Saturday, 7th July, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. I

(1854-1855)

was the first time it had occurred under Act XXXIII of 1852. He remembered that, some years ago, on a motion for execution in aid of the process of a Zillah Court under Act III of 1840, the then Chief Justice of the Supreme Court of Bombay refused to issue process, and held that it was optional with the Supreme Court to grant such process or not. There the question remained, until Act XXXIII of 1852 was passed, which, it was supposed, was sufficiently definite to prevent the recurrence of such disputes. As it had not proved so, it was highly desirable that some rule should be made, or some course adopted, which would set all doubts on the subject at rest; and he thought that the best means of securing that object was to refer the communication and the papers which had been received from Bombay to a Select Committee, who would report whether any further legislation was necessary or not; and, with that view, he hoped that his motion would be assented to.

The motion was put, and carried.

MR. LEGEYT then moved that Sir Lawrence Peel, Mr. Peacock, Sir James Colvile, Mr. Eliott, and the Mover should form the Select Committee.

Agreed to.

NOTICE OF MOTION.

MR. CURRIE gave notice that he would, on Saturday next, move the second reading of the Bill "to amend the law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William."

The Council adjourned.

Saturday, July 7, 1855.

PRESENT:

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

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

REPORTS OF SELECT COMMITTEES.

MR. PEACOCK presented the Report of the Select Committee on the Law relating to Patents for Inventions.

MR. ELIOTT presented the preliminary Report of the Select Committee on the Bill "for the ware-housing of goods intended to be exported from Madras, and to facilitate mercantile dealings concerning goods warehoused."

LIMITATION OF SUITS.

SIR JAMES COLVILE moved the first reading of a "Bill to provide for the acquirement and extinction of rights by prescription, and for the limitation of suits." He said, the Bill which he had the honor to present, had no pretensions to originality. It was, with a few additions and modifications, the measure formerly proposed by the Indian Law Commission. The history of that measure was probably well known to some of the Council. He would, however, shortly recapitulate it.

Early in 1841, Mr. Amos, he believed on the suggestion of Mr. Carmichael Smith, prepared a Draft Act with the double object of amending the law of limitation existing in the Courts of the East India Company, and of extending to the Crown Courts in India the amendments introduced into the English law of limitation by certain modern Statutes not then in force in India. That Draft Act was read for the first time in Council in April 1841. The measure was referred to the Law Commissioners for consideration, and they, by their Report of the 26th of February 1842, proposed to substitute for the Draft Act of Mr. Amos, an Act for the acquirement and extinction of rights by prescription, and for the limitation of suits; but limited, as to the first object, to the territories beyond the limits of the Presidency towns; and as to the latter object, to the Courts of the East India Company.

The Act, as its title imported, introduced for the first time the principle of positive prescription; and, though its operation was limited, as he had just stated, the Commissioners, by their Report, adverted to the anomaly of having one law of limitation and prescription within, and another without the limits of the local jurisdiction of the Queen's Courts; and expressed a desire to make the provisions of their Draft Act generally applicable, if, after consulting Her Majesty's Judges, Government should deem it expedient to do so.

A majority of the then Judges of the Supreme Courts, having declared themselves in favor of an uniform law of prescription and limitation, the Draft Act was amended accordingly, and a second Report of the Law Commissioners was made thereon on the 1st October 1842. A considerable correspond-

ence touching this measure took place. Two further Reports were made by the Commissioners with reference to objections made to their Draft Act, or suggestions for its improvement. The last of these was dated the 25th of April 1843, and to it was annexed the Draft Act as finally settled by the Commissioners on the 23rd February 1843. The whole of these Reports, and of the correspondence to which he had referred, would be found in the Reports of the Law Commissioners for 1843, 1844, and 1845, laid before Parliament.

Since April 1843, the question had, from one cause or another, been allowed to sleep.

He would now shortly state the present state of the Law, and he would begin with the Queen's Courts. These were still governed by the English Law of Limitation as defined by the Statutes 21 James I c. 16. and 4 Anne c. 16, modified by Act XIV of 1840 which extended Lord Tenterden's Act to India. But they did not administer the whole of the existing English Law of Prescription and Limitation; since various modern Statutes, including the 3 and 4 W. IV c. 27, amended by 1 Vic. c. 28, the 3 and 4 W. IV c. 42, and the 2 and 3 W. IV c. 71, had never been extended to India. An important question had, however, been settled by decision since the Commissioners reported. It was formerly doubted whether the Queen's Courts were not bound by the 17th Section of the 21 of Geo. III. c. 70, to apply to actions *ex contractu* between Hindus or Mahomedans, the Rules of Limitation supposed to exist in the Hindu or Mahomedan Codes respectively, instead of the English Law of Limitation. It was, however, determined by the Supreme Court of this Presidency in 1849, in the case of *Beerchund Podar* versus *Ramanath Tagore*, reported by Messrs. Taylor and Bell, that the English Law of Limitation, being one which bars the remedy and not the right, is, as part of the *lex fori*, applicable to all classes of suitors in the Queen's Courts of India. This question, which had been determined in the same way by the Supreme Court of Bombay, was, in 1852, conclusively settled by the Privy Council in the case of *Ruckmaboye* versus *Mottichund*, which would be found in the 5th volume of Mr. Moore's East India Appeal Cases.

What, then, was the Law of Limitation in the Courts of the East India Company? Those of the Presidency of Fort William were, it was well known, governed by Regulation III of 1793, Section XIV, and Regulation II of 1805 of the Bengal Code, and the Regulations extending the first of these enactments, with more or less of modifications, to the provinces which, since 1793, had been added to the Presidency of Fort William. There had been a vast body of judicial decisions, not altogether uniform, upon the different provisions of these Regulations; and the Law was not, he believed, considered to be in a satisfactory state. Particular Rules of Limitation were also to be found in several other Regulations, or Acts, to which it was unnecessary here particularly to advert. Again, the Courts of the Presidency of Bombay were governed by Regulation V of 1827 of the Bombay Code, and the Courts of the Presidency of Fort St. George by the 18th Section of Regulation II of 1802 of the Madras Code.

The Regulation Law of Limitation in the Madras Presidency did not materially differ from that of Bengal, the general period of limitation applicable to all suits being twelve years. But that of Bombay, which allowed a period of thirty, and in some cases one of sixty years for the institution of a suit for the recovery of land, six years for suits for debts, and but one year for suits founded on certain wrongs, was widely different from either. What was the Rule of Limitation, if any, observed in the non-Regulation Provinces, he was unable to state.

The result, then, was that the Regulation Law of Limitation differed in one Presidency, at least, from that which obtained in the other two; and that the Regulation Law of Limitation in each Presidency differed from the Law of Limitation which obtained in the Presidency Towns, not only in the periods of limitation, but in the exceptions to the application of those periods; and also in the principle on which those exceptions, where they were the same, were allowed. For example, Regulation II of 1805 of the Bengal Code, and Regulation V of 1827 of the Bombay Code, both admitted exceptions unknown to the Statute of James, and did not admit that which was founded on the disability of coverture; whilst an exception which was common to all the different systems, such as infancy, might be allowed in a Company's Court, when it would not be allowed in a Queen's Court, since the principle of the English Law that, when once the Statute had begun to run, nothing should stop its course, was unknown to the Regulation Law. Now, the anomaly that a demand might be barred in one Court, which

was capable of being enforced in a Court sitting at the distance of two miles from the other, provided the debtor could be subjected to the jurisdiction of the latter, though sufficiently striking, was of comparatively little consequence in the case of personal demands. But it might be of the most serious consequence if it affected the title to immoveable property. In a recent case, which had arisen in the Supreme Court of this Presidency, one Hindu brought an ejectment against another—an inhabitant of Calcutta—for land situate in the Mofussil. The defendant proved adverse and undisturbed possession for more than 12, but for a period somewhat less than 20 years. Therefore, according to the Regulation Law, he had a good title against the lessor of the plaintiff: but, under the Statute of James, the right of entry of the latter still subsisted. The Supreme Court of this Presidency held that, as the question was one of title to immoveable property, the *lex loci rei sitæ* was to be applied, and that the Regulation Law of Limitation was to be treated as falling within that description. But the case was, he believed, under appeal; and therefore, the point could not be considered as settled. If it was determined otherwise, the necessity for having one uniform Law of Limitation for all the Courts of this country would be all the stronger.

The Bill now introduced differed somewhat in the arrangement of its clauses from the Draft Act of the Law Commissioners. One reason for this difference was, that he wished to keep all the clauses which related to positive prescription distinct from those which related to the limitation of suits; in order that, if the Council should ultimately determine not to admit the principle of positive prescription, there should be no difficulty in striking out that part of the Bill.

The result of the opinions elicited by the publication of the Draft Act by the Law Commissioners, was, he thought, on the whole, favorable to the introduction of a positive prescription. But it must be admitted that, amongst the dissentients, there were many whose opinions were of considerable weight. He was himself in favor of introducing that prescription. As regarded easements, and incorporeal hereditaments, something of the kind, whether it was given directly, or was based on a presumed enjoyment from time immemorial, or on the fiction of a presumed grant, was essential. The principle existed, in one shape or another, in all the systems that were based on the Roman Civil Law, and had been formally adopted into the Law of England by the 2nd and 3rd Wm. IV c. 71, though in a manner which had led to a good deal of litigation. As regarded corporeal hereditaments, the Commissioners had shown, and the Honorable and learned the Chief Justice had observed in his letter of the 4th July 1842, that the introduction of the principle would make little substantial alteration in the Law of England as it now existed. He was not aware that it would be otherwise in the Mofussil. But if such were the case, he was all the more in favor of the proposed alteration of the Law. The effect of it, speaking generally, would be to give a positive title in circumstances in which the right of the opposite party, if out of possession, would be barred. And he thought that, in a country where affrays often arose out of disputes concerning the possession of land, it was impolitic to give to mere corporeal possession the high value it must have whenever the right survived the remedy, and a defendant in possession was allowed to hold adversely to a title against which, if out of possession, he could not have recovered. It was worth observing that the principle, though not recognized by the Regulations, was not new in this country. The Mahommedan Law did not seem to admit either of positive or negative prescription; but if either existed in the Hindu Law, the texts from which it was to be gathered, seemed to contemplate rather a positive prescription as to things capable of occupancy, than that kind of negative prescription, or limitation of suits, which was introduced by the Regulations.

He would now observe shortly on some of the clauses of this Bill, and particularly on those which differed from the corresponding clauses proposed by the Law Commissioners.

In Section III, he had thought it necessary to modify the corresponding clause of the Draft Act of the Commissioners. The latter was introduced for the first time into the Draft Act as finally settled in consequence of an observation of the late Mr. Thomason. Mr. Thomason had remarked on the sections of the Commissioner's Draft Act which related to easements, that

"they might have a very extensive effect. Tenants at will, by failure of the proprietor of the land to demand an increase of revenue for 12 years, would be changed into tenants with right of occupation at fixed rates; and that, notwithstanding they have been judicially declared, at the time of settlement, to be tenants at will."

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The Commissioners, after pointing out that he had misapprehended the scope and effect of the particular sections on which he was remarking, expressed their conviction that it was desirable to provide for the acquisition of such right of occupancy by prescription; and, accordingly, introduced the clause which stood as Section II of the Draft Act as finally settled. Now, he (Sir James Colvile) did not mean to say, that, upon a proper construction of that clause, the consequences apprehended by Mr. Thomason would flow from it. Still, the words appeared to him capable of misconstruction; and his attention having been drawn to a recent, though not unanimous, decision of the Sudder Dewanny Adawlut, which he thought showed that the change suggested by Mr. Thomason was, even in the present state of the Law, not altogether imaginary—he had endeavored to express more strongly that fixity of tenure was not to be presumed from a fact so ambiguous as that of payment of the same rent for a considerable period—that there must also be evidence of acquiescence in a claim on the part of the tenant to hold by a particular tenure. If this was not provided for, the landholder would, of course, disturb the existing relations between himself and his ryots, and try to raise his rents at least once every 12 years. The subject was a difficult one, and he had not a very strong opinion in favor of this clause.

In Section VII, he had thought it right to introduce two Clauses, 3 and 4, to meet the case, which often occurred, of the loss of land, part of an estate subject to an under-tenure during the subsistence of that tenure, by the encroachments of conterminous proprietors. It seemed hard that a title by prescription should be acquired against the superior landlord, assuming him to retain a reversionary interest in the soil, by such encroachments, whilst, for want of the actual right of possession, he was unable to resist them. His rights were protected by Clause 3. In like cases, where the sub-tenure was of that nature that the superior landlord retained no right in the soil, but could only enforce his right to rent by the sale of the putnee or other under-tenure, the rights of the auction-purchaser were protected by Clause 4.

He had added to Clause 12 a proviso, the object of which was to prevent the disturbance of existing titles by a retrospective operation of the Act. In the Presidency Towns in particular, in which the periods of limitation and prescription as to immoveable property and easements were shortened by this Act, a man, but for some such proviso as this, might be ejected, under a twelve years' title by prescription, by one who, before the passing of the Act, would have failed, or might actually have failed, because he could not prove a good title for twenty years.

He would now proceed to consider that part of the Bill which related exclusively to the limitation of suits. The general periods adopted, were twelve years for suits relating to immoveable property, specialties, and securities for money in the nature of specialties; and six years for other personal demands. The period of twelve years being that in use in the largest portion of British India, seemed to be that which it was most fit to adopt as the longest period of limitation; whilst there were strong reasons for choosing, as the general period of limitation to suits founded on personal demands, that of six years, being that which, in England and America, the countries which were chiefly connected with British India by commerce, was the period of limitation applicable to Bills of Exchange and other mercantile contracts.

Of the shorter periods of prescription, the first related to "Shaffa," or the right of pre-emption. This, the Council was aware, was a right derived from the Mahomedan Law. It was not generally recognized in this country; but in Behar and some of the western districts, it was in force even amongst Hindus. It was the preferential right of a co-sharer in property held in shares, or even of a neighbour, to purchase the property sold; and might be asserted against an actual purchaser on tendering to him the purchase-money paid by him. From its very nature—from its tendency to make titles uncertain—it was obviously a right which, if allowed to exist at all, ought to be promptly asserted. The Mahomedan Law endeavored to provide for this; and contained some curious distinctions on the subject. For instance, the Hedaya said:

"If the Shafee, on hearing of the sale, exclaim 'Praise be to God!' or 'There is no power or strength but what is derived from God!' or 'God is pure!' his right of Shaffa is not invalidated; insomuch that if, immediately on pronouncing these words, he, without delay, claim his Shaffa, he will accordingly get it; because the first of these is considered as a thanksgiving on his being freed from the neighbourhood of the seller; the second (which is an expression of admiration) is supposed to proceed from the astonishment with which he is struck at the intention manifested by the

seller of doing a thing which would be vexatious to him; and the last is considered as an exclamation prefatory to further discourse."

But it was quite clear that, in spite of these concessions to surprise or other infirmity, the Mahomedan Law required the Shafee, as soon as he heard of the sale, to declare to all about him that he meant to stand on his rights; and as these might be his own people, it further required him, as soon as conveniently might be, to intimate that intention before witnesses either to the seller, or to the purchaser, or upon the premises. If, however, these formalities were complied with, and his right was not admitted, the Mahomedan Law prescribed no period wherein he must assert it by litigation. And, accordingly, the Sudder Dewanny Adawlut had decided (and it appeared to him that, in the present state of the law, it had correctly decided) that the only period of limitation which it could apply to such a suit was the general period of twelve years. The inconvenience of this state of things had been forcibly brought to the attention of this Council by a petition from Mr. Lautour; who proposed that sales of all property subject to this right should be registered, and the Shafee bound to bring his suit to impeach the sale within one month from the date of the registration. He (Sir James Colvile) thought that the former part of this proposal should be dealt with by some general law of registration, rather than by such a Bill as this. The period of limitation which he proposed was somewhat longer than that proposed by Mr. Lautour, but considerably shorter than that of one year which was proposed by the Law Commissioners. It was three months from the time the purchaser was let into possession, or the sale registered, whichever should first happen.

Under the limitation of one year, he had brought most of those suits which the Law Commissioners proposed to subject to a limitation of that period, including suits by a Putneedar to set aside the sale of his putnee sold for current arrears of rent, which was the particular subject transferred to the Legislative Council from the former Legislature. The principle upon which this short period of limitation was sought to be applied to sales, was that of giving security to titles. The principle on which it was proposed to shorten the period of limitation where the parties were already litigating their rights by the summary proceeding which the law in certain cases allowed, was that of compelling them to proceed as speedily as was reasonable to a final settlement of their disputes.

Clauses 6 and 7 had been added on this principle. Clause 6, however, differed only from Act XIII of 1848 in the addition of the words "or to recover any property comprised therein." The expediency of some such provision as that in Clause 6 had been suggested to him in part by some observations made by his Honorable Friend on his left (Mr. Grant) during one of the debates on the Affray Bill.

From the Reports of the Commissioners, it appeared that the reason why suits upon securities not under seal, if attested by a witness, were included in Clause 8, was that, although, in the Mofussil, the distinction between instruments under seal and those not under seal was unknown, *khuts* and other securities in the nature of bonds were used. These, it was thought, ought to be placed on the same footing as English bonds, suits concerning which it was thought expedient to leave subject only to the longest period of limitation. But this reasoning did not apply to negotiable paper; and, as it seemed desirable that all negotiable paper, whether attested or unattested, should be governed by the same rules, he proposed to exclude it from this Clause.

By Clause 10 of Section XIII, he had endeavored to settle a question which, he believed, was of frequent occurrence in the Courts of the East India Company, and had not yet been finally determined. Regulation XIX of 1793 declared that grants of lakhiraj land before the grant of the Dewanny to the East India Company in 1765 were valid; that those made after that period and before 1790 were invalid, unless confirmed by the Governor General in Council, or some officer competent to confirm them; but that grants made since 1790 were absolutely void unless made by the Governor General in Council, and that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil, or the rent of it. He believed that suits by zemindars to resume and assess, related generally to lakhiraj lands of the 2nd class.

In the case *Sheikh Shufaitollah* versus *Joykissen Mookerjea*, Sudder Dewanny Adawlut Decisions for 1848, p. 460, Mr. Hawkins, in an elaborate decision, laid down that, in a suit by a zemindar to resume and re-assess lands held as lakhiraj from a period antecedent to the decennial settlement, there was no period of limitation. That decision,

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he believed, for some time governed the Courts. But he had reason to believe that, since the decision of the Privy Council in the case of the Government against the Rajah of Burdwan, the *nullum tempus* doctrine of Mr. Hawkins had been shaken, if not overturned ; and that, although the Law could not be stated as settled, there was a general impression that the ordinary 12 years' period of limitation was to be applied between zemindar and lakhirajdar, just as the Privy Council applied the 60 years' prescription to the suit by the Government against the Rajah of Burdwan.

He had adopted this principle ; but he did not propose to repeal Section X of Regulation XIX of 1793 ; or the other Regulations *in pari materiâ*. These were expressly saved by Section XXXV, which was taken, in terms, from the Draft Act of the Law Commissioners. It might, however, be a question with the Council whether the Legislature ought not to go further, and to apply this rule of limitation to all suits to resume and assess arising between landholder and lakhirajdar. The principle of the enactment just referred to was, that the zemindar, who, under the perpetual settlement, held his land subject to forfeiture for the nonpayment of the fixed revenue, ought not to be deprived of any part of his means of meeting the demands of Government; and that each portion of the land should bear its burthen. Still, if the zemindars slept upon it, there seemed to be no reason why he should not lose this like any other right; since the ultimate security of the revenue was provided for by the reservation in favor of a purchaser at a Government sale.

He (Sir James Colvile) had adopted generally the rules as to exceptions arising from the different kinds of disability proposed by the Law Commissioners.

These might be, in some respects, arbitrary; but on the whole, he thought them better than either the introduction of the English rule that, when the law of limitation has once begun to run, nothing shall stop it—which seemed to depend more on the language of the Statutes than on any sound principle—or the retention of the present system of the Courts of the East India Company, which seemed to him to err on the side of indulgence.

The only alterations he had made were—first, that, in Section XX, he had given to a plaintiff resident in Ceylon the benefit of the disability arising from absence; and in Section XXII, he had excluded the time during which the plaintiff had been diligently prosecuting a suit in a *competent* Court of the East India Company, which should have been nonsuited for defective pleading. The first seemed to him to be a very arbitrary rule; since a plaintiff resident in Ceylon might have less to do with India than one resident in the city of London; and he was assured that it would not be safe to alter the present practice of the Courts of the East India Company in the second particular.

In Section XXVI, he had followed the Commissioners' example in providing that the Act should not extend to any public property or right, nor to any suits for the recovery of the public revenue or for any claims.

But it was undoubtedly worth the consideration of the Council whether the rules of limitation applicable to claims by Government ought not to be re-enacted, and made part of this Act with or without modification.

He had introduced some express clauses as to process of execution, and had made a distinction between executions on regular and those on summary decrees. The rule as to execution now followed in the Courts of the East India Company, was not expressed in the Regulations, but, as was shown by an able argument of Baboo Ramapersaud Roy [in a case of which he (Sir James Colvile) did not recollect the name or date] had been adopted by analogy to the Law of Limitation, and depended upon precedent and long practice.

He had now only to apologize to the Council for having tresspassed so long upon their attention; for having dealt, he feared, so tediously with an uninteresting subject. He was afraid his measure, notwithstanding the able assistance for which he had to thank both the Clerk Assistant and Baboo Ramapersaud Roy, might still be somewhat imperfect, particularly in what related to the Presidencies of Fort St. George and Bombay. But, knowing how many demands there were upon the time of his Honorable Friends opposite who represented those Presidencies, he had determined to launch his Bill as it stood, and to trust to having its deficiencies, such as they might be, pointed out and remedied here. He would only add that, if these were such as, in the opinion of any considerable portion of the Council, to make an amendment of the Bill, before it was published to the world, desirable, he should not oppose that course.

He would now beg leave to move that this Bill be read for the first time.

The Bill was read a first time accordingly.

PATENTS.

Mr. PEACOCK moved that a Bill "for granting exclusive privileges to Inventors" be read a first time.

This Bill, he said, was submitted to the consideration of the Council by the Select Committee appointed to consider and report upon the Law relating to Patents for Inventions; and he would briefly explain the principles upon which it was based.

There were many difficulties connected with a Law relating to Patents for Inventions, and many persons had disputed the expediency of granting exclusive privileges to inventors. The Select Committee were of opinion that the arguments in favor of granting such privileges to actual inventors, preponderated.

In England, a Patent for an invention was an exclusive privilege granted by the Crown upon certain conditions, under a power reserved by the Statute 21st of James I, c. 3. That Statute declared all other monopolies to be void; but Section VI reserved to the Crown the power of granting to the true and first inventor for the term of 14 years, or under, the privilege of the sole working or making of any manner of new manufactures within the realm. The Patent, being a grant of the Crown, was in every respect subject to all the rules of Law that were applicable to other grants derived from the Crown. One of these rules was, that the grant was to be construed most strictly against the Patentee; and the whole Patent was void if it contained any false recital. The consequence of this was, that Patents were frequently set aside upon grounds that might be considered merely technical. If a person claimed as part of his invention any thing that was publicly known or used, his whole Patent was void, notwithstanding the other portion of his invention might be new and useful, and he might have fully believed, at the time of obtaining the Patent, that his whole invention was new. This depended upon a rule applicable to all grants by the Crown—namely, that if the Crown is deceived in any respect, the whole grant is void.

The Select Committee thought it unnecessary to follow the principle adopted in England of giving an inventor his exclusive privilege by a grant. They thought it would be better that he should be entitled to it by law; and, therefore, instead of providing that an inventor should derive his exclusive privilege from a grant by the Governor General of India in Council, they had provided that he should derive it under the Act itself, subject to certain restrictions. The only thing which an inventor gives to the public as a consideration for the exclusive privilege conferred upon him, is a knowledge of his invention. He ought, therefore, before he obtains an exclusive privilege, to communicate to the public such a knowledge of his invention as will enable them to practise it as soon as his exclusive privilege expires. According to this Bill, in order to obtain an exclusive privilege, an inventor must first petition the Governor General in Council for leave to file a specification describing the nature of his invention, and the manner in which it is to be performed. The Select Committee considered it necessary to have some check to prevent persons from filing specifications in frivolous cases, which would be productive of much inconvenience, and might be injurious to the public. They, therefore, did not think it right to enable any person to file a specification as a matter of course, but left it to the Governor General in Council to grant permission to do so. Subject to this check, the proposed Law would follow the Law of Copy-right rather than the Law of Patents.

The Bill provided that, after an order was obtained from the Governor General of India in Council, the specification must be filed within a certain time; and it allowed the inventor an exclusive privilege for 14 years from the date of the filing of his specification, subject to certain conditions.

The Select Committee had felt some difficulty in determining precisely the period during which an inventor should be entitled to an exclusive privilege. By the Statute of James, the grant of the Crown might be for 14 years or *under;* but the practice in England was to grant the exclusive privilege for 14 years: he was not aware of any instance in which a shorter period had been prescribed. The Select Committee had fixed 14 years as the period for the duration of an exclusive privilege given under this Act. It had, however, been found, in some cases, that 14 years was too short a period to enable the inventor to derive the full benefit of his invention, and sufficient remuneration for his outlay in perfecting it and bringing it into practice. In such cases, recent Statutes authorized the Crown to enlarge the grant for a further period not exceeding 14 years; and this Bill conferred power on the Governor General of India in Council to extend the exclusive privilege for a further period not exceeding 14 years.

The next question to be considered was, who should be deemed an inventor? Should the term denote only the actual inventor; or should it also include the first importer of an invention into India? In England, the first importer of an invention from a foreign country was entitled to the grant of an exclusive privilege; but there appeared, in these days especially, to be no sufficient reason for conferring upon the first importer of an invention, all the privileges of the actual inventor. The Bill, therefore, limited the exclusive privilege to the actual inventor. It did not appear necessary to confer upon importers from foreign countries a privilege which ought not to be granted to the importer of an invention from England, and it certainly would not be right to confer an exclusive privilege upon such importers of inventions.

In England, although a Patent conferred an exclusive privilege upon the Patentee for the term specified in the grant, still, the moment he filed his specification, any person might go to the Patent office, read the specification, and become master of his secret. If such a person could obtain an exclusive privilege in India by merely importing the invention, we might have persons coming out from England with the secret of an invention disclosed by a specification filed in that country, and obtaining a privilege here to the exclusion of the actual inventor.

The Select Committee thought it right that the provisions of the Bill should not be confined to British subjects alone, but that they ought to be available to all actual inventors, whether British subjects or foreigners. In England, it seemed that an alien might obtain Letters Patent. But in America, he (Mr. Peacock) believed that an alien could not obtain a Patent unless he had resided one year in the United States. If a person actually invented something that was new and useful to the public, the Select Committee saw no sufficient reason why he should not have an exclusive privilege in respect of it, whether he were a British subject or not, and whether he were a resident in India or not. The object was, to induce persons to invent, and, having invented, to disclose the secret of their inventions for the benefit of the public. If any one invented any new and useful article, or any new and useful method of making such an article, it appeared to the Select Committee that he should be entitled to avail himself of the provisions of this Bill even though he might be an alien, and might be resident abroad.

In England, to enable an inventor to obtain an exclusive privilege, his invention must be new; otherwise, his Patent would fail. It had been a question with the Select Committee what sort of previous knowledge should prevent an invention from being considered new in this country. They thought it right that, if an inventor made his invention known in England or elsewhere without taking out Letters Patent or other like privilege, he should be deemed to have dedicated the same to the public; and should not be entitled to an exclusive privilege here; but that, if he made his invention known in England under Letters Patent, or elsewhere under a like privilege, he ought to be allowed to obtain an exclusive privilege in India. The Select Committee had, however, followed the recent Act relating to Inventions in England, by providing that the exclusive privilege in this country should cease as soon as the exclusive privilege obtained in England or abroad was at an end. That appeared to them to be a sound principle; otherwise, a person, having made known an invention in England or elsewhere in consideration of an exclusive privilege for 14 years, might come out to India seven years after the date of his Patent, and obtain an exclusive privilege here for 14 years from the time of his arrival, and so restrain the public in India from using an old invention seven years beyond the period during which the public in England would be restrained.

The Bill provided that any person, being the actual inventor of a new and useful invention, or deriving title through the actual inventor, who might obtain Letters Patent in England or other like privilege elsewhere after the passing of the Act, might also obtain an exclusive privilege in India, provided he applied for leave to file a specification here within six months from the date of obtaining the Letters Patent in England, or other like privilege elsewhere.

With regard to Letters Patent obtained before the passing of the Act, it became a matter for consideration whether a different rule should not be framed. It had been doubted whether the Crown could grant an exclusive privilege for the use of an invention in India. The Select Committee had provided by this Bill that persons who obtained English Patents before the passing of this Act, might obtain an exclusive privilege in India, provided they applied for leave to file their specifications within twelve months from the passing of the Act. So that, if a person now held a Patent in England for 14 years, of which four years had elapsed, he

would be entitled to an exclusive privilege here for the unexpired period of 10 years, notwithstanding he had already made his secret known in England, provided only that he applied for leave to file his specification within twelve months after the passing of this Bill.

Some difficulty might, however, be experienced in carrying out this provision to its full extent; because, if any one from England or elsewhere other than the Patentee, having read the specification, and so learnt the secret of the invention, had introduced the invention into this country during a time when there was no Law to restrain him from so doing, it would be unjust to interfere with his rights after the Bill should be passed; since he might have set up a manufactory or made other outlays of capital for bringing the invention into use. There had been several applications here for the grants of Patents. One of them was an application for a Patent for the bleaching of Jute. If a person had ascertained the method of carrying out that process from the specification filed by the inventor in England, and had already brought it into operation here, after expenditure of money, the Select Committee thought that it would be unjust to give an exclusive privilege to the inventor, which would prevent the other from continuing to use the invention in this country. He did not think it likely that such a case existed, but it was necessary to make provision to meet it. The Committee had, therefore, provided that, in the case of Patents granted in England, or other like privilege granted elsewhere, before the passing of this Bill, no exclusive privilege should be given to the inventor as against persons who had *used* the invention in India prior to the first reading of the Bill.

There remained now but one or two other subjects in connection with the Bill, to which he had to draw the attention of the Council.

The first of these was, the jurisdiction of the Courts. In actions for the infringement of Patents, many difficulties arose as to the sufficiency of specifications—difficulties often involving scientific inquiries. In England, there were two modes by which the validity of a Patent might be tested—first, by an action brought by the Patentee for the infringement of his Patent—secondly, by a writ of *scire facias*, issued at the instance of any person, calling on the Patentee to show cause why his Patent should not be rescinded. In the former case, the Patentee, who brought the action, opened his case to the jury and had a reply; and he generally succeeded in establishing the validity of his Patent. Upon a *scire facias*, the prosecutor had the first word and the last; and there was scarcely a single case in which a Patent had been upheld when the validity of it was discussed in that form of proceeding. It was seldom that a specification could be drawn in such a manner that no hole could be picked in it, even though there were scientific men in England who devoted themselves principally to the business of preparing specifications.

The Mofussil Courts could very well try whether an invention had been infringed or not; and, accordingly, this Bill gave the principal Court of original jurisdiction in civil cases the power of deciding actions for infringement; but the Select Committee had provided that no objection to a specification should be admitted in an action for infringement. They had confined the jurisdiction to try the validity of a specification, to the Supreme Court at Calcutta.

One great object in requiring a specification was, that the public might obtain full information of the secret of the invention. If an inventor did not properly specify his invention, the injury would be rather a public than a private one; the Bill, therefore, provided that a defect or error in a specification should be a question to be considered, not in an action for infringement, but on a motion in the Supreme Court for a rule to show cause why the Patent should not be set aside. If the Supreme Court should set the Patent aside on that motion, the decision would operate for the benefit of the public at large.

The Select Committee had also provided that, in an action for infringement, the plaintiff should be at liberty to succeed if he proved that any portion of the Patent which was new and useful had been infringed, even though the inventor might have claimed as part of his invention some thing which was not new or useful, provided he had acted *bonâ fide*, and not with any fraudulent intention. In England, an action for infringement would fail if it appeared that any portion of the invention claimed was not new, even though the inventor might not be suing for the infringement of that part of it, and, at the time of obtaining the patent, believed that he was the actual inventor of all that he claimed as his invention. To prevent an inventor from being deprived of his exclusive privilege in consequence of any error in his specification, the Bill provided that, where an error or defect in the specification was unin-

tentional, and might be amended without injury to the public, the Supreme Court might order an amendment to be made. If a person fraudulently claimed in his specification more than he was entitled to, or if he filed a specification intentionally framed in such a manner as to mislead the public, or not to give them all the information to which they were fairly entitled, of course his Patent would be rescinded. There was a case in which a Patent was taken out in England for the manufacture of Seidlitz Powders. The new medicine was composed of three ingredients—carbonate of soda, Rochelle salts, and Tartaric acid. These ingredients were well known substances before the date of the Patent; but the Patentee, instead of describing them by their names, described the mode of making each of them, and the mode and proportions in which they were to be mixed. In that case, the Court of Queen's Bench held the Patent to be void, upon the ground that it was the duty of the Patentee to point out in the plainest manner the mode of producing that for which he claimed a monopoly; and that the public were misled by the specification, inasmuch as it tended to make people believe that an elaborate process was necessary to be gone through in order to obtain the articles, which they might have purchased at any chemist's shop if the specification had described them by their names. Under this Bill, a specification like that would, and ought to be held bad. But if a man, in specifying an invention which required a very minute and scientific description, unintentionally, fell into an error, or honestly claimed as part of his invention any thing which might be previously known, he would not, under this Bill, be entirely deprived of the benefit of his invention; but the error might be amended by order of the Supreme Court, if they should be of opinion that such amendment might be made without detriment to the public. He (Mr. Peacock) thought it was very desirable that, after an inventor had undergone all the expense and trouble of obtaining an exclusive privilege, and all the anxiety of bringing his invention into use, he should not be turned round upon by any technical objection to his specification.

The only other question that now remained was, whether the Legislative Council had the power to pass this Act without previously sending it home for the sanction of the Crown. The present Charter Act said:—

"No Law or Regulation made by the Governor General in Council shall be invalid by reason that the same affects any prerogative of the Crown; provided such Law or Regulation shall have received the previous sanction of the Crown, signified under the Royal Sign Manual of Her Majesty, countersigned by the President of the Board of Commissioners for the Affairs of India."

The question was, would this Law affect any prerogative of the Crown? It appeared to the Select Committee that it would not. Assuming that the prerogative of the Crown to grant Patents extended to India, the privileges given by this Act would not affect any privilege granted by the Crown. If it should so happen, which was a very unlikely case, that the Crown should grant a Patent to the mere importer of an invention, and the actual inventor should obtain an exclusive privilege under this Act, a conflict might arise. But in order to provide against such a case, and to remove all doubt, the Select Committee had inserted a Section which provided that—

"Nothing in this Act shall affect the prerogative of the Crown, or interfere with or affect any Letters Patent now or hereafter to be granted by the Crown."

So that, if the Crown should think it right to exercise the prerogative of granting Letters Patent in India, which had never hitherto been done, this Bill would not affect the case, and the Letters Patent would remain in precisely the same condition as they would be if the Bill were not passed.

These were all the observations which he thought it necessary to make upon the Bill. The Bill would be printed, with the Report of the Select Committee; and every Member of the Council would have an opportunity of reading and considering it before he (Mr. Peacock) moved the second reading.

The Bill was read a first time.

AMEENS (BENGAL).

MR. CURRIE postponed the second reading of the Bill "to amend the Law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William."

MINORS (FORT ST. GEORGE).

MR. ELIOTT moved that 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" be now read a third time and passed.

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

MR. PEACOCK was requested to carry the Bill to the President in Council, in order

that it may be submitted to the Most Noble the Governor General for his assent.

PORTS AND PORT-DUES.

On the Order of the Day for the third reading and passing of the Bill "for the regulation of Ports and Port-dues" being read—

MR. GRANT moved, under Standing Order No. LXXXVI, that the Bill be re-committed. He had a few amendments to propose in it, which were of no great importance. But his Honorable and learned Friend opposite (Mr. Peacock) had amendments to move, which were of considerable importance, and to which, as far as he was aware, no opposition would be made.

The Honorable Member's motion was put and carried; and the Council accordingly resolved itself into a Committee for the further consideration of the Bill.

MR. GRANT moved that the following new Section be inserted before Section I, namely:—

"Section XXI of Act I of 1852, and Schedule C appended to that Act, are hereby repealed."

Question put and agreed to.

MR. GRANT next moved amendments in Section I, which were severally agreed to, and which made it stand thus:—

"Regulation VII of 1801 of the Bengal Code; so much of Regulation II of 1810 of the Bombay Code as is still in force; Section XII Regulation III, 1833 of the Bengal Code; Act XIII of 1839; Section XXXIX of Act I of 1852; Sections XLII and XLIII of Act XIII of 1852; and Act XI of 1853, so far as it relates to the removal of any obstruction, impediment, or public nuisance affecting or likely to affect the navigation of the Port of Bombay,—shall cease to be of force in any Port, River, or Channel in which the same respectively are now in force, from the time when such Port, River, or Channel shall be declared to be subject to this Act."

THE CHAIRMAN then read Section XXXVII, which, as framed originally, provided that disputes regarding the amount of salvage payable for anchors, wreck, stores, or other property recovered from the bed of any Port, River, or Channel, subject to the Act, should be decided by a Magistrate. As amended in the Committee of the whole Council, it provided that such disputes should be decided by arbitration.

MR. GRANT said, the Select Committee, and another Honorable Member of the Council, thought it would be better to leave such disputes to the ordinary Civil tribunals. It was not expected that many cases would arise; and when any did arise, it appeared to be advisable that the Small Cause Courts should be the tribunals to resort to. The value of the property saved would, in most cases, not pay for the expenses of arbitration. He, therefore, moved that the following words be left out of the Section:—

"And if any dispute shall arise as to the amount of such salvage, the same shall be fixed and determined by arbitration. Each party shall appoint an arbitrator, who shall elect an umpire, and the award of such arbitrators or, in case they shall differ, of the umpire, shall be final."

Question put and agreed to.

THE CHAIRMAN then read Section XL, which provided that Port-dues should be levied in Ports subject to the Act at rates not exceeding those mentioned in the Schedule annexed.

MR. PEACOCK said, he should be very sorry if any delay should occur in the passing of this Bill, because he believed that many of the Sections contained in it would be very beneficial; but he felt that he could not vote for the third reading of the Bill if it remained in the state in which it had been settled in Committee of the whole Council.

As the 40th Section of the Bill stood originally, it provided that—

"Port-dues, at rates not exceeding the rates mentioned in the Schedule, should be paid by every vessel, (which was altered into 'every sea-going vessel and river steamer') which should enter or be in any Port, River, or Channel subject to the Act."

The "Schedule of Port-dues and fees chargeable under this Act," as it originally stood, provided as follows:—

"Upon all vessels, (which was altered into—'all Sea-going vessels and River steamers') of whatsoever description, being vessels to which this Act applies, entering or being in any Port, River, or Channel subject to this Act, and either taking in or discharging any cargo or passengers therein, a consolidated tonnage duty not exceeding eight annas a ton (which was altered into—'a consolidated tonnage duty, to be from time to time fixed by the local Government with the sanction of the Governor General of India in Council, but not exceeding eight annas a ton').

"Upon all such vessels entering any such Port, River, or Channel, but not taking in or discharging any cargo or passenger therein, one-half the consolidated tonnage duty that would otherwise be chargeable under the preceding Rule."

He felt that eight annas a ton would be a higher duty than ought to be taken in any Port: he was satisfied that it would be much too high as to the generality of the Ports, and, therefore, he could not consent to fix eight annas as the maximum rate. He thought

that he would not be doing his duty, if he put it in the power of the Executive Governments to fix a maximum duty of eight annas, when he saw that that maximum was too high. According to the Schedule as amended in Committee of the whole Council, and as it now stood, no dues would be payable in any Port until they were fixed by the Local Government with the sanction of the Governor General in Council. The Council, by passing this Bill, would be delegating to the Executive Governments the power of fixing the dues; and it appeared to him that, by so doing, they would be exceeding their powers, notwithstanding the dues were to be fixed with the sanction of the Governor General in Council. By the Charter Act 3 and 4 William IV c. 85, it was enacted that the Local Governments should not have the power of making Laws and Regulations. That power was vested in the Governor General of India in Council; and by the late Act for the Government of India, the Legislative Council was the Council to whom the power of making Laws was entrusted. The Legislative Council had no authority to make Laws and Regulations at variance with the Charter Act; and the question, therefore, that arose was, whether fixing the amount of Port-dues was an act of legislation, or a duty of the Executive Governments? It appeared to him that it was an act of legislation, and that it would be quite as inconsistent with the Charter Act to delegate that duty to the Executive Governments, as it would be to delegate to them the power of fixing custom duties or any other taxes. In his opinion, the fixing of a maximum did not alter the case in principle. If the Legislative Council could not authorize the Executive Governments to fix the amount of a tax, it could not authorize them to fix it within certain limits. If the Council could authorize the Executive Governments to fix Port-dues not exceeding eight annas a ton, they might authorize them to fix Port-dues not exceeding 200 annas per ton. It was not even contended that eight annas a ton was necessary for every Port in India. The fact of the Act's rendering the sanction of the Governor General in Council necessary, did not, in his (Mr. Peacock's) judgment, get rid of the difficulty. Before the Council was established, it was decided by the Supreme Court that legislative functions could not be delegated by the Governor General in Council in his Legislative capacity to the Governor General in Council in his Executive capacity. The Governor General in Council for the purposes of legislation was a different body from the Governor General in Council for executive purposes. For executive purposes, the Governor General and one Ordinary Member of Council formed a quorum; but for the purpose of passing Laws and Regulations, it was necessary, before the late Act, that there should be at least three Ordinary Members of Council present, and, under the late Act, there must be at least six Members of Council assembled. The sanction of the Governor General in Council could not make any difference, unless it were the sanction of the Governor General in Legislative Council. Independently of the Standing Orders of the Legislative Council, there could be no greater difficulty in obtaining the sanction of the Governor General by an Act to be passed in the Legislative Council than there would be in obtaining the sanction of the Governor General in Council assembled for the purpose of exercising other functions. If the Executive Governments were to fix the Port-dues, they must first ascertain what were the average annual expenses incurred at each Port, and what was the average amount of tonnage which annually entered it. If they could collect these data, and submit them, with a Schedule of dues, to the Governor General in Council in his executive capacity with their reasons, it appeared to him (Mr. Peacock) that they could have no greater difficulty in submitting the data and Schedule, together with their reasons in support of it, to the Governor General in his legislative capacity; and then every Member of the Council would have an opportunity of forming his own judgment whether the dues proposed to be levied were necessary or not. It might be said that there would be an inconvenience in this respect, in consequence of the Standing Orders of the Legislative Council; and that no sanction could be given by the Governor General in the Legislative Council, or, in other words, that no Act could be passed for giving sanction to the Schedule without having a Bill for that purpose passed through its several stages, which would require a publication in the *Gazette*, in order to invite the opinions of the public. But, for his own part, so far from considering that this course would be inconvenient, it appeared to him that it would be highly beneficial. The Local Government having submitted the Schedule, and the data and reasons upon which it was founded, to the Legislative

Council, a Bill to give sanction to the Schedule would have to pass through two readings, upon the second of which it might be debated: the Schedule would then be printed and published: the public, and the persons best acquainted with the Port to which it applied, would have an opportunity of urging any objections to it if they thought that it would be injurious to the trade of the Port for which it was intended: those objections would be deliberately weighed and considered by the Select Committee: and then the whole measure would be further discussed and finally determined by the whole Council. If, however, it should be found expedient in any case to sanction a Schedule without delay—a case which he did not think possible—the Council had the power of suspending its Standing Orders; and, if that were done, the Schedule would not be in a worse position than if it had been submitted to the Governor General in Council in his executive capacity.

The Schedule, as it at present stood, provided that the consolidated tonnage duty should be chargeable for every vessel subject to the Act, except coasting vessels, entering or being in the Port once between the 1st day of January and the 30th day of June, and once between the 1st day of July and the 31st day of December in each year. He knew that, in practice, many of the large passenger ships from England arrived in this Port between the 1st of July and the 31st of December, and did not leave for the return voyage until after December. Under this Schedule, each of those ships would have to pay dues twice over—first for entering the Port between the 1st of July and the 31st of December, and again for being in the Port between the 1st of January and the 30th of June. It appeared to him that it would be very unjust to make them pay two half-years' consolidated tonnage dues for a single voyage.

He had made inquiries since the last discussion of this Bill, and he believed that a maximum of eight annas was much too high for any Port in these territories. At present, the Light and Buoy-dues in the Port of Calcutta did not pay the expenses of the Lights and Buoys; but there were other dues levied; and taken together, the collections paid nearly—but not quite—all the expenses of the Port. An English or foreign ship entering this Port at present paid only two annas per ton for Light-dues, and, if it drew eight feet of water, one anna per ton, passing Moyapore inwards—that is, three annas per ton altogether; but dhoonies paid six annas and three pie per ton. Whether this was because they did not employ pilots, he did not know. But he felt confident that eight annas would be much too high a duty to impose on English and foreign ships, and still more so on dhoonies in this Port.

At the Port of Madras a consolidated duty of three annas per ton was payable twice a year for British, Native, and foreign vessels. Ships of 1,400 tons burthen in that Port paid only at the same rate as vessels of 700 tons burthen; and yet, three annas per ton was found to be quite sufficient.

At the outports of the Presidency of Madras, English, Native, and foreign ships not exceeding 700 tons, paid only one anna per ton twice a year. Dhoonies also originally paid one anna per ton, but the rate for that class of vessels had been reduced to six pie per ton, payable twice a year; and yet the collections were found to be amply sufficient.

He had not been able to collect all the information that was necessary to enable him to move an amended Schedule to this Bill applicable to all the Ports in India; but he should be sorry to be forced to oppose the third reading until he could obtain that information. He, therefore, intended to propose a Section, in lieu of Section XL, authorizing the collection of Port-dues at the several Ports for one year at the same rates as those which were now usually collected at each Port; and to strike out the Schedule now annexed to the Bill. The following were the words of the Section which he proposed to introduce:—

"The dues and fees now usually collected at the several Ports within the said territories, may, during the period of one year from the time of the passing of this Act, be collected at such Ports respectively. No Port-dues or fees shall hereafter be levied in any such Port, except under the authority of this Act, or of an Act hereafter to be passed for fixing the amount thereof; but nothing herein contained shall prevent the levy, as heretofore, of Light duties under Regulation VI, 1831 of the Bombay Code, and Act XIII of 1854, or of fines or duties payable under Act XXVII of 1850."

The effect of this amendment would be, that the Port-dues which had been levied for many years past, would continue for one year longer; but they would cease at the end of that period. This would afford sufficient time to enable the several Local Governments to prepare and submit to the Legislative Council their respective estimates of the dues required to be collected at each Port subject to their Governments, with a statement of the average annual expenses of each Port for the last three years, its average collections,

and the average amount of tonnage that resorted to it. With these data before it, each Member of the Legislative Council would be in a position to form his own judgment whether the scale recommended was a proper one or not, and to determine what the rate ought to be. The amount fixed would then be published in the *Gazette*. The public would have an opportunity of urging any objections to the proposed rates which they might consider necessary: those objections would be considered first by a Select Committee, and afterwards by a Committee of the whole Council: and the scale would be revised and altered, if necessary, before the dues could be collected. In this manner the Council would themselves discharge the duties which had been entrusted to them, instead of delegating those duties to the Executive Governments.

SIR JAMES COLVILE said, he did not wish to raise any objection to this amendment, because it was one to which he, with the other Members of the Select Committee, had already agreed, after full discussion with the Honorable and learned Member opposite (Mr. Peacock). He only desired to state, as to any inconsistency that might be supposed to exist between the vote which he intended to give to-day, and the vote which he had given on the former debate upon this question, that his object throughout had simply been to ensure that the Act should come into operation as soon as possible, and also that the Port-dues in such Port should be fixed with reference to its own receipts and charges, with the aid of that local knowledge which seemed to him to afford the only means of fixing the dues with accuracy. He did not dispute the general propositions respecting the delegation of legislative power to executive bodies, and he certainly would not dispute the authority of the decision to which the Honorable and learned Member had referred, and to which he (Sir James Colvile) was himself a party. But he still adhered to the opinion that, provided a fair maximum was fixed, this Council would not be improperly delegating power to the Executive Government in authorizing it, as this Bill now did, to vary, from time to time, the rates to be actually taken; and he understood that an amendment, which the Honorable and learned Member would hereafter propose on the next Section, would leave the effect of the Bill in this respect untouched. He admitted, however, that his Honorable and learned Friend had shown that the Council in now legislating, as to the maximum, was proceeding somewhat in the dark; and he fully conceded that it was desirable that the Council, if it could, should fix the maximum rate of dues to be levied at *each* Port at the moment at which it legislated for it, and then leave it to the local Government to impose the actual rate within that maximum. And he had also come to the conclusion that one real object which he contemplated—namely, that of speedily bringing the Act into operation—would perhaps be gained more effectually by the amendment proposed, than by the Bill in its present form. For he, certainly, had never intended that a local Government should be allowed to take a consolidated fee of eight annas per ton in any Port, unless it showed good cause for imposing such a rate; and he had accordingly, at the last Meeting of the Council, introduced into the Schedule the amendment which required the Local Governments to propose a scale of Port-dues subject to the sanction of the Governor General in Council. But this amendment, whilst it operated as a check on the Local Governments, and insured that the Port-dues should be in proportion to the exigencies of each Port, would also have delayed the time at which the Act would come into operation. And his Honorable and learned Friend had shown that, probably, it would take as long a time, or nearly as long a time, to submit a Schedule of dues for each particular Port, and to obtain the sanction of the Executive Government of India to that Schedule, as it would take to pass a short Act, or short Acts, with the same object, through the Legislative Council. Therefore, he had come to the conclusion that the best course was to pass the Act so that it might come at once into operation, legalizing the Port-dues now taken for a limited period only. The period must be strictly limited, or the Port-dues would never be reformed. Before the end of that period, the local Governments would necessarily propose a new and amended table of Port-dues for each Port, which, if reasonable, the Legislative Council would enact as the future maximum.

He admitted that there was great force in what the Honorable and learned Member had said regarding the effect of publication. But he was sorry to say that publication did not always succeed in eliciting information. For instance, the paper lying before him showed that this Bill, as read a second time in this Council, and published to the world, proposed the very maximum of eight annas per ton to which the Honorable and learned

and coasting vessels Port-dues at a lower rate than they did from large vessels, or to exempt them from payment altogether; or, otherwise, whether it should not allow the present mode of enforcing payment by means of port clearance to continue to be the only means of pressure against them. The correct principle appeared to him to be, that no greater burthen should be imposed upon the coasting trade than that which it now practically bore.

SIR LAWRENCE PEEL said, he had very few observations to make, and should not have spoken had it not been that a subject of great importance had been touched on in the debate, and that a decision of the Supreme Court at this Presidency in connexion with that subject had been referred to. He had not an accurate recollection of that decision; and had he been aware that it would be referred to, he would have read it before coming to the Council. But, as well as he remembered, the case stood thus. He well remembered that a question had been raised in the Supreme Court as to the right of the Indian Legislature, after the Charter Act had passed, to impose taxes. The question had been very ably argued by Mr. Montriou, who contended that no such power existed. The Supreme Court, however, decided in favor of the power; and, either in the same case, or one that occurred soon after, an opinion had been expressed by the Court that the Legislature could not confer such powers as were attempted to be conferred on the Municipal Commissioners, which, if he remembered aright, included the power of making rules enabling them to impose penalties on the subject in cases not defined. But it certainly never had been his opinion that matters of regulation and detail might not be exercised by the Commissioners by an authority delegated from the Legislature; and we know that a power of an analogous kind, or making bye-laws, existed in corporate bodies. He thought that this Act, as it was originally drawn, was not open to the objection that it delegated any legislative authority; for, substantially, the delegation was nothing more than of the power to lower duties in the nature of Port-duties: nor was the Act, in his opinion, now open to any objection of that kind. The general principle that a limited legislature, with a delegated power of making laws conferred on it by the Supreme Legislature, could not delegate that power of making laws to others, seemed to him unquestionable; but he should be sorry if it went abroad that either he or the Court of which he had the honor of being a Member, had decided or thought that such powers as those of merely lowering duties, or any matter of mere regulation and detail, were incapable of being conferred. On principle, he thought that the Legislature ought to do themselves all that they could do, and that it was not a proper exercise of their functions to delegate that which they might legally delegate without some strong justifying cause.

The Honorable Member who had spoken last but one in the debate (Mr. Grant), and who had spoken with his accustomed ability, had remarked on the slow progress of Indian Legislation. But he hoped that the character of this Council as a legislative body would be judged of by their acts alone, and not by any antecedent course of legislation. The Honorable Member had said that, whereas six months was the usual period of incubation for hatching an Act of Parliament, the Indian Legislature had taken twelve years for the production of its offspring. He hoped that their period of gestation would be something shorter; and, judging from the limited experience which they had had of the working of this legislative body, he thought that it would not be just to impute to it so tedious a course, since many important Acts had been passed already, in a short time, allowing for the necessary period of two or three months, according to the nature of the Act, which must occur between the second reading of a Bill and its next stage.

Into the merits of the question now under consideration, he did not propose to enter, as the motion of the Honorable Gentleman (Mr. Peacock) was not resisted by the Members of the Select Committee.

MR. PEACOCK said, he quite agreed with the Honorable and learned Chief Justice that it would not be inconsistent with the Charter Act for the Legislative Council to fix a penalty, a tax, or a Port-duty, and to delegate to the Executive Government the power of lowering it. As the Bill originally stood, the Port-dues were fixed by it at a rate not exceeding 8 annas a ton, with power to the Executive Governments to lower them. When the Bill was before the Committee of the whole Council, he pointed out that Port-dues at the rate specified in the Schedule must, as the Bill then stood, be levied in every Port, unless the local Governments should think fit to reduce them. To avoid that difficulty, an amendment was proposed and carried, by which

Mr. Allen

the dues were to be fixed by the Executive Governments with the sanction of the Governor General in Council at rates not exceeding 8 annas a ton. That maximum was fixed, not because the Legislative Council considered that 8 annas a ton would be necessary or proper for every port, but because it might be necessary in respect of some one or more ports. The Legislative Council had not considered what was a necessary and proper rate for each port, but had left that duty to be performed by the Executive Governments, limiting them, however, to 8 annas a ton. He considered it to be the duty of the Legislative Council to exercise their own judgment as to the proper rate of duties to be levied at each of the ports. If he had thought that 8 annas a ton was a proper rate for each of the ports, he would not have objected to the Schedule as originally framed. His objection to it was, that, exercising his judgment upon the facts before him, he considered 8 annas a ton too high a rate of duty for any port in India, and certainly much too high for most of the ports. Entertaining that opinion, he could not consistently vote in support of a Bill which delegated to the Executive Governments the power of fixing dues at a rate not exceeding that amount at every port, trusting to the Executive Government to reduce them. But an amendment was proposed and carried, leaving it to the Executive Government to fix the Port-dues, provided they should not exceed 8 annas a ton —an amount which he believed to be too high. By so doing, he would be delegating a power to the Executive Governments to do that which, in the exercise of his own judgment, he would not do himself. For instance, if he would not grant a duty of 8 annas a ton at the port of Akyab, could he consistently authorize the Executive Government to fix the dues for that port at an amount not exceeding 8 annas a ton? He contended that, by so doing, he would be delegating to others a duty which he ought to perform himself, and would be authorizing them to do that which he himself would not do.

The Honorable Member opposite (Mr. Grant) said that many Acts had been passed already which involved a violation of the principle for which he (Mr. Peacock) contended. The Honorable Member referred particularly to the Post Office Act. It did not appear to him that that Act infringed the principle at all. It directed that a certain rate of postage should be charged for letters according to their weight, and allowed the Governor General of India in Council to lower that rate if it should be found to be more than sufficient. That was not inconsistent with the principle of the Charter Act; but it would have been inconsistent with that principle had the Legislature authorized the Governor General in Council to fix the postage dues at an amount not exceeding 8 annas a tolah, when they did not think that 8 annas a tolah was necessary. The Legislative Council did not do so by the Post Office Act. On the contrary, having satisfied themselves as to what was a proper and sufficient rate of postage, they fixed that rate, and authorized the Governor General in Council to reduce it if it should be found to be higher than necessary. He should not object to adopt the same course in respect of Port-dues. Let the Legislature fix the amount which they might consider necessary to be levied at each port to cover the expenses of the port, and then authorize the Executive Governments to reduce the dues so fixed, if they should be found to be higher than necessary for the expenses of the port.

With respect to the Schedule as altered in Committee of the whole Council, it appeared to him that the moment the Legislature said no Port-dues should be payable until they were fixed by the local Governments subject to the sanction of the Governor General of India in Council, it deputed to the Executive Government a legislative function.

With reference to the observation of the Honorable Member for the North-Western Provinces, he did not think that the new Section which he (Mr. Peacock) had proposed, would enable tolls to be collected after the passing of the Act in any case in which they were not collected now; but to prevent any difficulty arising from Section XLI, to which the Honorable Member had alluded, he had intended to propose an amendment in the Section which would enable the Executive Governments to reduce the duty on dhoonees, without reducing the duty on English and foreign vessels, and also to reduce the duty on ships which entered the port in ballast, or which might be driven in by stress of weather. He could not consent to an Act which would impose upon ships in ballast the same duty as upon those which entered for the purpose of discharging their cargoes; nor could he consent to make all vessels which might be driven into a port by stress of weather, or might enter a port to take in water, or for any temporary purpose, half the amount of a six months' consolidated tonnage duty.

MR. PEACOCK'S motion was then put, and carried.

THE CHAIRMAN read Section XLI, the words of which were :—

"The local Government may, from time to time, vary the rate at which Port-dues and fees shall be levied in each port, river, or channel, in such manner as, having regard to the receipts and charges on account of that port, it may deem expedient, by reducing or raising the dues and fees, or any of them ; provided that the rates shall not, in any case, exceed the amount hereby authorized to be taken, and that they shall at all times be the same in the same port for all sorts of vessels liable to the payment of Port-dues under this Act, according to tonnage."

MR. ALLEN said, for the reasons which he had already stated, he should move that the words—

"And may also, during the period of one year after the passing of this Act, remit altogether or reduce the rate of dues and fees leviable on any particular description of vessels"

be inserted after the word "channel" in the 3rd line of the Section.

THE CHAIRMAN suggested that the Honorable Member should move to insert these words as a separate Section after Section XLI.

MR. ALLEN, assenting to this course, withdrew his amendment.

MR. PEACOCK then moved amendments in Section XLI, which were severally agreed to, and which made the Section stand thus :—

"The Local Government may, from time to time, vary the rate at which Port-dues and fees shall be levied in any such port, river, or channel in such manner as, having regard to the receipts and charges on account of that port, it may deem expedient, by reducing or raising the dues and fees, or any of them ; provided that the rates shall not, in any case, exceed the amount authorized to be taken by this or any subsequent Act."

MR. ALLEN now moved that the words which he had before proposed as an amendment in Section XLI, should be inserted as a separate Section after it.

The question being put, the new Section was agreed to, after a slight verbal alteration.

Section XLVI provided how the tonnage of vessels liable to Port-dues, should be ascertained ; and Clause I of the Section, as framed originally, provided that, if any Master or Owner of a British registered vessel, or a vessel registered under Act X of 1841 or Act XI of 1850, should neglect or refuse to satisfy the Conservator as to the tonnage of his vessel, he should be liable to a penalty not exceeding 100 Rupees ; and the Conservator might cause the vessel to be measured, and her tonnage ascertained ; in which case, the Owner or Master should also be liable to pay "the expenses of such measurement." In the Committee of the whole Council, the words "expenses of such measurement" were left out, and the words "fee provided for such service by the Schedule annexed to this Act" were substituted for them.

SIR JAMES COLVILE said, the Honorable and learned Member opposite (Mr. Peacock) intended to move that the Schedule should be struck out altogether ; and he should therefore now propose that the words substituted in this Clause in Committee be left out, and the former reading be restored.

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

A similar amendment was made in Clause 2nd of the Section, which referred to vessels of a class not included in the preceding Clause.

A slight verbal amendment was next made in Section LXIII, on the motion of Mr. Grant.

MR. PEACOCK then moved that the Schedule annexed to the Bill be left out.

The question was put and agreed to.

MR. GRANT said, this would make it necessary to go back to Section XLV, and alter its wording, which the Council could do under the Standing Orders.

The Section provided that the Conservator may, in certain cases, ascertain the draught of vessels, and charge to the Master "the fee provided for such service by the Schedule annexed to this Act."

MR. GRANT moved that the latter words be left out, and the words "the expenses of such operation" be substituted for them.

The question was put and agreed to.

The Council then resumed its sitting ; and the President reported the Bill, with amendments.

MR. GRANT postponed the third reading of the Bill until next Saturday.

PENAL SERVITUDE.

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill "to substitute penal servitude for the punishment of transportation in respect of European convicts, and to amend the Law relating to the removal of such convicts."

Motion carried, and Committee formed.

Section I provided that—

"After the commencement of this Act, no European shall be liable to be sentenced or ordered by any Court within the territories in the possession and under the Government of the East India Company, to be transported."

MR. ELIOTT moved that the words "or American" be inserted after the word "European."

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

Section II was passed, after a similar amendment.

Section III was passed, after a slight verbal amendment.

Section IV was passed as it stood.

Section V was passed, after an amendment similar to that made in Section I.

Sections VI and VII were passed as they stood.

Section VIII was passed, after an amendment similar to that in Section I.

Sections IX to XV were passed as they stood.

Section XV the Interpretation Clause, enacted that—

"The word European, as used in this Act, shall be understood to include any person usually designated a European British subject, or any European or American."

MR. ELIOTT moved that the words "or any European or American" be left out.

Question put, and agreed to.

Section XVI said :—

"This Act shall commence from and after two months from the publication thereof in the *Calcutta Gazette*."

MR. PEACOCK moved as an amendment that the words "two months from the publication thereof in the *Calcutta Gazette*" be left out, and the words "1st of November 1855" be substituted for them.

Question put and agreed to.

The Preamble and the Title were severally passed, after an amendment similar to that made in Section I.

The Council having resumed its sitting—

MORTGAGE-DEBTS.

THE PRESIDENT moved that the Council resolve itself into a Committee upon the Bill "to amend the English Law in force within the territories in the possession and under the Government of the East India Company, relating to the administration of the estates of deceased persons charged with any money by way of mortgage, and descending or devised;" and that the Committee be instructed to consider the Bill in the amended form in which it was recommended by the Select Committee to be passed.

Motion carried, and Committee formed accordingly.

The Bill was passed as it stood.

The Council having resumed its sitting,—

THE PRESIDENT reported the above Bills.

NOTICES OF MOTION.

MR. GRANT gave notice that he would, on Saturday next, move that the Bill "for the regulation of Ports and Port-dues" be read a third time and passed.

MR. ALLEN gave notice that he would, on Saturday next, move the first reading of a Bill "to prevent the public sale or exposure of obscene books and pictures."

SIR LAWRENCE PEEL gave notice that he would, on Saturday next, move the third reading and passing of the Bill "to amend the Law relating to the administration of the estates of deceased persons charged with money by way of mortgage."

MR. PEACOCK gave notice that he would, on Saturday next, move the third reading and passing of the Bill "to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the Law relating to the removal of such convicts."

MR. CURRIE gave notice that he would, on Saturday next, move the second reading of the Bill "to provide for the better Lighting of the Town of Calcutta."

The Council adjourned.

Saturday, July 14, 1855.

PRESENT :

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

Hon. J. A. Dorin, Hon. Maj. Genl. J. Low, Hon. J. P. Grant, Hon. B. Peacock, Hon. Sir James Colvile, D. Elliott, Esq., C. Allen, Esq. and P. W. LeGeyt, Esq.

MARRIAGE OF HINDOOS (BENGAL.)

THE CLERK presented a petition from the Association of Friends for the promotion of social improvement, praying the Council to amend the Laws relating to the Marriage of Hindoos in Bengal.

INDECENT PUBLICATIONS.

MR. ALLEN moved the first reading of a Bill "to prevent the public sale or exposure of obscene books and pictures." He said, he did not suppose that any Honor-