Saturday, 2nd June, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

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(1854-1855)

Section XCII provided that diet money should be deposited at the time of the issue of the warrant.

It was amended by the omission of a provision regarding warrants for arrest upon *mesne* process, and by an alteration fixing the maximum rate of diet money ;—and then passed.

Sections XCIII and XCIV were passed as they stood.

The Committee then adjourned, on the motion of General Low.

The Council resumed its sitting.

POLICE AND CONSERVANCY (BOMBAY).

MR. LEGEYT moved that certain papers which he had received from the Secretary to the Government of Bombay be laid upon the table, and referred to the Select Committee on the projects of Law relating to the Police and Conservancy of Calcutta, Madras, and the Straits Settlements.

Agreed to.

NOTICE OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday next, move the second reading of the Bill "to amend Act XXVIII of 1839."

The Council adjourned.

Saturday, June 2, 1855.

PRESENT :

The Honorable J. A Dorin, Senior Member of the Council of India, *Presiding.*

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

MINORS (FORT ST. GEORGE).

MR. ELIOTT presented the Report of the Select Committee on the Bill "for making better provision for the education of male minors, and the marriage of male and female minors subject to the superintendence of the Court of Wards in the Presidency of Fort St. George."

BUILDINGS (BOMBAY).

MR. LEGEYT moved that the Bill "to amend Act XXVIII of 1839" be now read a second time.

Question put and agreed to.

The Bill was read a second time accordingly.

MR. LEGEYT gave notice that he would, on Saturday the 9th instant, move that the necessary Standing Orders be suspended, to enable him to move that the above Bill be passed through its subsequent stages.

SMALL CAUSE COURTS.

The Council then resolved itself into a Committee for the further consideration of the "Bill for the more easy recovery of small debts and demands in the territories subject to the Government of the East India Company."

Section XCV was passed as it stood.

Section XCVI provided that the Court may suspend execution temporarily where it shall appear that the defendant is unable at the time to pay the debt or damages awarded against him.

MR. LEGEYT moved that this Section be expunged. If it were retained, he thought that, in almost every case in which an execution was applied for on a decree, the defendant would plead inability to pay ; and this would entail on the Court a more troublesome inquiry than that which had been required in trying the case. There were several Sections in the Bill which would increase the present amount of labour of the Judge ; but this one would do so to so great a degree that he thought it would be much better to expunge it. Means for the relief of insolvents were in force in all the Presidencies ; and if a defendant was really unable to satisfy a judgment, he might obtain very speedy relief by those means.

He also thought that the exercise of the power given by the Section, would constantly be liable to misconstruction. Plaintiffs would always be thinking that the Judge suspended execution from favor, affection, or some cause advantageous to his own interests.

For these reasons, he thought that the Bill would be much improved if the Section were expunged.

MR. PEACOCK said, the Section was similar to Section LXXI of the Act constituting the Small Cause Court in Calcutta ; but he should be very sorry to see much difficulty thrown in the way of the Courts by constant applications such as those which the Honorable Member for Bombay apprehended ; and if the Section was likely to give rise to any difficulty, he thought it had better be left out, especially as he believed that the necessity for the corresponding Section in the Calcutta Small Cause Court was not very much felt.

The Section was put, and negatived.

Sections XCVII to CVII were passed as they stood.

Section CVII said—

"If a judgment creditor be unable to enforce a judgment against the person or moveable property of the debtor within the jurisdiction of the Court which pronounced the judgment, the Court shall grant him a copy of the judgment, and certificate of any sum remaining due under it; and on the presentation of these to any other Civil Court of Her Majesty or of the East India Company, such Court shall proceed to enforce the judgment according to its own rules and mode of procedure, under Act XXXIII of 1852."

MR. CURRIE said, he thought this Section required amendment. It seemed to him that, as it stood, there was no distinct provision whatever for the sale of immoveable property, and it might be inferred that immoveable property was not to be sold at all. Even supposing that the certificate granted by the Judge would provide for the sale of immoveable property out of the jurisdiction of the Court which pronounced the decree, how was the sale of such property within the jurisdiction of the Court to be enforced? It seemed to him that the Section should be amended by some such words as the following being added at the end :—

"against the person, or moveable or immoveable property of the defendant. Provided that no sale of immoveable property shall be made by any Court of Small Causes established under this Act.

MR. ELIOTT said, he did not see how this amendment would remove the objection taken to the Section. The object of the Section was, that a Moonsiff, as the Judge of a Small Cause Court, should not have power to sell immoveable property; but that, if the judgment debt could not be satisfied by execution against moveable property, application for the sale of immoveable property might be made to the Moonsiff in the exercise of his ordinary jurisdiction, or to any other Civil Court.

MR. PEACOCK said, the object of the Section was to prevent a Moonsiff, as a Judge of Small Causes, from seizing lands in execution of decrees. This Bill did not give power to Moonsiffs to try any question regarding landed property. If they were allowed to seize lands in execution of a decree, and the lands of a third person were seized, they would have to try the question of title indirectly without their decision being subject to an appeal. It had been considered advisable to guard against this, because very difficult questions of title might often arise, which ought not to be trusted to a Moonsiff in the exercise of a summary jurisdiction. The object was to provide that, if a Moonsiff could find the person of a judgment debtor, or moveable property belonging to him, he might issue execution against the person or the moveable property; but if he could not find either, and the debtor was possessed of landed property within the local limits of his jurisdiction, then he must remove the case to his regular Court, and levy against that property subject to the rules which govern the exercise of his ordinary jurisdiction, and under which an appeal from his decision would lie. If the immoveable property was beyond the limits of his district, then application must be made to the Court within the jurisdiction of which it was situate, and that Court would levy against it according to its own rules and mode of procedure. If the Section was not worded so as clearly to express this, it appeared to him (Mr. Peacock) that the amendment proposed would not make it more explicit. The only doubt he felt was, whether the words "other Civil Court" in the Section would include a Moonsiff's regular Court. To obviate all difficulty in that respect he proposed to alter the Section.

MR. CURRIE having withdrawn the amendment which he had proposed, the further consideration of the Section was postponed.

SIR JAMES COLVILE suggested that a proviso might be added, prohibiting the removal of a judgment from a Court of Small Causes to the Supreme Court for execution against immoveable property, except where it appeared that the amount of the claim could not be levied against the person or moveable property of the debtor by a Small Cause Court.

Section CVIII was passed as it stood.

MR. CURRIE moved that the following Section be inserted after Section CVIII :—

"If any person resists the execution of a process issued under this Act, the Court may, on the oath of the peon or other officer resisted, summon the offender to answer the charge, and if, after due service of summons, he fail to attend, may issue a warrant for his apprehension. If the charge be proved, the Court may punish the offender by a fine not exceeding 50 rupees, commutable, if not paid, to imprisonment in the Civil Jail for a period not exceeding 30 days."

MR. CURRIE said, two Sections somewhat to the purport of this amendment in the earlier part of the Bill had been struck

out, but, he thought, without sufficient consideration. They had been struck out in connexion with another Section respecting contempts, for which there was a general law applicable to all Courts; and under the impression that the general law would apply equally to resistance of process. But the law for punishing contempt of Court would not apply to cases of resistance of process, which would be a contempt committed beyond the sight and hearing of the Court. In Bengal and Madras, the existing law for resistance of process was expressly applicable only to Zillah Courts. In Bombay, the terms of the law were more general. They included apparently the Courts of Moonsiffs; but he was not sure whether even there they would apply to the new Small Cause Courts. But at any rate, for Bengal and Madras, it would be necessary to have such a Section as he proposed.

MR. LEGEYT said, in Bombay, under Act XXX of 1841, a Moonsiff's order for punishing for contempt was subject to an appeal; and he thought that some check of the same kind ought to be added to the Section proposed.

MR. PEACOCK said, the Council had determined this question at its last meeting. On that occasion, it had resolved to strike out Sections LXVI and LXVII, the latter of which said—

"The Court, or any Court to which any process may be sent for service or execution, may hear and determine cases of resistance of process occurring within its own jurisdiction; and on proof of the offence, may convict the offender, and punish him in the manner provided by the last preceding Section."

The punishment prescribed in Section LXVI was imprisonment for a term not exceeding seven days or a fine not exceeding 20 rupees, commutable to such imprisonment. Both these Sections had been negatived by the Council, at its last meeting; and it appeared to him that it would be entirely opposed to that Resolution to introduce the new Section proposed, which prescribed a larger measure of punishment.

MR. GRANT said, he thought it was against the Standing Orders to entertain the present motion at an adjourned Committee of the Council.

MR. PEACOCK said, the proper course appeared to be, to leave all cases of resistance of process to be punished by the law as it now stood. Regulation IV of 1793, Section XXV, gave powers to the Courts of Dewanny Adawlut in the zillahs of Bengal, and the cities of Patna, Dacca, and Moorshedabad to deal with cases of resistance of process; and those powers were extended to the Courts of Moonsiffs by Act XXVI of 1852.

MR. CURRIE remarked that he was not sure of this.

MR. PEACOCK said, Section II of Regulation XXVI of 1852 was the Section to which he alluded. But at any rate, any power which existed now in Moonsiffs' Courts to punish resistance of process issued by them as such, would be available to punish resistance of process issued by them as Courts of Small Causes under this Bill.

MR. ELIOTT said, in Madras, Moonsiffs would not have power to punish resistance of process issued under this Act unless there was a special provision given to them.

MR. LEGEYT said, Moonsiffs in Bombay would have such power under both the criminal and the civil codes. Under the latter, the punishment might be a fine extending to 25 rupees.

MR. PEACOCK said, if Section II of Regulation XXVI of 1852 did not apply to Moonsiffs at Madras in the exercise of their ordinary jurisdiction, it was hardly necessary to give them the power in the exercise of a summary jurisdiction, which would extend only to cases of small amounts.

SIR JAMES COLVILE said, his view was to give Moonsiffs, as Small Cause Judges, the power to punish resistance of process which they had as Moonsiffs exercising an ordinary jurisdiction; but certainly nothing beyond that. If the power in their ordinary jurisdiction was subject to appeal, the power in their summary jurisdiction ought to be equally subject to appeal.

MR. GRANT said, it appeared to him that the Council had scarcely sufficient information at present upon which to determine whether the Section proposed should be admitted or not. If Moonsiffs had power under the general law to punish for resistance of process, the Section would be unnecessary as to them, because this Bill took away no powers vested in Moonsiffs. But by Section CXVIII, the Executive Governments might establish new Courts to exercise a Small Cause jurisdiction; and these, in Bengal and Madras at least, would have no power at all to punish resistance of any process they might issue, if there was no special provision in the Bill giving such power.

The further consideration of the proposed Section was postponed.

Section CIX was passed as it stood.

THE CHAIRMAN then read Section CX, which provided—(Clause 1) that "every order and judgment passed under this Act shall be final and not open to review or appeal, except as hereinafter provided:" namely, (Clause 2) where a plaint has been improperly rejected—or (Clause 3) where new evidence or matter material to the issue has been discovered since the trial—or (Clause 4, para. 1) where evidence has been improperly admitted or improperly rejected—or (para. 2) where there has been a substantial defect in procedure or investigation, or misconduct of the opposite party, or of the Small Cause Court, from which there may be strong probable grounds for presuming a failure of justice.

After a verbal amendment in Clause 1—

MR. ELIOTT moved that the words "except as hereinafter provided," at the end of the Clause, be left out, and the words "in all cases in which the amount claimed does not exceed 20 rupees" be substituted for them.

The Honorable Member said, in suits not exceeding 20 rupees, the decisions of Moonsiffs in Madras had always been final; and the exercise of this jurisdiction had proved so beneficial, that, after an experience of almost forty years, the Government and the Sudder Court of that Presidency had recommended that it should be extended to suits amounting to 50 rupees. The Sudder Court of Bombay had recommended that a rule, similar to that which had so long obtained at Madras disallowing appeals in cases not exceeding 20 rupees, should be introduced into that Presidency. A very cautious reformer, the Honorable Mr. Millet, in his evidence before the Select Committee of the House of Commons on the Indian Territories in 1853, stated that he would take away the appeal in cases of simple debt up to 10 rupees.

The Act for the Small Cause Courts at the Presidency towns disallowed any sort of appeal except when the amount exceeded 100 rupees.

The Lieutenant Governor of Bengal thought that the provisions regarding appeal would in a great measure neutralize the good effects of the intended law. He (Mr. Eliott) very much feared that this would be the result. For the reason he had already stated, that in this class of suits there was less cause to distrust the honesty of the Judges than in those of higher amount, in which the suitors could afford to corrupt them, notwithstanding all the check which a regular appeal provided, he would be prepared to enact that, in all cases within the limit of 50 rupees, the judgment should be final. But he took a middle course, and proposed that it should be final as at Madras, in all cases in which the amount claimed did not exceed 20 rupees. If the provision which he now proposed were not introduced, the Bill would take away the rule which had so long operated advantageously in Madras. He trusted that the Council would consider this well before it agreed to the Section as it now stood.

MR. LEGEYT said, to a great extent he agreed with what had fallen from the Honorable Member who had spoken last. He thought that, in cases under 20 rupees, no appeal, strictly so called, ought to be allowed; but he was not for leaving out the provisions contained in Clauses 2 and 3 of the Section. To leave out those contained in Clause 2, would be to go farther than the Law as it now existed in Madras, because that Clause said—

"Upon the application of a plaintiff, the Zillah Judge may order the admission of a plaint improperly rejected."

Now, there was no rule, in Madras or elsewhere, which allowed a Judge to reject altogether the application of a plaintiff in the first instance.

The Government and people of Bombay had, very justly, received the provisions contained in Clause 3 of this Section with some degree of approval, and went to the extent of saying that it should be applicable in cases of whatever amount: and he agreed with them. The Clause provided for the re-hearing of a suit by

"the Zillah Judge, or the Small Cause Court with the sanction of a Zillah Judge, on the application of either of the parties, on the ground of the discovery of new evidence or matter material to the issue of the case which the petitioner had no knowledge of, or could not produce at the time of trial."

If a party to a suit did show that he did not know, at the time of trial, of evidence which would have altered the nature of the decision, or had it not within his reach, but had discovered or obtained it since, and was ready to produce it, surely he would have a very strong ground for the re-hearing of the suit.

He (Mr. LeGeyt) hoped, therefore, that these Clauses would be retained. In other respects, he concurred fully with the Honorable Member for Madras, and thought that appeals, in the ordinary acceptation of the term, in suits under 20 rupees, ought to be

allowed in an Act for a Court of Small Causes.

MR. CURRIE said, he quite agreed with the observations of the Honorable Member for Bombay respecting Clauses 2 and 3.

With regard to Clause 3, he remarked further that the Small Cause Court in Calcutta could grant a new trial; and where no appeal on the merits was allowed, he considered the power to grant a new trial to be absolutely necessary.

As to Clause 4, he did not look with much favor on the provisions for appeal to the Zillah Judges. They had been retained by the Select Committee on the ground that

"with the present machinery of Native Judges, the check of appeal, limited as proposed, is essentially necessary as a means of controlling the proceeding of the Small Cause Courts, and more especially if all the Moonsiffs are at once to be vested with a Small Cause jurisdiction."

He should have been glad if all the Moonsiffs were not to be vested at once with a Small Cause jurisdiction. Had the Motion to give the jurisdiction only to selected Moonsiffs been carried, he should have gone further, and proposed to strike out Clause 4 of the Section altogether; for he thought that it would open the door to a great deal of protracted litigation; that the applications to the Zillah Judges, right or wrong, would be very numerous; and that the Zillah Judges would be greatly encumbered without any real benefit to the parties concerned. But as the case stood, he thought that the appeal in the higher class of cases might be of use as a check on the proceedings of the Small Cause Courts; and therefore, if the motion for disallowing appeals in cases under 20 rupees were carried, he could be disposed to retain the Clauses of this Section as to suits for sums above 20 rupees.

MR. PEACOCK said, he certainly thought that the same rule as to appeal ought to apply in cases under 20 rupees as in cases between that amount and 50 rupees. The grounds upon which this Bill allowed an appeal were—first, under Clause 2, the improper rejection of a plaint. The Honorable mover of the amendment would extend this Clause to cases under 20 rupees as well as to cases above that amount; but there was no reason why that Clause should apply to cases under 20 rupees, and not the others. If a Small Cause Judge rejected a plaint, he would do so because he considered that the plaintiff had no cause of action. But the principle which allowed the plaintiff to appeal against the improper rejection of his plaint ought also to allow the defendant to appeal against the improper rejection of his defence. The same mischief would arise from an improper decision in regard to a defence as in regard to a claim; and if an appeal were allowed in the one case, it ought also to be allowed in the other, though the amount at stake were under 20 rupees.

Then as to Clause 3, which the Honorable Member for Bombay would extend to cases under 20 rupees, but which the Honorable mover would not, could it be maintained that if a plaintiff or a defendant was able to show that he had discovered new evidence material to the issue of the case which he had no knowledge of, or could not produce, at the trial, he ought not to be entitled to an order for the re-hearing of the suit, whether the amount involved was 20 rupees or 40 rupees? Twenty rupees would probably be of more consequence to one man than 40 rupees to another.

Then as to Clause 4, para. 1, if the lower Court rejected evidence which ought to have been taken, or admitted evidence which ought to have been rejected, should not the Zillah Judge have the power of setting it right in a case of 20 rupees, as well as in a case of 40 rupees?

Again as to Clause 4, para. 2, if there were a substantial defect in procedure,—such, for instance, as the hearing of a case without proof that the summons had been served—or if there were misconduct of the party or of the lower Court, from which there might be strong grounds for presuming failure of justice, ought not the Zillah Judge to have the power of setting aside the judgment if the case were one of 20 rupees as well as if it were one of 40 rupees? Surely he ought.

With regard to the question of labour, the Zillah Judge could not, in any case, enter into the facts; and, therefore, an appeal would impose no great labour upon him. The power of review would be only upon certain special grounds; and looking at those grounds, he (Mr. Peacock) certainly thought that, where that power was given in cases of 20 rupees, it ought also to be given in cases below 20 rupees.

MR. LEGEYT said, he would venture, with very great deference, to reply to what had fallen from the Honorable and learned Member who spoke last. The principle upon which the Honorable mover of the amendment went, was, as he (Mr. LeGeyt) understood it, to withhold the right of appeal in cases the value of which was so small that

they would not bear the expense of an appeal. From a fondness for litigation, or from motives of enmity, a native suitor would very often spend three or four times the money involved in a suit in trying to gain a decree; and his principal reason for wishing to exclude cases of small amounts from the appeal Clauses was to prevent the unnecessary expense in which parties became involved from such motives. He could not deny the force of what the Honorable and learned Member to his right (Mr. Peacock) had urged as to whether a Zillah Judge ought not to have the power of reviewing and setting right a judgment of a Small Cause Court upon the special grounds stated in the different Clauses of this Section in cases below 20 rupees as well as in cases above 20 rupees; but still, could not an erroneous judgment upon most of those grounds be remedied under Section CXI, which said—

"Upon the application of either of the parties, the Zillah Judge may state a case for the opinion of the Sudder Court, if he shall be of opinion that the ruling of the Small Cause Court upon the construction of a document, or upon any point of Law or usage having the force of Law, affecting the merits of the case, is erroneous; or that the decision of the Small Cause Court is contrary to Law, or usage having the force of Law: and the Sudder Court, upon the receipt of such, shall proceed in the manner laid down in Sections LXXVIII to LXXXI of this Act."

It did appear to him that, when any such gross departure from regular procedure as those which the Honorable and learned Member had supposed, occurred, it might be set right by an application to the Zillah Judge under that Section; and therefore, he still thought that, in cases under 20 rupees, it would be very advisable to shut the door to appeals—or rather, to further litigation, which would involve expenses that cases of that class would not bear. He was quite aware that the popular opinion was that the right of appeal should be retained, and people would complain if it was withdrawn; but still, as the Council was legislating for the public good, and was passing what it desired should be a beneficial measure, he thought that it ought not to put it within the power of suitors under this Act to protract litigation beyond the limits prescribed by Clauses 2 and 3 of this Section and by Section CXI.

SIR JAMES COLVILE said, he could not agree with the Honorable Member who had spoken last in his construction of Section CXI. That Section provided only for raising, by a case stated by the Zillah Court, such questions for the decision of the Sudder Court as might, under a preceding Section, be raised by the Small Cause Court itself—namely, the construction of a document, or any point of Law, or usage having the force of Law, affecting the merits of the case. That would not involve any question of misconduct of the opposite party, or of the Small Cause Court; and he thought that, if an appeal on such points were to be given at all, it was better to give it, as was proposed, to the Zillah Judge, than to give it to the Sudder Court.

He was, however, disposed to agree with what the Honorable mover of the amendment proposed. It would be hard upon suitors in the Madras Presidency, who already possessed the means of having cases not exceeding 20 rupees determined without appeal by Judges of the very class to which it was proposed to extend powers under this Act, to be forced to have such cases determined by the same Judges in the exercise of a Small Cause jurisdiction subject to the right of appeal. The question of appeal was a very wide and difficult one. No doubt, on abstract principles, it was as desirable to ensure strict justice in a suit for a very small amount as in a suit for a large one. But, unfortunately, suits for very small amounts would not bear the expensive machinery of an appeal. Moreover, a suit for a small amount might often arise between a very rich man and a very poor one; and every body knew that in a protracted litigation, the longest purse had a very undue advantage. Although the right of appeal provided by this Section would be very limited, still, under Clause 4, it would be capable of being exercised oppressively against a suitor who might obtain a judgment for a small sum; and he (Sir James Colvile) should, therefore, be glad to see that Clause omitted from the Section.

There was a clear distinction, he thought, between the 4th and the 2nd and 3rd Clauses of the Section, which the Honorable Member for Bombay would apply to cases of whatever amount. Under Clause 2, no party to a suit could be dragged against his will to the appellate Court. If the Moonsiff rejected a plaint, and the plaintiff was dissatisfied, it would be entirely a matter of his own choice whether he went to the Zillah Court or not. If he went there, he would go alone, no process having then issued against the defendant. Again, Clause 3, as it had been explained to him, prescribed the exercise of a ministerial, rather than a judicial, function. But for this explanation, he should have felt some objection to it; since there

seemed to be no sufficient reason why the Small Cause Court should not have the power of itself directing a new trial if it was satisfied that, on the first trial, there had been a miscarriage of justice owing to the non-production of evidence which the party had not then the means of producing, or of the existence of which he was not then aware. It would be very hard, he thought, in such a case, to send the party to the Zillah Judge to get an order for a new trial. But he understood the Clause to mean only that, according to the usual course of the East India Company's Courts, the Moonsiff would have to obtain the sanction of the Zillah or superior Judge for the re-hearing of the suit ; and that that would be obtained, not by litigation of the parties before the Zillah Judge, but by a simple statement of the case by letter or other communication from the Judge of the Small Cause Court to the Zillah Judge. To the Clause so explained, he did not object.

But under Clause 4, if, on any of the grounds stated in it, the dissatisfied party saw fit to appeal, he would have the power of compelling his opponent either to leave the decree to the unassisted judgment of the Zillah Judge, or to resist the reversal of the decree.

He (Sir James Colvile) looked upon the whole measure as in some degree experimental. If the right of appeal were retained for the higher class of cases—for cases exceeding 20 rupees, which would be better able to bear the expense of an appeal—there would, he thought, be some check on the carelessness of these Judges, and sufficient means of testing their efficiency. On the other hand, we should have the means of trying how far such Judges could, to the satisfaction of the public, be entrusted with a final jurisdiction in the smaller class of cases, in which it was so desirable to have cheap and speedy justice. These were cases in which it was highly improbable that any undue influence would be exercised over the Small Cause Judge ; they were cases which would ordinarily involve only such disputed questions of fact as he, from his acquaintance with the habits and modes of dealing of native suitors, would probably be better able to decide than the Zillah Judge, or himself (Sir James Colvile), or any other gentleman in that room.

MR. GRANT said, if this had been a question about the admission of a regular appeal, he should have agreed entirely with the Honorable and learned Member to his right (Sir James Colvile), and said that, in claims not exceeding twenty rupees, the Bill ought not to give an appeal upon the merits, because the mass of such cases could not bear the expense of such an appeal. But he thought that it had not been sufficiently adverted to that the appeal allowed by the Bill was an appeal not upon the evidence, but upon the special ground of injustice done by reason of some defect in procedure ; or of the improper rejection or admission of evidence ; or of misconduct. Now, the value of appeals is two-fold. One value is in their providing means of doing justice between individual suitors, where there may have been a failure of justice in a particular case as tried by a subordinate Court. Another, and very much higher value is, in their keeping subordinate Courts to their duty. When the Judge of a subordinate Court knows that his proceedings are liable to be thoroughly sifted, he naturally pays attention to his duties, and, for his own sake, avoids errors of form and procedure so far as he is able to do so. But when he knows that there is no possibility of an appellate tribunal ever seeing the case, and that his proceedings will never, in all probablity, come under any sort of review at all, such is human nature (and Moonsiffs are but human beings) that he will be very apt to become lax in his procedure, regardless of the consequences to the parties before him. In saying this, he (Mr. Grant) made no imputation against the class of Moonsiffs. In England, there had been many Courts under various designations, exercising jurisdiction somewhat similar to that proposed to be given by this Bill, before the Act for the institution of County Courts was passed ; and it was known that the very bad working of those Courts led the way to the introduction of that Act. He remembered that at one time, the *Times* newspaper was full of the doings of these Courts. People were aghast when they learnt what sort of Courts they were living next door to. And why were these Courts so bad ? Because there was no appeal from them. If this had been the case in England, in the absence of the wholesome check of appeal, could it be expected that Moonsiffs in this country, as a body, would do better if relieved from the same wholesome check ? Under this Section, a suitor can appeal only upon the ground that injustice has been done to him, because the Small Cause Court has not done something that it was bound to do. It would not do for him to say—

"I appeal, because the Small Cause Court, after considering my case properly, has come to a decision adverse to me." That, as the Bill is framed, would be no ground for appeal; and he would admit that there might be justice in a charge of litigiousness brought against a suitor who should wish to appeal in a 20 rupees case upon such grounds. But if a plaintiff sues for the recovery of 20 rupees, and the defendant tenders evidence that he has paid the money, and the Judge refuses to hear that evidence, can the defendant be accused of being a litigious person, if he desires access to a higher Court, to complain of such a decision as that?

He (Mr. Grant) believed, that to disallow in cases under 20 rupees, the special appeal from the Small Cause Courts upon such grounds as this, which is allowed in all cases from all our other Civil tribunals, would injure the character of these Courts; and therefore, he should vote against the amendment proposed.

MR. LEGEYT said, the Honorable Member who spoke last, had not recollected sufficiently that all Moonsiffs' Courts worked under the special and immediate superintendence of the Zillah Judges; and if they ran into irregularities like those for which the former English Courts of Small Causes became notorious, it might be supposed that the Zillah Judges, if they did their duty at all, would at once check them. There would be nothing to make a Moonsiff, as Judge of a Small Cause Court, independent of the Zillah Judge. He would still be quite subject to those checks which the Zillah Judge now had over him in the exercise of his ordinary jurisdiction. In Bombay, a Zillah Judge or his assistant inspected the Courts of his Moonsiffs every year, examined his proceedings, and looked into the way in which he carried on his business; so that, even if suitors did not come forward to appeal, he would detect any glaring irregularities. If the right of appeal were retained by this Bill in cases under 20 rupees, there would be increase of work, instead of decrease, not only for the Moonsiffs but also for the Zillah Judges. At present, the admission of an appeal took scarcely any time at all. Time was taken only when the case appealed came before the Zillah Judge for trial. Under this Bill, tho Zillah Judge would have to determine the merits of every application for an appeal; and any one who knew how much time that process occupied in the Sudder Courts now, would be able to form some idea of the time which it would occupy in a Zillah Judge's Court.

He still thought, with great deference, that the intention was that Section CXI should apply to cases of the kind in question. If, for instance, a Moonsiff refused to call a witness, and decreed the case, surely that would be a point of Law which would affect the merits of the case, and upon which the Zillah Judge might state a case to the Sudder Court, to know whether the Moonsiff's ruling was right or not. Certainly, Section CXIII would enable the Court to reject any frivolous application for an appeal or a rehearing; but it would take considerable time to make the investigation which was to show that the application was frivolous. This Bill, throughout, would by no means diminish the labours of those who were to administer it. There were Sections in it which would add considerably to the labours of the Moonsiffs, and if these appeal Clauses were made applicable to cases below 20 rupees, they would add very considerably to the labours of the Zillah Judges, and even of the Sudder Courts.

MR. GRANT said, he did not wish to prolong the discussion upon this point. With reference, however, to what had fallen from the Honorable Member who had spoken last, he desired to explain that, when speaking upon this question before, he had not forgotten the fact that these subordinate Courts were under the general control of the Zillah Judges; but he wished to say distinctly, that he looked upon that kind of general control as at best illusory. The only possible mode that he could imagine of properly ascertaining the general character of a Judge's proceedings in the trial of cases, was to go through some of his cases, thoroughly sifting and testing them. This is done and must be done when a case is taken up in appeal; but could it be maintained that a Zillah Judge, in the exercise of a mere general control over his Moonsiffs, and visiting their Courts occasionally, would or could go through this process?

He had only one other observation to make. The Honorable Member who had spoken last had said that, if the amendment in question were adopted, the proceedings of Small Cause Courts in cases under 20 rupees would still be open to review, under Section CXI of the Bill. Now, it did seem to him that the Honorable Member was a little inconsistent in this. The Honorable Member would not allow a right of appeal to the Zillah Judge in a certain class of cases, because

he thought it would engage too much of the Zillah Judge's time; but when he was pushed, and was asked if he would refuse a suitor redress in a case of 20 rupees, against such gross irregularities as were supposed in that class of cases, feeling the force of this argument, he replied "Oh! no. By no means. The party will have a remedy under Section CXI." Now, Section CXI provides that, upon the application of either party to a suit, the Zillah Judge may state a case involving a point of Law, for the opinion of the Sudder Court. That was a very proper provision, because it was very desirable that doubtful points of Law should be referred to the Sudder Court, whose decision upon such references would be, not only for the particular case in which they had arisen, but for all succeeding time. The cases, however, which he (Mr. Grant) had supposed, were cases involving, not any doubtful point of Law, but wrong done to a party by a palpable defect in procedure. The Honorable Member, for the sake of saving the time of the superior Courts, would not allow the Zillah Judge to correct such an error, but yet he would allow the suitor wronged to move the Sudder Court for its correction; and to do so through that very Zillah Judge. Now, if the object was to avoid occupying too much of the time of the superior Courts, it did seem to him that this was not a mode of proceeding that was likely to obtain that object.

MR. ELIOTT'S amendment was then put, and negatived.

The Clause was next put as verbally amended, and agreed to.

Clause 2 was put, and agreed to as it stood.

Clause 3 was amended by the omission of the words "Zillah Judge or" in the first line, and then agreed to.

On Clause 4 being proposed—

SIR JAMES COLVILE moved as an amendment the insertion in the first line of words which would exclude from its operation all cases where the sum claimed or recovered should be below the amount of 20 rupees.

MR. GRANT said, for the reasons he had stated when Clause 1 was under discussion, he objected to this amendment.

The question being put, the Council divided:—

Ayes 4.	*Noes* 4.
Mr. Currie.	Mr. Allen.
Mr. LeGeyt.	Mr. Grant.
Mr. Eliott.	Mr. Peacock.
Sir James Colvile.	The Chairman.

The numbers being equal, the Chairman gave his casting vote with the "Noes."

So the motion was negatived.

The Clause was then put, and agreed to, and the Section, as amended, was passed.

Section CXI (inserted above) was then read by the Chairman.

After a slight verbal amendment—

MR. PEACOCK moved that the words "or that the decision is contrary to Law, or usage having the force of Law" after the word "erroneous" be left out.

The question was put, and agreed to; and the Section, as amended, was passed.

MR. CURRIE moved that the following new Section be inserted after Section CXI:—

"The application under Section CX or CXI to the Zillah Judge shall be written on stamped paper of the value prescribed for petitions to the Zillah Court: provided that, when such value may be of higher amount than the value of the stamp prescribed for the petition of plaint by Section VIII of this Act, the application may be written on stamped paper of the value prescribed for the petition of plaint; or if no stamp be prescribed for the plaint, the application may be on unstamped paper."

The question being proposed—

MR. GRANT moved as an amendment that the words "Provided also that, if the application be successful, the value of the stamp, if any, shall be returned to the petitioner" be added to the question.

The amendment was put, and agreed to; and the original motion, so amended, was passed.

Section CXII was carried, after some amendments.

Sections CXIII, CXIV, and CXV were passed as they stood.

MR. LEGEYT moved that the following new Section be inserted after Section CXV:—

"A nonsuit shall be no impediment to the institution of a new suit on the same cause of action, where the party is not precluded by lapse of time, or otherwise under the general Law."

The Section was agreed to.

On the motion of MR. GRANT, the Committee then adjourned.

The Council resumed its sitting.

DISTRICT MOONSIFFS (FORT ST. GEORGE).

MR. ELIOTT postponed the motion, of which he had given notice for this day, for a Committee of the whole Council on the Bill "to amend the Law relating to District

Moonsiffs in the Presidency of Fort St. George."

BOUNDARY MARKS (FORT ST. GEORGE).

Also the Motion for a Committee of the whole Council on the Bill "for the establishment and maintenance of boundary marks in the Presidency of Fort St. George."

SESSIONS COURT AT OOTACAMUND.

MR. ELIOTT moved that a communication received by him from the Government of Fort St. George, forwarding a copy of a Memorial from the residents of Ootacamund and of the orders passed thereon by that Government, be laid upon the table, and referred to the Select Committee on the Bill "to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund on the Neilgherry Hills."

Agreed to.

ASSESSMENT (MADRAS).

MR. ELIOTT next moved that a communication received by him from the Government of Fort St. George, forwarding an address from certain rate-payers and householders of Madras, praying for the extension of Act X of 1852 to that Presidency, be laid upon the table, and referred to the Select Committee on the projects of Law relating to the Police and Conservancy of Calcutta, Madras, and the Straits Settlements.

Agreed to.

BUILDINGS (BOMBAY).

MR. LEGEYT withdrew the notice of Motion given by him this-day, and moved that the necessary Standing Orders be suspended, to enable him to move that the Bill to amend Act XXVIII of 1839 be passed through its subsequent stages.

MR. ELIOTT seconded the motion.

MR. PEACOCK said, if raising buildings within the Fort higher than 50 feet would affect property outside the Fort as to light and air, he thought an opportunity should be given to the persons concerned of expressing their opinions upon the proposed Act.

MR. LEGEYT said, that would certainly not be the effect on any property outside the Fort, but it might be different as to property within the Fort. The Fort of Bombay had ramparts mounted with guns; but close to them were extensive private dwellings. In 1839, for what reason he did not know, an Act was passed declaring that no building within the Fort should be constructed of a greater height than 50 feet. He believed that was done because the place was a military garrison. Since then, however, houses had been built within the Fort of a greater height than 50 feet. Recently, the Bank of Bombay had applied to the Government of that Presidency for permission to build a house for their own purposes beyond the prescribed height. The Government refused permission, being advised by the Advocate General that, under Act XXVIII of 1839, it had not the power to protect parties violating the provisions of the Act from penalties. The Governor of Bombay was also the Commander-in-Chief of the Fort of Bombay; and the Government now applied to the Legislature for power to give such permission in those cases only in which it should see fit.

MR. GRANT said, he thought that, with the information now before it, the Council was hardly in a position to vote upon the question. If the Clause in the Bombay Building Act was passed exclusively for the sake of the Government, from some mistaken idea of its necessity in a military point of view, there could be no objection, upon the application of the Bombay Government, to the Standing Orders being suspended and the Bill to repeal the Clause being passed immediately into law. But the Honorable Member appeared to be unable with certainty to assure the Council that this had been the sole object of the Clause. It was not impossible that there might have been another object, in which private interests were concerned; and if that were the case, the Bill ought not to be passed into law without an opportunity being afforded to the parties interested of saying whatever they might have to say upon it. Perhaps, before the next meeting of the Council, the Honorable Member would be able to look into the official papers connected with the passing of Act XXVIII of 1839, and to satisfy the Council that it had been passed for Government objects only. If so, he (Mr. Grant) would readily agree to the Standing Orders being suspended in order that the Bill might be passed through its stages without delay.

MR. LEGEYT said, he had no doubt that the only reason for the restriction imposed by the Act had reference to the town being a Military town and garrison; but he would look into the papers connected with the Act; and, meanwhile, with the leave of the Council, would withdraw his motion.

The motion was, with leave, withdrawn. Mr. LeGeyt gave notice that he would renew it on Saturday next.

NOTICES OF MOTION.

MR. ALLEN gave notice that he would, on Saturday next, move the first reading of a Bill "to empower officers of the Customs and Revenue Departments to search manufactories and houses for contraband Salt in the North-Western Provinces."

MR. GRANT gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee on the Bill "for the regulation of Ports and Port-dues."

The Council adjourned.

Saturday, June 9, 1855.

PRESENT :

The Honorable Sir Lawrence Peel, *Vice President*, in the Chair.

Hon. J. A. Dorin, Hon. Major Genl. Low, Hon. J. P. Grant, Hon. B. Peacock, Hon. Sir James Colvile, D. Eliott, Esq., C. Allen, Esq., P. W. LeGeyt, Esq., and E. Currie, Esq.

PREVENTION OF FIRES (CALCUTTA).

THE CLERK brought under the consideration of the Council a Petition of the Secretary of the British Indian Association, concerning the Bill "for the better regulation of buildings, and for the more effectually preventing accidents by fire, within the town of Calcutta."

MR. CURRIE moved that this Petition be referred to the Select Committee upon the Bill.

Agreed to.

PRISON DISCIPLINE (PUNJAUB).

THE CLERK reported to the Council that he had received from the Under-Secretary to the Government of India in the Home Department, an extract from a Despatch from the Honorable the Court of Directors regarding the reforms proposed in prison discipline in the Punjaub.

MARRIAGES.

Also, a copy of a Despatch from the Honorable the Court of Directors, together with connected papers, on the subject of Marriages in India.

SEARCH FOR CONTRABAND SALT (NORTH-WESTERN PROVINCES).

MR. ALLEN moved that a Bill "to empower Officers of the Customs and Revenue Departments to search manufactories and houses for contraband salt in the North-Western Provinces" be now read a first time. He said, in making this motion, it was scarcely necessary for him to remind the Council that a very large portion of the revenue of this country was raised by a duty on salt; and that, whereas in Bengal the duty was raised by a monopoly on manufacture and a Customs duty on importations by sea, in the North-Western Provinces it was raised solely by a Customs duty on the salt which crossed the land frontier. The law which now applied to the North-Western Provinces in regard to salt, was Act XIV of 1843. It consolidated all former Laws on the subject, and was, to all intents and purposes, the sole Salt law in existence in those Provinces. The principal Act, with reference to salt, for the Provinces of Bengal, was Act XXIX of 1838; and a comparison of the two would show a very remarkable difference at the very commencement. Ten Sections of the Act for Bengal—Sections II to XI—contained provisions for the search of houses for contraband salt; and Section XIV provided for the stopping of any person who was found in the Act of conveying salt, exceeding in quantity five seers, without a rowannah; but there were no similar provisions in the Act for the North-Western Provinces.

Throughout a very large tract of country in Bengal, from Chittagong round the top of the delta of the Ganges, down to Cuttack, including the whole Province of Orissa, salt beyond a certain quantity could not be carried without a Customs pass; and the Legislature had deemed it absolutely necessary to allow the right of search in houses within this portion of territory, as otherwise it would be impossible to prevent the storing and transport of illicit salt. But in the North-Western Provinces, from one part of the country to another—from Benares upwards, or from Agra across to Shajehanpore—the transport of salt was perfectly free. No one could stop a cart, or ask whether the carrier had a Customs pass. It would appear that the Legislature, seeing there was only a frontier line to guard in the North-Western Provinces, thought it would be sufficient to prohibit the transport of salt across that line, and had therefore not given the right of search in