Saturday, 9th June, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. I

(1854-1855)

The motion was, with leave, withdrawn.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

houses. Now, this frontier line extended from the Sutlej to the Soane ; and it was quite clear that a line of this kind could not be a mere mathematical line, having length without breadth. Some breadth must be given up to the Custom House Officers on which to seize salt. Section III of Act XIV of 1843 said—

"It shall be lawful for the Government of the North-Western Provinces from time to time to make and issue such orders as may be deemed expedient for the collection of the aforesaid duties, in such manner, and upon such line or lines, and at such places on or near such line or lines, as may seem fit ; and all such orders shall have the same force as if they formed a part of this Act from the date notified in the *Gazette* wherein they shall be published."

In accordance with the power thus given, the Government of the North-Western Provinces had marked out a line or band which varied in breadth from a minimum of 10 to a maximum of 15 miles, outside of all the large towns, so as not to interfere with trade. Within that band, salt not protected by a rowannah was contraband. By Section VIII of the same Act, it was provided that

"it shall be lawful for all officers of the Customs Department to search any carriages and conveyances, and any packages, upon reasonable grounds of suspicion that such carriages, conveyances, or packages contain any articles made subject to duty, or prohibited to be imported by this Act, and to detain all such articles as may be liable to confiscation under the provisions thereof."

But this was not sufficient. It was necessary to search, for contraband salt, not only carriages, but also houses, within the band which he had mentioned. The land-frontier in the North-Western Provinces was one very difficult to guard ; and there was little to prevent men from escaping with illicit salt from one hamlet to another, and placing it in concealment within houses or enclosures, where, as the law now stood, it could not be seized. On these grounds, the Government of the North-Western Provinces asked the Legislature for power to search houses within the narrow band which it had marked out, in the same way as the Bengal Government had power to search houses within the thousands of square miles contained within the chowkey divisions of that portion of the Presidency.

The Sections of the Act for Bengal which gave the power of search in houses, were guarded with extreme caution. The Customs officer who made the search, must be a superior officer ; he must have full information of the place where the salt was kept in store ; of the person by or for whom it was kept in store ; and of the grounds for believing it to be contraband. There were also Sections providing heavy penalties for malicious search or malicious information. This Bill proposed to give the right of search in houses in the North-Western Provinces subject to the same rules and precautions, and the same penalties.

This was one part of the question embraced by the Bill.

Another part referred to the fact that, although the transport of salt was perfectly free throughout the North-Western Provinces, the manufacture of salt in those Provinces was strictly prohibited. The Section in Act XIV of 1843 which particularly related to the illicit manufacture of salt, was the 5th. It enacted that

"it shall be lawful for the Collectors of Customs and the Collectors of Land Revenue within their jurisdictions to destroy all works for the manufacture of salt, and to seize the salt stored thereat, and to apprehend the persons concerned in the manufacture thereof, and make them over for trial to the Magistrate within the limits of whose district the offence may have occurred."

Now, this Section, though it gave a right of entry into manufactories, gave no right of entry into dwelling-houses. The Bengal Act above referred to, he was bound to admit, gave no right of entry into dwelling-houses when it was suspected that salt was manufactured therein. But the manufacture of salt in the Lower Provinces was carried on chiefly in open sheds, in uninhabited tracts of land. These salt *churs*, as they were called, were far away from any population. On this account, the Bengal law was considered sufficient as a means by which to deal with salt works or manufactories. But in the North-Western Provinces, the salt sprouts out through the ground all over the country. The people scrape a little off the surface of the earth, take it to their houses within the villages, and there, having first thrown the earth into water, and dissolved the salt, they place the brine on the tops of their houses, where solar evaporation takes place ; or in wet weather, they boil it within enclosures until the water is evaporated, leaving the salt behind. It cannot be known in the North-Western Provinces whether there is a salt manufactory or not ; because, frequently, the earth is impregnated not only with salt, but with saltpetre also ; and in the North-Western Provinces, the manufacture of saltpetre, so far from being prohibited, is encouraged, as forming a very valuable branch

of trade. Now, the manufacture of saltpetre is commenced in precisely the same way as the manufacture of salt. There is, however, one chemical difference between the two, which enables the ryots of the North-Western Provinces easily to separate one from the other. Boiling water will hold a very much larger quantity of saltpetre in solution than cold water will; but this is not the case with salt. The ryots, therefore, charge the water as much as they can with saline matter when it is at the boiling point, and leave it to cool. By this process, the saltpetre *only* is separated from the brine, while a certain quantity of saltpetre and of other salts, with all the alimentary salt, remain unseparated from each other, and unpurified. The *malâ fide* saltpetre manufacturer, after taking out the saltpetre, proceeds to refine the saline solution which remains, and to purify it in the same way as he would salt earth, and in this way, he manufactures alimentary salt contrary to the law.

There being in the North-Western Provinces no regular manufactories for salt separate from dwelling-houses, it had been found impossible to prevent the illicit manufacture of salt without exercising the right of searching houses. Formerly, for many years, upon a construction of the existing law by the Sudder Board of Revenue, which was approved by the Lieutenant Governor of the North-Western Provinces, the Customs officers, upon good information, entered dwelling-houses, seized the contraband salt contained therein, and apprehended the manufacturers: and the manufacturers, having committed a penal offence, were convicted and punished. But recently, the Judge of Agra had given a construction to the law which would prevent this being done in future. The Joint Magistrate of Muttra had seized a quantity of salt, and punished the smugglers. They appealed against his decision upon a special ground. The Judge of the appellate Court, without reference to the point upon which the case was appealed, held that search of dwelling-houses was not justified by the Act, and that the whole proceedings were therefore vitiated and void from the beginning, and, on that ground, threw out the case. It was not for him (Mr. Allen) to say, if the law here laid down was correct or not; but even if, on an appeal to the Sudder, that construction should be upset, it did not appear to him, or to the Government of the North-Western Provinces, to be fair to place Custom House Officers in this dilemma—that, if their suspicions were wrong, and they discovered, in their search of a dwelling-house, *no* salt, they would be liable to punishment, however careful they might have been in their inquiries before hand; and that they could only escape punishment by finding illicit salt in all cases of search. It was forcing the Custom House Officers to act with ropes round their necks. In Bengal, as he had said before, it did not at first appear necessary to permit the search of dwelling-houses for *manufactured* salt. But even there, it had subsequently been found necessary to pass an Act legalizing the search of dwelling-houses. In 1848, the Board of Salt and Customs decided that it was illegal for Customs officers to enter dwelling-houses to search for the manufacture of salt. The consequence of this was, that the Salt revenue fell very heavily, and the Supreme Government passed Act III of 1851, which allowed search within dwelling-houses under the same stringent rules as those provided by Act XXIX of 1838 whenever there were good grounds for suspecting that salt was being manufactured therein. If it was necessary to give that power in Bengal, where the manufacture was carried on chiefly in uninhabited places, it must be allowed that it was necessary to give it in the North-Western Provinces, where the manufacture was carried on in houses in the way he had already described.

The Bill which he had prepared, was a short one. It consisted of only 8 Sections, and imposed no new penalties. It merely prescribed the mode of procedure in cases of search, under the same stringent rules as those which Act XXIX of 1838 prescribed for Bengal. (The Honorable Member here proceeded to state the substance of each Section.)

The last Section was one not to be found in any preceding Act relating to salt. It provided a penalty for persons conniving at the manufacture of illicit salt. Act XIV of of 1843 provided a penalty for such connivance where the party conniving was a zemindar, or other proprietor of land, or his agent; but it did not apply to any other persons. This Bill would do so.

With these observations, he begged to move that the Bill be read a first time.

MR. GRANT said, if the Bill related to the public finances, under Standing Order No. LX the motion for the first reading might be discussed.

MR. ALLEN said, the Bill did not in any way touch the revenue now derived from

salt, or the penalties prescribed by existing Acts. It only allowed the right of searching houses in the North-Western Provinces for illicit salt.

THE PRESIDENT said, it appeared to him that the Bill did not relate to the public finances, but only proposed to confer further powers upon Revenue Officers in the North-Western Provinces.

The Bill was then read a first time.

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."

Sections CXVI and CXVII were passed as they stood.

Section CXVIII said—

"It shall be lawful for the Executive Government in any of the Presidencies to extend the summary jurisdiction of the Moonsiff's Court in any district as a Small Cause Court under this Act, to an amount not exceeding 300 Rupees."

MR. ALLEN said, he did not see why Courts of such extended summary jurisdiction should be confined to the Presidencies. They would be admirable institutions; and he should, therefore, propose that the words "said Presidencies" in the Section be left out, and the words "Territories in the possession and under the government of the East India Company" be substituted for them —so that such a jurisdiction might also be conferred on Courts in the Punjaub, in the Tenasserim Provinces, and elsewhere.

The motion was put and carried; and the Section, as amended, was passed.

Sections CXIX to CXXII were passed as they stood.

Section CXXII was a provision for the date from which the Act should come into force.

Blanks had been left in it for the month and year, which, on the motion of Mr. Peacock, were filled up with the words "the 1st day of January 1856."

Section CVII (the consideration of which had been postponed since the last Meeting of the Council) was then read by the Chairman.

MR. PEACOCK submitted the Section in the form in which he had, on the last occasion, proposed to amend it.

SIR JAMES COLVILE said, at the last Meeting of the Council, he had suggested a proviso to this Section, 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. His only object in this was, to prevent applications being made to the Supreme Court when the same end might be reached by an application to a Small Cause Court. The proviso now inserted, said that no case should be removed to the Supreme Court for execution either against the person of a judgment debtor (which was quite right) or against any moveable property belonging to him. Now, if a writ of *fieri facias* issued from the Supreme Court, it would go against property whether moveable or immoveable. The object which he had in view might be gained if the proviso directed that no judgment should be removed to the Supreme Court, unless it was necessary to attach immoveable property belonging to the debtor. The principle of the Clause under consideration he understood to be, that it was not advisable to give a Small Cause Court direct power to levy against immoveable property; because, if such a power were given to it, and it issued execution against property in respect of which claims of third parties arose, those claims, according to the practice in the Mofussil, would be litigated before the Court from which the process had issued; and that would involve a trial of questions of title, which were not questions that came within the scope of the ordinary jurisdiction proposed to be given by this Bill. The framers of the Bill had, therefore, by Section CVII, provided that, where a plaintiff was unable to obtain satisfaction of a judgment by execution against the person or moveable property of his debtor within the jurisdiction of the Court which pronounced the judgment, he must apply under Act XXXIII of 1852, to any other Civil Court of Her Majesty, or of the East India Company; which latter description, it was intended, should include any Moonsiff's regular Court, the orders passed by which would be subject to an appeal upon the facts. Considering the greater expense which always attended applications to the Supreme Court, he (Sir James Colvile) had suggested, at the last Meeting of the Council, that it would be desirable to provide that, where the application for execution in aid was limited either to the person or to moveable property, the plaintiff

should be obliged to go to the Small Cause Court, and should not have the liberty of going to the Supreme Court and recording his judgment there under Act XXXIII of 1852.

SIR LAWRENCE PEEL said, if the law were as he thought it should be, then every Court would possess the power to satisfy a judgment creditor out of any property which the debtor might possess. But, unfortunately, there still existed many differences between the powers of different Courts in this respect. The general principle of this Clause he understood to be, to give the execution in aid of the writ of execution of a Small Cause Court, to a similar Court; and to that he entertained no objection whatever. Had the process of execution given to these Courts been a general one, which he should have preferred, then there would have been no difficulty; but he could foresee difficulties, unless the suitor were enabled to resort to the superior as well as the inferior Courts; for, since the latter had not the power of reaching all property, a fraudulent debtor might convert his property into one beyond the reach of the inferior tribunal. In such a case, the creditor ought to be at liberty to invoke the aid of the superior tribunal to give him satisfaction out of his debtor's property. If this were limited to immoveable property, the provision would not go far enough; and therefore he wished the clause to be so framed that, whilst the execution in aid should be that of a Small Cause Court, still the creditor might resort to a higher Court, where he made it appear that the debtor had property which the inferior Court could not reach by its process, and that without such execution in aid, his claim could not be satisfied. At Calcutta the Small Cause Court had long been in the habit, in certain cases, of selling immoveable property under its process; that is, where, by usage, a tenant might remove erections at the expiration of his term, the Court treated the buildings universally as chattels. Whether this practice could be supported in point of law, it was not necessary nor advisable to say; but he thought it desirable that some measure should be introduced to put the executions of all the Company's Courts and of the Small Cause Courts on the same footing as that on which the executions of the Supreme Courts now stood under the present Act.

MR. PEACOCK said, to meet all objections, he should move amendments which would make the Section stand thus:—

"If a judgment creditor be unable to enforce or obtain satisfaction of a judgment by execution against the person or moveable property of the debtor within the jurisdiction of the Court which pronounced the same, the Judge of such Court, if he has general jurisdiction by virtue of which he has power to issue execution against immoveable property for the satisfaction of decrees, shall, upon the application of the judgment creditor, issue execution against any immoveable property of the defendant which the plaintiff shall point out within his general jurisdiction, under the same rules and procedure, and subject to the same appeal, as in cases which fall within his general jurisdiction; or the Court, on the application of the judgment creditor, shall grant him a copy of the judgment, and a certificate of any sum remaining due under it; and on the presentation of the copy and certificate to any other Civil Court of Her Majesty or of the East India Company within the said territories, such Court shall proceed to enforce such judgment, according to its own rules and mode of procedure, under Act XXXIII of 1852. Provided that no such judgment shall be removed into any Court other than a Court of Small Causes for the purpose of enforcing the same against the person or moveable property of a debtor within the local limits of a Court of Small Causes, which such Court might levy under a decree of its own. Provided also, that Section I Act XXIII of 1840 shall not extend to any writ or process of execution issued out of a Small Cause Court."

The amendments were severally agreed to; and the Section, as altered, was passed.

MR. CURRIE moved that the following new Section, the consideration of which had been postponed since the last Meeting of the Council, should be inserted after Section CVIII:—

"If any person resists the execution of a process issued under this Act, the Court may, on the statement on oath of the peon or other officer resisted, summon the offender to answer the charge; and if, after the service of the 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 thirty days. All orders passed by a Court of Small Causes under this Section shall be appealable to the Zillah Judge."

MR. CURRIE, in moving the above, said he had added a proviso for an appeal, because he thought that orders passed by a Moonsiff in cases of this nature ought to be subject to appeal, in the same way as orders passed by him for contempt now were. There could be no objection to this, as the progress of a case would not be affected by an appeal from an order for resistance of process.

It seemed to be doubted, at the last Meeting of the Council, whether there was any necessity for a provision in the Bill respecting resistance of process, some Honorable

Members being under the impression that the general law would enable Moonsiffs to punish for resistance of process issued by them under this Act. But he had no doubt whatever that such a provision was necessary. There was no law which provided generally for cases of resistance of process. The only law that existed on the subject, was applicable solely to the Zillah Courts. He understood that Moonsiffs did take upon themselves to punish for resistance of their own process under Section II of Act XXVI of 1852, which said—

"All Laws and Rules now in force relating to the mode of procedure in the trial and decision of original civil suits in the Courts of the Judges and Principal Sudder Ameens, shall also apply to and regulate the mode of procedure in the trial and decision of original civil suits in the Courts of Sudder Ameens and Moonsiffs;"

but this Section did not, in reality, cover cases of that nature. But even if it did, it certainly would not apply to cases of resistance of process issued by the Courts to be established under this Act; and therefore, he thought that some such provision as that which he proposed was absolutely necessary in this Bill.

MR. PEACOCK said, as he understood the law, Moonsiffs had power to punish for resistance of process; and if that power was not inconsistent with the provisions of this Act, it would be available to them in cases of resistance of process issued by them as Small Cause Judges. Regulation IV of 1793, gave the Zillah Courts power to punish for resistance of process. Act VI of 1843 extended certain powers to the Courts of the Sudder Ameens; and the question was whether that Act was sufficient to give them the same powers which the Zillah Judges had under Regulation IV of 1793. The words of Section I of Act VI of 1843 were very similar to those which the Honorable Mover of the new Section had quoted—

"In modification of Clause 4 Section XVIII Regulation V of 1831, Bengal Code, it is hereby enacted that, in the trial and decision of all original suits referred to them by the Judge, the Principal Sudder Ameens shall be guided by the rules established for the conduct of business in the Courts of the Zillah and City Judges."

In 1852, the Sudder Court, upon a reference, decided that, under this Section, it was competent to Principal Sudder Ameens to impose punishment for resistance of their process, in the same manner as Zillah and City Judges were rendered competent to impose such punishment by the 22nd and following Sections of Regulation IV of 1793, and by Regulation IX of 1799. They said—

"We find that all the provisions of Regulation IV of 1793, including those in Sections XXII, &c., respecting penalties for resistance of the process of the Courts of Judges, are comprehended by the preamble of that Act under the general description—'The following rules for receiving, *trying*, and *deciding* suits or complaints declared cognizable in the Courts of Dewanny Adawlut;' and we must, therefore, construe the words 'trial' and 'decision' in Section I Act VI of 1843 as intended to confer the like powers on Principal Sudder Ameens,—the punishment of resistance or obstruction to justice being held to be necessary incidents to full and effectual trial and decision."

If this had been the decision of the Sudder Court, which was the highest judicial authority upon these questions, he saw no necessity for introducing into this Bill a Clause expressly conferring the power. He understood that, in point of fact, Moonsiffs did, at present, in their ordinary jurisdiction, exercise the power of punishing for resistance of process under Section II of Act XXVI of 1852; and he thought it would be better if they were left to deal, as Moonsiffs acting in their ordinary jurisdiction, with any resistance of process issued by them as Judges acting in the jurisdiction given by this Bill.

MR. CURRIE said, if it was clear that the power allowed by the Sudder Court to Moonsiffs in the exercise of their ordinary jurisdiction, would be available to them for resistance of process issued by them in the exercise of the jurisdiction given by this Bill, he had no wish that the Section which he proposed should be introduced. But it seemed to him doubtful whether the power would be available.

SIR LAWRENCE PEEL said, the Honorable Member (Mr. Peacock) had referred to a decision of the Sudder Court. He had not caught the name or date of the decision, nor was he aware whether it had been acted on. Very soon after he had come to this country, as Advocate General, he was consulted by the Government concerning the power of the local Courts of the Company to punish for contempts. It seemed to be considered by those who consulted him, that the power did not exist. He looked into and considered all the Regulations on the subject of the jurisdiction of these Courts, and he came to the opinion that no power, up to that time, of committing for contempts, had been conferred; but, on general

principles, he stated that he thought any Court in the Mofussil had power to remove persons committing contempts in their presence, which were in the nature of an obstruction of their proceedings ; but that they had no further power. In consequence of this, an Act was passed on the subject of contempts, but whether it was intended by the Legislature to give to the inferior Mofussil Courts as full a power of committing for contempts as to their superior Courts, he was not aware. An identity of procedure did not necessarily involve an equality of power of committing for contempts ; and it was a power which elsewhere was not entrusted alike to all Courts.

On the whole, he was disposed to think that it would be better to legislate expressly on the subject.

MR. ELIOTT said, Section LXVI, which provided penalties for contempt, and Section LXVII, which provided penalties for resistance of process, had been struck out of the Bill on the assumption that Act XXX of 1841 would give power to Judges under this Act to punish for contempts and resistance of process ; but for his own part, he thought that a doubtful point.

SIR JAMES COLVILE said, Act XXX of 1841 only applied to contempts in open Court, and the motion before the Council, as he understood it, did not include contempts of that kind.

He confessed the construction which the Sudder Court had put upon Section II of Act XXVI of 1852 appeared to him to be a very liberal construction. He would not say that the Sudder Court was wrong ; but certainly, but for that decision, he should have felt considerable difficulty in holding that the power to punish resistance or obstruction of process was part of the laws and rules relating to the mode of procedure to be observed in the trial and decision of an original suit. However, if it had been decided by the highest tribunal in the country competent to deal with the question, that Moonsiffs in the exercise of their ordinary jurisdiction, had the power of punishing for resistance of process, there could be no harm to give that power to them in the exercise of their Small Cause jurisdiction ; and if so, it might be necessary expressly to give such power to the new Courts which might be constituted under this Act, to which Act XXVI of 1852 would not apply.

The new Section, moved by Mr. Currie, was then put, and agreed to.

MR. CURRIE then said, this would render necessary a verbal alteration in Section CX, which had been agreed to at the last Meeting of the Council. The words of the first Clause of the Section were—

> "Every order and judgment passed under this Act shall be final, and not open to review or appeal except as *herein* provided."

The term "herein" might be taken to mean "in this Section," which would make the Section inconsistent with the one which the Council had just resolved to add to the Bill. To prevent any misconstruction, he should move that the words "in this Act" be substituted for it.

The motion was held to be in order within the spirit of Standing Order LXXVIII, and the amendment was agreed to.

Appendix A of the Bill (form of plaint) was then passed as it stood.

Appendix B (form of summons) was passed after a few alterations.

Appendix C (warrant for arresting on mesne process) and Appendix D (form of security bond to be signed by a defendant arrested on such process) were negatived.

Appendix E (form of subpœna), Appendix F (form of writ of execution against the person), Appendix G (form of writ of execution against the effects), Appendix H (form of warrant for delivery of property), and Appendix I (form of security bond for payment of the amount of a decree by a judgment debtor,) were severally passed as they stood.

The Preamble being read by the Chairman—

MR. PEACOCK moved that the words "Presidencies of Fort William in Bengal, Fort St. George, and Bombay," be left out, and the words "Territories in the possession and under the Government of the East India Company" substituted for them.

The motion was carried, and the Preamble as amended was passed.

The Title was passed as it stood.

The Council then resumed its sitting.

DISTRICT MOONSIFFS (FORT ST. GEORGE).

MR. ELIOTT moved that the Council resolve itself into a Committee on the Bill "to amend the Law relating to District Moonsiffs in the Presidency of Fort St. George" ; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

The Motion was carried, and the Council formed itself into a Committee on the amended Bill.

Sections I, II, and III, were passed, after some verbal amendments.

Section IV was passed as it stood.

Section V provided a penalty for contempt of Court.

MR. PEACOCK said, a Section similar to this (Section LXVI) had been struck out of the Small Cause Courts Bill under the impression that Moonsiffs already had the power for which it provided, under Act XXX of 1841. If Section V of this Bill were retained, it might be raising a doubt whether it would be competent to Moonsiffs to punish for contempts under the Small Cause Courts Bill.

MR. LEGEYT said, in Bombay, Moonsiffs had exercised the power of punishing for contempts for the last fourteen years.

The Section was negatived.

Sections VI and VII were passed as they stood.

Section VIII said, Clause 2 Section VI of Regulation XV of 1816 of the Madras Code, relating to reviews of judgment, should be applicable to the Courts of District Moonsiffs, except that a petition for a review need not be written upon stamped paper.

MR. ALLEN said that, considering the great relief which this Section proposed to give to a suitor applying for a review of judgment, he did not see the necessity of giving him the further relief of exempting him from the payment of stamp duty. When Moonsiffs' Courts were first established in Madras, suitors were exempt from the payment of stamp duty in miscellaneous proceedings. But the jurisdiction of Moonsiffs extended at that time to only 200 rupees. The Courts of Sudder Ameens were afterwards established, with a jurisdiction extending to 500 rupees; and then the miscellaneous petitions had to be written upon a stamp paper of the value of 4 annas. Moonsiffs now had a jurisdiction extending to 1,000 rupees; and, therefore, he thought that petitions for review under this Act, like miscellaneous petitions before Sudder Ameens, should be subject to a stamp of 4 annas. In the Small Cause Courts Bill, the Council had introduced a Section requiring that petitions for review should be written upon stamp paper; and he should now move that the words "except that the petition for a review need not be written upon stamped paper" be omitted from this Section, and the words "and the petition for a review shall be written on a stamp paper of the value of 4 annas" be substituted for them.

MR. ELIOTT said, the reason of inserting in this Bill the provision in question was, that it was laid down as a general rule that no stamp duty should be levied in the Courts of Moonsiffs except for plaints and petitions for appeal. Referring to Clause 2 Section VI of Regulation XV of 1816, it appeared to be necessary, in allowing reviews in the Courts of Moonsiffs under the same circumstances as reviews in the superior Courts, to exempt petitions for review in those Courts from payment of the stamp to which such petitions were liable in the higher Courts, in order to maintain that principle. In this Presidency, there was no express rule on the subject; but the practice was to allow petitions for review to be written upon unstamped paper. If that privilege was given in Bengal, it ought also to be given in Madras.

MR. PEACOCK said, he should prefer that petitions for review should be required to be written upon stamped paper as in the Small Cause Courts Bill, but with the proviso, also inserted in that Bill, that the amount of the stamp should be returned, if the application was successful. The object of this was to prevent persons from taking up the time of the Court with frivolous applications.

MR. ALLEN said, he had no objection whatever to such a proviso being added to the Section.

MR. CURRIE said, the Section in the Small Cause Courts Bill to which reference had been made, said—

"The application under Section CX or CXI *to the Zillah Judge* shall be written upon stamped paper, &c."

An application for a review would not be to the Zillah Judge, but to the Small Cause Court, and therefore need not be on stamped paper. It was only on account of applications under some of the Clauses of Sections CX and CXI of the Small Cause Courts Bill, being applications that must be made to the Zillah Judge, that the Section subjecting them to a stamp duty was introduced.

MR. ELIOTT said, the Sudder Court had ruled, some time ago, by construction, that reviews were allowable in Moonsiffs' Courts; and in practice they had been allowed in such Courts for several years. The Sudder Court only thought it advisable that the practice should be sanctioned by the express authority of Law. If it was so sanctioned, it appeared to him that petitions for review should not be subject to stamp

duty, because there was a general rule that no stamp duty should be levied in Moonsiffs' Courts except upon plaints and petitions for review.

MR. ALLEN'S motion was then put.

The Council divided:—

Ayes 3.	*Noes*. 7.
Mr. Allen.	Mr. Currie.
Mr. Grant.	Mr. LeGeyt.
Mr. Peacock.	Mr. Eliott.
	Sir James Colvile.
	General Low.
	Mr. Dorin.
	The President.

Majority against, 4 :—So the motion was negatived.

Section VIII was then put, and passed as it stood.

Section IX was passed as it stood.

The Preamble and the Title were severally passed as they stood.

The Council resumed its sitting.

BOUNDARY MARKS (FORT ST. GEORGE).

MR. ELIOTT moved that the Council resolve itself into a Committee upon the Bill "for the establishment and maintenance of boundary marks in the Presidency of Fort St. George"; 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.

Sections I, II, and III were passed as they stood.

By Section IV, it was provided that

"in the case of unoccupied fields, of which the ownership is not at the time claimed, the cost shall be charged to Government."

MR. GRANT moved that the words "of which the ownership is not at the time claimed" be left out of the Section. It would be very hard to charge a person who claimed the ownership of a field from which he derived no benefit, with the cost of boundary marks, which were put up only for the purposes of Government. The state of the case was this. Several owners of fields declined to cultivate them, because the assessment was too high. When they declined to cultivate their fields, they had no more to do with them than any Member of this Council; and there was no more reason why the cost of boundary marks should be charged to them than to any Member of this Council. As the Section was originally framed, it was open to a very strong objection, which he had pointed out; and he had to thank the Select Committee for having met it by an amendment. The words which he now proposed to omit, were not open to so strong an objection; but still, they would make a person liable for the cost of boundary marks upon a field with which he had, in reality, nothing whatever to do; and therefore, they ought to be expunged likewise.

The motion was put, and carried; and the Section, so amended, was passed.

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

The Council resumed its sitting.

PORTS AND PORT-DUES.

MR. GRANT moved that the Council resolve itself into a Committee on the Bill "for the regulation of Ports and Port-dues"; 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.

Section I of the Bill was passed as it stood.

Section II was passed after some verbal amendments.

Sections III, IV, and V were passed as they stood.

Clauses 1 to 10 of Section VI were passed as they stood.

Clause 11 of the Section empowered the local Government, with the sanction of the Governor General of India in Council, to make Port Rules, not inconsistent with the Act,

"for regulating the use of cargo and other boats and of catamarans plying for hire in any such Port."

SIR LAWRENCE PEEL said, if he were called on to construe judicially the language of this Clause as it stood now, he should be of opinion that it did not enable the Government to regulate the rate of hire of cargo boats and other boats. He understood, however, that, in fact, the intention was to enable the Government to do so. To such a power, however, he entertained objection. It might be proper, in certain limited cases, where there was risk of extortion, to subject passenger boats to a tariff of prices; but this provision went far beyond that, and was meant to give the power of instituting a tariff of prices for the hire of all cargo boats. He could see no necessity for such a law, and thought the matter should be left to private arrangement, when the effect of competition would probably be to produce moderate and reasonable charges.

MR. PEACOCK said, he also thought that the local Governments ought not to be invested with such a power. They could make regulations for the purpose of keeping ports clear and in proper order; but to give them the power of fixing the price which a man should charge for the hire of his cargo-boat, would be to go too far.

SIR JAMES COLVILE said, he could see no objection to fixing a tariff of prices for boats plying to and fro for the conveyance of passengers, any more than to fixing a tariff of prices for cabs and hackney-coaches; and such a tariff, it appeared to him, would be better fixed by the local Government than by the Legislature. But he confessed he thought it would be going too far to fix a tariff of prices for the hiring out of a boat, for the conveyance of cargo, which the owner might wish to use for some other purpose.

MR. PEACOCK said, if a tariff was to be fixed at all, it ought to be fixed by the Legislature rather than by the local Government, as was done in England in the case of cabs and hackney-coaches. He should, therefore, suggest that a proviso be added to the clause, declaring that it should not be in the power of the local Government to fix the price to be charged for the use of any cargo-boat or catamaran.

MR. GRANT said, he should move that the words "the use of" be omitted from the Section; and after that motion was disposed of, the Honorable Member might move his proviso; but he confessed he should be satisfied with the Section as it stood.

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

After another amendment, which was merely verbal—

MR. PEACOCK moved that the following be added to the Clause:—

"Provided that nothing in this Act shall authorize the local Government to fix the price to be charged for the use of any such boat or catamaran."

The motion being put, the Council divided:—

Ayes 5.	*Noes* 5.
Mr. Currie.	Mr. Eliott.
Mr. LeGeyt.	Sir James Colvile.
Mr. Allen.	Mr. Grant.
Mr. Peacock.	Genl. Low.
The Chairman.	Mr. Dorin.

The numbers being equal, the Chairman gave his casting vote with the Ayes. So the motion was carried.

The Section, as amended, was then passed.

Sections VII and VIII were passed as they stood.

Section IX was passed after a slight amendment.

Sections X to XX were passed as they stood.

Section XXI provided that—

"If any person shall wilfully and without lawful excuse, loosen or remove from its moorings any vessel within any such port, river, or channel, without leave or authority from the owner or Master of a Vessel,"

he shall be subject to a fine of 200 rupees, or to imprisonment, with or without hard labor, for a period not exceeding six calendar months.

MR. LEGEYT moved that the words "other than a person empowered by this Act" be inserted after the word "person" and before the word "shall" in the first line of the Section.

After some conversation, the amendment was put and negatived.

Sections XXII to XXXI were passed as they stood.

Sections XXXII, XXXIII, and XXXIV were passed after some verbal amendments.

Sections XXXV and XXXVI were passed as they stood.

Section XXXVII enacted that—

"If any anchors, wrecks, stores, or other property shall be recovered by any officer employed by the Local Government for that purpose, from the bed of any port, river, or channel subject to this Act, the Local Government shall be entitled to receive a reasonable sum for salvage, having regard to the place of recovery; and if any dispute shall arise as to the amount of such salvage, the same shall be fixed and determined by a Magistrate."

SIR LAWRENCE PEEL said, he was not sure that he understood this Section correctly; but, according to his view of its meaning, it was open, he thought, to some objection. It seemed to constitute the Government the only salvors where salvage was earned by their officers; but, as salvage money would be earned by the personal services, labour, and risk of their servants, he saw no reason why those, who were mainly the meritorious cause of the salvage, should be wholly excluded from any share in the salvage money awarded. At present, in such cases, both would participate.

Nor did he approve of the tribunal selected to decide on the matters which might be in dispute under this Section. He should much prefer to this tribunal the ordinary Civil Courts of the country. This tribunal was of an anomalous character, and not peculiarly fitted for such questions; and it was

substantially displacing the jurisdiction of all the ordinary civil tribunals, to substitute one which, having to decide under this Section on disputes between the Government and the subject only, would be a Court composed of a single Magistrate, appointed by the Government, paid by the Government, and removable at the pleasure of the Government: and, though he himself did not think that justice would not be impartially administered, still a jealousy might be entertained, and suspicions might grow up, of an undue bias in favor of the Government. Looking, therefore, to the nature of the disputes, he did not think the selection of the tribunal a wise one. He thought also that the description of the officer was somewhat vague, for nothing was said as to the local jurisdiction of the officer; and, apparently, any one who answered the description of Magistrate might be selected for Judge by the parties claiming salvage.

MR. GRANT said that, as the local Government must keep up establishments in ports to which this Section should be made specially applicable, for the purpose of searching for and recovering lost anchors and chains and wrecked property, they would go to considerable expense in keeping up those establishments, and it seemed to him only fair that the money paid for salvage should go to them and not to the persons who were paid to recover the property. The salvage intended was of articles taken up from the bed of the river. The Section would not apply to a ship sailing.

With reference to a remark that had fallen from the Honorable and learned Member opposite (Mr. Peacock) with regard to Section XXXVI, which prohibits search by unauthorized persons for anchors, cables, or other stores in any port or river subject to the Act, it should be observed that this is expressly a rule which will apply only to those ports to which it may be specially extended by the local Government. In any port where the local Government does not keep up an establishment for searching for and recovering wrecked property, any person saving such property will be entitled to compensation as an ordinary salvor.

With reference to the Honorable and learned Chief Justice's objection that parties might think that a Magistrate, in determining the amount of salvage in cases of dispute, would be swayed by an undue bias in favor of Government, because he is an officer appointed by the Government and is removable at the pleasure of the Government—if that was an objection at all, it must equally apply to the whole of the Company's Courts; for the Judges of those Courts are all appointed by the Government, and are removable at the pleasure of the Government; and yet, though they frequently try cases to which the Government is a party, the impartiality of their decisions in these cases is not impugned. Whatever tribunal should be determined on, it should be a cheap one, otherwise the expenses of the action might eat up the whole value of the property saved.

SIR LAWRENCE PEEL said, as to the question of expense, it must be remembered that the majority of cases would fall below rupees 500, and so be within the pecuniary jurisdiction of a Small Cause Court; and in other cases they might, by a proper procedure, be dealt with in the superior Courts by a summary and comparatively inexpensive suit.

SIR JAMES COLVILE moved that the words "a Magistrate" be left out of the Section, and the following words be substituted for them:—

> "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."

The motion was put, and carried, and the Section, thus amended, was passed.

Sections XXXVIII and XXXIX were passed as they stood.

Section XL stood thus—

> "Port-dues, at rates not exceeding the rates mentioned in the Schedule to this Act annexed, which Schedule shall be taken as part of this Act, shall be paid by every vessel which shall enter or be in any port, river or channel subject to this Act, &c."

MR. CURRIE inquired, how this would affect harbour craft? According to the Schedule referred to, if a vessel was under 200 tons burthen, and was registered as a coasting vessel or harbour craft, she would pay port-dues once a year. If she was not so registered, she would pay twice a year. But what was to be the system of registry? Without some system, it would not be easy to levy these dues.

Then, as to up-country boats entering the port,—was it intended that they should be liable to the payment of dues? If it was, it would be difficult to collect the dues from them. It appeared to him that it would be better to exempt these boats from payment altogether, and to say that dues shall be paid by every vessel not moved by oars. It could hardly be required that every country

boat coming within the limits of a port should report itself at the Harbour Master's Office ; and yet, under Section XLIV, it must do so within 24 hours after arrival under a penalty of 100 rupees.

MR. GRANT said that the last objection of the Honorable Member was certainly applicable to the Bill as it was now worded, and it would be necessary to make some correction in a subsequent part of the Bill in order to avoid it.

As to the payment of harbour-dues by river boats using a harbour in a river, the intention of the Bill was to enforce such payment. On general principles, he did not see why such boats should be exempted from payment of port-dues. They benefitted by the whole of the arrangements of the port, by the ghauts, and piers, and wharfs ; they took up room, and had the advantage of the police of the port equally with sea-going vessels, and might, therefore, fairly be required to contribute towards its expenses. The rate of payment for them would be very small ; and he did not think there would be any great difficulty in collecting the payments.

SIR JAMES COLVILE said, in Select Committee, he also had felt the objection which the Honorable Member to his right (Mr. Currie) had advanced, to making boats, as contra-distinguished from ships, subject to these port-dues ; but at the same time, he admitted the force of the argument of the Honorable Member who had spoken last, that country boats derived benefit from all the arrangements made in the port, and ought, therefore, in strict justice to pay for it.

With regard to the necessity of registry, it appeared to him that, if a boat paid port-dues once during a year, the receipt which would be given for that payment, would protect it from a second demand during the same year ; and, therefore, no elaborate system of registration would be requisite under this clause.

MR. CURRIE replied that, doubtless, the receipts would not be transferable, but they would certainly be transferred.

MR. GRANT said, he had no doubt that a system of registration ought to be, and must be introduced. But this law repealed a law in Bombay under which anchorage dues were now paid there ; and if it imposed no duty upon country craft, there would be a very great loss in the harbour revenues of that Presidency. If any provision could be made for exempting boats of small burthen from payment, he should not oppose it ; but he could not see why large up-country boats, for whose accommodation at the different ports expense would be incurred, should not pay for the benefit which they derived.

After some conversation, the further consideration of the Section was postponed.

The Council having resumed its sitting—

THE PRESIDENT reported the several Bills which had passed through Committee, with amendments.

SMALL CAUSE COURTS.

MR. LEGEYT moved that the Bill "for the more easy recovery of small debts and demands," as amended in Committee of the whole Council, be republished in the *Government Gazette* for general information.

Agreed to.

BUILDINGS (BOMBAY).

MR. LEGEYT 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. He said, it had been suggested to him at the last Meeting of the Council that he should endeavor to ascertain the reason why the restriction prescribed by that Act had been imposed. He had ascertained that the restriction had existed in a former Regulation, which was repealed by Act XXVIII of 1839 ; but that Regulation contained a clause which empowered the Government of Bombay to allow, when it thought fit, buildings within the Fort to be raised above a height of 50 feet ; and he further found, on reference to records in the Home Office here, that the Government of India forwarded to the Government of Bombay for its opinion the draft of Act XXVIII of 1839 after it had been read in Council, and that the Bombay Government wrote back suggesting that the power which the Rule, Ordinance, and Regulation gave it of allowing buildings to be raised above the prescribed height where it thought fit, should be retained in the Act ; but that that communication came too late, the Act having previously been passed by the Supreme Council and received the assent of the Governor General.

He could find nothing whatever to lead him to believe that the restriction had been provided with the view of protecting private property. On the contrary, all that he could discover, tended to show that it had been provided, because the place to which it related was a military garrison. He had no

doubt that it had been provided with reference to that fact, and without any reference whatever to the interests of private property adjacent; and this, he thought, was proved by the old Rule, Ordinance, and Regulation giving to the Governor in Council or the Commander-in-Chief of the garrison the power of removing the restriction at discretion.

He now moved to suspend the Standing Orders, because, by Act XXVIII of 1839, no building could be commenced within the Fort of Bombay without a certificate from the Surveyor of Buildings, under a penalty; and the Surveyor could not give a certificate until it was shown to him that the building desired would be constructed in strict conformity with the law. The Bank of Bombay proposed to construct a building which would not be in strict conformity with the law; and, therefore, the Surveyor would not give a certificate. If this Bill should have to be published again, a delay of three months would take place; and to avoid that delay, he moved that the Standing Orders should be suspended in respect of this Bill.

MR. PEACOCK said, if the Standing Orders were suspended, he doubted very much whether the Bill should be passed in its present form. It authorized the Government of Bombay to raise buildings within the Fort above a certain height—namely, 50 feet. But to authorize it to do that would be as much as to say that it might authorize buildings to be raised to any height above 50 feet; which would be very objectionable.

THE PRESIDENT said, it had been announced as the settled course of the Council that the Standing Orders should not be dispensed with, except on grave public occasions—that is, when the public would be greatly inconvenienced if they were rigidly adhered to. On a late occasion, during his absence, on the reading of a Bill which related, he believed, to the pardon of offenders convicted in Her Majesty's Supreme Courts and before Justices of the Peace, the Standing Orders had been suspended. It was supposed, on that occasion, in the Council, that the propriety of this suspension would be acquiesced in, but he knew that that was not the case; and a learned person at Madras had expressed to him his disapprobation of the course pursued, stating that he thought that, on so important a measure, the Judges of Her Majesty's Courts in all the Presidencies, as well as the public generally, should have had an opportunity given to them of considering that proposed law, and of stating to it any objections which they might entertain.

The Council itself might think a proposed law necessary and unobjectionable; but what certainty could we have that all whom the laws which we propose to make are to bind, will take the same view of the matter? As to this particular measure, though he should regret putting the Bank to the inconvenience of delay, he had heard nothing suggested which savoured of a public mischief. The inconvenience of a short delay did not appear to be one that affected anybody except the Bank itself. For any thing that appeared, this inconvenience might have been avoided by more activity at an earlier stage. Therefore, he should vote against the motion for the suspension of the Standing Orders.

MR. LEGEYT'S motion was then put, and negatived.

NOTICES OF MOTION.

MR. ELIOTT gave notice that he would, on Saturday the 16th Instant, move that the Bill "to amend the Law relating to district Moonsiffs in the Presidency of Fort St. George" be read a third time and passed.

Also that the Bill "for the establishment and maintenance of boundary-marks in the Presidency of Fort St. George" be read a third time and passed.

BUILDINGS (BOMBAY).

MR. LEGEYT moved that the Bill "to amend Act XXVIII of 1839" be referred to a Select Committee consisting of Mr. Eliott, Mr. Allen, and the Mover.

Agreed to.

SUPERVISION OF EMBANKMENTS (BENGAL).

MR. PEACOCK moved that Mr. Currie be added to the Select Committee on the Bill "for the better supervision of embankments."

Agreed to.

NOTICE OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 16th Instant, move the second reading of the Bill "to facilitate the acquisition of land needed for public purposes in the Presidency of Bombay."

The Council adjourned.