which is as follows:—

"In discussing a question, no Member shall be allowed to speak more than once, except in explanation or when in Committee, and except the mover of an original question, who shall be allowed to speak once to the question, and close the debate with a reply."

MR. PEACOCK said, in that case the Honorable Member opposite (Mr. Grant) had been out of order, for the Honorable Mover of the Bill had closed the debate before the Honorable Member opposite had risen to speak.

THE COMMANDER-IN-CHIEF said, according to rule, the debate had been closed after the Honorable Mover of the motion before the Council had spoken in reply; and, according to his experience of the practice in the House of Commons, it was very seldom that any Honorable Member was allowed to be heard after the reply of the Mover of an original question. But considering the importance of the subject now under discussion, he desired to say a few words regarding the Bill.

It was impossible, he thought, to object to the principle of the Bill, because the best means by which the Legislature of a country could be guided in deciding upon its measures was evidence collected from all parts of the country. But he did think that the objections which had been advanced against this Bill by the Honorable and learned Member to his left, were of great force. The Honorable Mover of the Bill had suggested, with reference to the details of the

Bill upon which the Honorable and learned Member to his left had commented at such length, that the Bill might be referred to a Select Committee for consideration and report. But how were the Select Committee to get rid of the details? The Bill, he had no doubt, would be amply discussed by the Select Committee; but the details at which they would arrive must be the same as those contained in this Bill. He (the Commander-in-Chief), for his own part, doubted whether, at so early a stage of its existence, this Council ought to give itself the power proposed to be conferred by this Bill.

He made these observations with very great deference. He agreed in the principle of the Bill; but the details were such that, when the motion for the second reading came to be put, he must vote against it.

MR. ELIOTT said, he concurred with His Excellency the Commander-in-Chief; and, with reference to the objections urged by the Honorable and learned Member opposite (Mr. Peacock), he was not prepared to accept the Bill in its present shape. But for the original Motion that the Bill should be read a second time, and the suggestion that it should be thrown out altogether, he would propose, as an amendment, a *tertium quid*; which was, that the words "now read a second time" at the end of the question be left out, and the words "referred, before the second reading, to a Select Committee consisting of the Chief Justice, Mr. Grant, Mr. Peacock, and Mr. Elliott" be substituted for them.

MR. PEACOCK said, it appeared to him that it would be far better, instead of referring the present Bill to a Select Committee as proposed, that any Honorable Member who desired to introduce a measure of the kind, should move to refer to a Select Committee for consideration and report the question whether there was any necessity for this Council to examine witnesses, with instructions to send up, if they should consider that there was any such necessity, a Bill together with their Report. To alter the Bill which was now before the Council, would, in his judgment, be much more difficult than to prepare an entirely new one.

Before concluding, he wished to say but a few words in explanation. The Honorable Member opposite (Mr. Grant) had said that he assumed that this Bill would be pushed to an absurd extent. Certainly, if his words admitted of that interpretation, he had never intended that they should. What he had intended to object to was the deputing of a

power to Commissioners to compel Public Officers to give evidence, provided such Officers did not produce a certificate from the authority to which they might be subordinate.

MR. LEGEYT said, in deference to what had fallen from the Honorable and learned Member opposite (Mr. Peacock), he should move, with the leave of the Council, to withdraw the motion for the second reading of the Bill, and would adopt, in preference, the course suggested by him.

Agreed to.

MR. ELIOTT also, with the leave of the Council, withdrew his amendment.

#### MOFUSSIL MUNICIPAL LAW.

MR. LEGEYT moved that a communication received by him from the Government of Bombay, on the subject of sanitary reforms in the Mofussil, be laid upon the table and referred to the Select Committee on the question of Mofussil Municipal Law.

Agreed to.

Moved by the same that a communication received by him from the Government of Bombay on the subject of making the Municipal Funds in the Mofussil available for the support of Dispensaries, be laid upon the table and referred to the same Committee.

Agreed to.

#### TRANSPORTATION OF CONVICTS (STRAITS SETTLEMENT).

Moved by the same that a further communication received by him from the Government of Bombay, be laid upon the table and referred to the Select Committee appointed to consider and report on the existing Law in the Straits Settlement regarding the transportation of Convicts.

Agreed to.

#### TAKING OF EVIDENCE BY THE LEGISLATIVE COUNCIL.

Moved by the same that the question of enabling the Legislative Council to call for evidence, be referred to a Select Committee consisting of Mr. Grant, Mr. Peacock, Mr. Elliott, Sir Arthur Buller, and the Mover.

Agreed to.

Mr. Peacock

#### PIRATICAL VESSELS (STRAITS SETTLEMENT).

MR. PEACOCK moved that the Bill "to authorize the arrest and detention, within the Ports of the Settlement of Prince of Wales' Island, Singapore, and Malacca, of Junks or Native Vessels suspected to be piratical" be referred to a Select Committee consisting of the Chief Justice, Mr. Allen, and the Mover.

Agreed to.

#### ADJOURNMENT.

The Council then adjourned until the 1st of November, on the motion of the Commander-in-Chief.

Saturday, November 1, 1856.

#### PRESENT :

The Honorable J. A. Dorin, Vice-President.  
Hon. Sir J. W. Colville, P. W. LeGeyt, Esq.,  
Hon. B. Peacock, and  
D. Elliott, Esq., E. Currie, Esq.

The Members assembled at the Meeting did not form the quorum required by law for a Meeting of the Council for the purpose of making Laws.

Saturday, November 8, 1856.

#### PRESENT :

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

Hon. Sir J. W. Colville,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq., and
D. Elliott, Esq.,	Hon. Sir A. W. Buller.

THE CLERK presented the following Petitions :—

#### MUNICIPAL ASSESSMENT (MADRAS).

A Petition of a Committee of Rate-payers in Madras praying for the appointment in that Town of a like number of Municipal Commissioners as is proposed for the Town of Calcutta.

MR. ELIOTT moved that the above Petition be referred to the Select Committee on the Bill "for appointing Municipal Commissioners, and for levying rates and taxes in the Town of Madras."

Agreed to.