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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

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1858.

He had no objection whatever to offer to this change if it were intended. He approved of the principle of the Bill in Military Cantonments and hoped it would be generally adopted; but he thought it would be desirable that all its objects should be perfectly understood in places in which it would be published for general information previous to its being passed into law.

MR. HARINGTON, in reply to the first question of the Honorable Member for Bombay, begged to observe that the Bill, as drawn, would include all residents within the limits of Military Cantonments, Bazaars, or Stations, whether belonging to the Army or not, who were not amenable to the Articles of War for the Queen's and Company's troops serving in India; and in reply to the second question, that the Bill would extend to European residents of Cantonments, Bazaars, and Stations not amenable to the Articles of War mentioned in the answer to the first question.

The question was put and agreed to.

The Bill was read a second time accordingly.

ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. PEACOCK postponed the motion (which stood in the Orders of the Day) for the third reading of the Bill "to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic."

SETTLEMENT OF ALLUVIAL LANDS (BENGAL).

MR. CURRIE postponed the motion (which stood in the Orders of the Day) for the third reading of the Bill "to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal."

LUNATIC ASYLUMS.

MR. CURRIE postponed the motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "relating to Lunatic Asylums."

PROCEEDINGS IN LUNACY (SUPREME COURTS.)

MR. CURRIE postponed the motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature."

FORT OF TANJORE.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "for bringing the Fort of Tanjore and the adjacent territory under the Laws of the Presidency of Fort Saint 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.

Agreed to.

The Bill passed through Committee without amendment, and was reported.

CANTONMENT JOINT MAGISTRATES.

MR. HARINGTON moved that the Bill "for conferring Civil jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those Officers Registers of Deeds within the limits of their respective jurisdictions" be referred to a Select Committee consisting of Mr. Peacock, Mr. LeGeyt, Mr. Forbes, and Mr. Harington.

Agreed to.

The Council adjourned.

Saturday, August 14, 1858.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. Major Gen. Sir J. Outram,	E. Currie, Esq.,
Hon. H. Ricketts,	H. B. Harington, Esq. and
Hon. B. Peacock,	H. Forbes, Esq.

THE CLERK presented to the Council a Petition signed by Damoodur Mohapattro on behalf of certain principal Sabaiths or Ministers of the Temple of Juggernath praying for a construction of Section I Clause 3, Regulation XXVII. 1814, of the Bengal Code, with reference to an order passed in appeal

by the Sudder Court at Calcutta, whereby the Petitioners were obliged to pay the costs of several defendants against whom they brought a suit in which it is alleged their defences were the same, and one defence would have been sufficient.

THE VICE-PRESIDENT apprehended that the Petition could not be received—first, because the subject-matter of it properly belonged to a Court of Law, inasmuch as it prayed the Council to put a construction on a particular Regulation, and a construction contrary to that which had been put on that Regulation by a competent Court; secondly, because the Petition purported to be signed only by a Vakeel on behalf of the Petitioners.

INDIAN NAVY.

MR. PEACOCK presented the Report of the Select Committee on the Bill "to amend Act XII of 1844" (for better securing the observance of an exact discipline in the Indian Navy.)

ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. PEACOCK moved that the Bill "to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

SETTLEMENT OF ALLUVIAL LANDS (BENGAL).

MR. CURRIE moved that the Bill "to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal" be read a third time and passed.

MR. PEACOCK said, he could not give a silent vote upon the occasion. It appeared to him that the Bill altered the law as it at present stood, without any sufficient reason for such alteration. First, it altered the rights of proprietors of land; secondly, it altered the rights of Government; and thirdly, it contained a provision (to which he would hereafter advert) of which he could not foresee the effect. He saw no sufficient reason why they should be called upon to pass a law altering the existing rights of parties, a law which would possibly not only cause many difficulties in carrying out its provisions, but by which considerable litigation might be occasioned.

It appeared to him perfectly clear that a proprietor having an estate on the banks of a river became entitled to any alluvion which formed upon it, as an increment to his original tenure.

Section IV Regulation XI. 1825 enacted that

"when land may be gained by general accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from Government by a Zemindar or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever. Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed, to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II. 1819, or of any other Regulation in force."

He could not understand the words "shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed" in any other sense than that the alluvion became a part of the estate paying Revenue to Government. The Circular Order No. 12 of 30th April 1833, which he would read from Marshman's Compilation relative to the Resumption and Settlement of estates, laid down the rule clearly. It said—

"In the permanently settled provinces, all land of alluvial formation appertains to the proprietor of the estate to which a change in the channel of the river has added it—except when, as contemplated in Clause 3, Section IV of the Regulation in question, it may be an island separated from the main land by a channel not fordable 'at any season of the year'—or when it may have accrued to an estate or waste tract, the Zemindary title of which is vested in Government. And the Sudder Board request your special attention, and that of your subordinates, to that part of Clause 1 of the Section above cited, which lays down, that the right of the party, thereby recognized as proprietor, is exactly co-equal, as regards the land of new formation, with that by which he holds the estate to which

the alluvion has attached itself, whilst, at the same time, the concurrent lien of the State upon its share of the produce of all land formed subsequently to the date of the permanent settlement is declared with equal distinctness.

"It follows, therefore, that all proprietors —circumstanced as above stated—whether they have, or have not, disputed the claim of the Revenue Authorities to fix an assessment upon newly formed lands of the description contemplated by Clause 1 Section IV, Regulation XI. 1825—have a right to admission to terms of permanent engagement, whenever they may think fit to demand it, unless, indeed, the alluvion have been let out in farm, for a specified term, in consequence of their recusance, in. which case, as well as while the lands may be held khas, they are, of course, entitled to Malikana. It is only necessary to add that the injunctions of the Honorable the Court of Directors against permanent settlements of lands at the disposal of Government, refer exclusively to cases where no party may possess a legal claim to such immunity; and that the Right Honorable the Governor General in Council has expressed himself strongly averse to the conclusion of temporary arrangements with persons upon whom the law has conferred the unqualified right above alluded to."

Thus it appeared that the proprietor had a right in the alluvion exactly coequal with the rights which he possessed in the original tenure—that he had a right to be admitted to a permanent engagement when the original estate was permanently settled—and that the Government had a lien upon the alluvion for the Revenue. Now, this Bill proposed to do away with both the right of the proprietor and the right of Government. It proposed to deprive the owner of a permanently settled estate which had been increased by alluvion, of the right of insisting upon the alluvion being permanently settled and added to the original estate as one tenure; and it compelled the Revenue Authorities without their consent to settle the alluvion separately and thereby to give up their lien thereon for the Revenue of the original estate. He (Mr. Peacock) confessed that he argued theoretically rather than practically, for he had had no practical knowledge whatever on the subject of these alluvions. But since he had last addressed the Council, a letter received from Mr. Samuells, the Commissioner of Patna, who was practically acquainted with the subject, had been printed, in which that gentleman took precisely the same view as he did. Mr. Samuells said:—

"When the proprietor of a parent estate engages with Government for the alluvion which has accreted thereto, he and the Government, being the only parties interested, may unquestionably make any arrangement as to the estate upon which they can agree, and the alluvion may in that case be settled as one separate estate, or half a dozen separate estates as may be determined. I know of no Law or decision which in any way militates against this. The law, it is true, declares the alluvion an increment of the original estate, and its tenure co-extensive with the tenure of the original estate; but as the Government and the proprietor, acting in concert, may carve the original estate into as many separate estates as they think fit, there is no reason why they should not do the same by the increment. Accordingly, alluvial lands have very frequently been settled as separate estates with the proprietors of parent estates, and such estates are never sold along with the parent estate at Revenue Sales for arrears due upon the former."

Then he went on to show that the decision in the Koilwar case was perfectly correct. He said:—

"The decision in the Koilwar case is, as I have said before, in strict conformity with the usual practice of the Revenue authorities. That practice is shortly this. If the proprietor of the parent estate agree to the additional assessment, *he can demand that it shall be consolidated in perpetuity with his original jumma.* If he prefers that the alluvion should be formed into a distinct estate, he represents his wish to the collector, who, *if he sees no objection*, makes a separate settlement with him in perpetuity and the two estates, the old and the new, cease to have any necessary connection with each other. In the generality of cases, however, the proprietor of the parent estate is unwilling to run the risk attendant on accepting the settlement himself, for even when the alluvion is settled as a separate estate, the risk is considerable."

Now the Board said that the proprietors have a right to admission to terms of permanent engagement whenever they may think fit to demand it, unless indeed the alluvion has been let out in farm for a specified term in consequence of their recusance.

This was the law as it was then understood, and according to that interpretation, the owner of an estate had an unqualified right to land that accrued to it by alluvion, and to demand that the assessment of the alluvion should be made on the same principle as that of his original estate.

One great object of the permanent settlement was that proprietors of land might lay out capital in improving their estates. A proprietor not only was entitled to demand that his alluvial formation should be treated as part of the estate to which it accrued, but he also had an unqualified right, if he chose, to have it settled on the same principles as the settlement of the original estate. He might, if the original estate were permanently settled, with safety expend his capital on the improvement of the alluvion; but, as proposed by the Bill, if the Revenue Authorities should refuse to settle the alluvion permanently, they might do so, and then there would be no security that any money laid out on the alluvion might not add to the assessment at a future time. He (Mr. Peacock) found that it was expressly stipulated in the engagement between the proprietor and the Government, that the proprietor was not entitled to any diminution of Revenue, if any portion of his estate were washed away. Under the old law his liability to pay the Government Revenue remained, although one half of his estate should be washed away. Under Act IX of 1847, until a new survey took place, the assessment could not be increased in consequence of alluvion, and he was entitled to a diminution if any part of his estate were washed away. But words had been inserted in this Bill which would deprive the proprietor of the right to a permanent assessment of the alluvion without the consent of the Revenue Authorities, and by depriving him of this right you deprive him of the power which was one of the great objects of the permanent settlement, namely, the power to lay out his capital in improving his estate, without becoming liable to an increase of the assessment in consequence of the improvements.

Mr. Peacock proceeded to show the evils which were occasioned by the system of tithes in England, and to obviate which the tithes-commutation was passed.

If it were left optional with the Collector (as this Bill proposed to leave it), to refuse to settle the estate permanently, the owner would have no security that, if he improved the alluvion by laying out his capital upon it, the Government might not come down upon him at a future time and subject him to additional taxation in consequence of the improvements.

This Bill then (he said) would act unfairly by the proprietor by depriving him of the right (as laid down in the books up to the time of the Circular Order of 1841) of taking alluvion as an increment of the parent estate and of having it settled as a permanent assessment. It would next act unfairly towards the Government, for Government had a lien upon the alluvion, and if you compel the Revenue Authorities to grant it out as a separate estate, without their consent, you deprive the Government of its lien. He (Mr. Peacock) spoke theoretically, but he must say that, if an original estate were cut off from its river-frontage, it might be greatly diminished in value; and it might so happen that it might not sell for a sufficient sum to pay the Revenue due to Government. Now, in the letter to which he had referred, Mr. Samuells took up that very point. He says—

"A case came before me the other day in which a proprietor, who had obtained a separate settlement for an alluvial formation, had gone on paying the assessment for five years after the alluvion was entirely washed away. He let it go at last and the Mehal was instantly purchased by a speculator on the chance of the re-appearance of the alluvion, an event which will be the ruin of the original estate, as it owed its value almost entirely to its river-frontage and the valuable churs which from time to time formed against it."

Again, Mr. Samuells said—

"An estate, for instance which has become little less than a bed of sand, continues to pay a high Revenue, because it possesses a valuable bazar on the banks of the river; a deara forms in front of this bazar, and a separate settlement is made with the malik of the original estate. He immediately allows the original estate to be sold for arrears of Revenue, and then constructs a new bazar on the banks of the deara which shuts up the old one, and the original estate must be resettled at a pepper-corn rent. For the time the Government may gain on the deara what they have lost on the permanent estate, but these dearas may be, and frequently are, washed away in a night, and then the Government find that what I cannot but term the crotchet of treating accidental and temporary increments in all cases as separate estates has resulted in a serious diminution of their Revenue."

Now if any case could be put, and if a gentleman so practically acquainted with the subject as Mr. Samuells had put such a case, he (Mr. Peacock) apprehended that it was quite possible that such cases might arise in practice. He therefore proposed to leave it optional with the Collector to refuse to grant the alluvion as a separate estate. The zemindar had a right to insist that it should not be separated from the original estate, and should be settled as a permanent estate; it was only in the event of his agreeing that it should be settled as a separate estate, that it could be so settled: but in that case Government should not be bound to forego its right to the alluvion as a security for the Revenue of the original estate. If the proprietor should refuse to have the jumma of the alluvion incorporated with that of the original estate, the Government ought to have the power of refusing to assess it as a separate estate, and in that case it would be let in farm reserving Malikana.

Another point was, whether it was expedient to make the alluvion a separate estate for all purposes when it was let out reserving Malikana. The Bill said that in such a case it should

"thenceforward be regarded and treated as in all respects separate from and independent of the original estate."

He did not know whether any great importance was attached to the word "estate." It would no doubt be said that that word was used in the sense explained by Regulation VIII. 1800, namely:

"Any land subject to the payment of Revenue, for which a separate engagement may have been executed to Government by the proprietor or by a farmer; or which may have been separately assessed with the public Revenue, although no engagement shall have been executed to Government."

He understood the word "estate" in the sense given to it by that Regulation But the Bill said that the *alluvial land* should be regarded and treated as in all respects separate from and independent of the original estate.

It was a rule that estates should be named, that is, estates in the Regulation sense of the term. Suppose, then, the owner of an estate called A. should make a will leaving it to his natural son, and that a large alluvion should be formed. By Regulation XI. 1825, the alluvion would be an increment to the tenure and would pass under the will. But by this Bill as it now stood, if the owner should refuse to enter into an engagement for the Revenue to be assessed upon it, and in consequence of his recusance it should be let in farm, the alluvion must thenceforward be regarded and treated as in all respects separate from and independent of the original estate. Now suppose the owner should die without making a new will, and upon his death his heir-at-law should claim the alluvial land, a very important question would arise, namely, whether the alluvial land would pass as part of the estate A. He apprehended that under this Bill it would not pass, and the son to whom the estate was left would lose his river-frontage.

It might so happen that the owner of the estate might become lunatic or incompetent to make a new will after the formation of the alluvion, or he might not understand the effect of this Bill, and his son to whom the estate was devised, might thus lose the alluvion and be deprived of his river-frontage. He thought that the Legislature should be careful not to do injustice or to create doubts as to the rights of individuals by the use of such general words, and if the Bill were to be passed at all, he thought that the alluvial lands should be declared separate from the original estate only for Revenue purposes.

Again, the 2nd Section saved the rights of under-tenants, but the rights of mortgagees were not provided for, though the mortgager of the whole interest was not an under-tenant.

Again, suppose an estate were granted by the proprietor to a Putnee Talookdar and his heirs for ever reserving only a small rent. According to the law of 1825, any subsequent alluvion would be an increment to the tenure of the Talookdar. Suppose also that it should be stipulated that the rent reserved should not be diminished in consequence of any part of the estate being washed away, nor increased in consequence of the formation of any alluvion. The Talookdar might have paid a high premium in consideration of having to pay a low rent, or he might have paid a high price because

he was aware that he would be benefited by all accretions. But if the alluvion must be settled as a separate estate, if the proprietor refused to have it assessed permanently as part of the original estate, and must thenceforward be treated as in all respects separate from the original estate, the Putneedar might be injured. The word "proprietor" was used in the first Section, and according to the definition of that word in Section VII Regulation VIII. 1793 a Putneedar was not included. If the Government let the estate to farm reserving Malikana to the Zemindar or proprietor, the Putnee Talookdar would not receive any additional rent from the ryots, but would be deprived of the benefits to which he would have been entitled, had the accretion been made a part of the original estate.

THE VICE-PRESIDENT said, he was interested in this part of the case which related to Putneedars, and he would wish the Honorable and learned Member to explain what difference there was in this respect between the proposed Bill and the law as now existing? He (the Vice-President) thought that in both cases the rights of the Putneedars were equally protected.

MR. PEACOCK resumed.—If you were to assess it permanently as part of the original estate, the right of the Putneedar would be confirmed. According to the present law the proprietor had a right to have the estate settled as part of the original estate, but he had no right to have it settled as a separate estate without the consent of the Revenue Authorities. But by this Bill, if he refused to take it as part of the original estate, he had a right to have it assessed as a separate estate. Thus Government might have to forego their Revenue, or do great injustice to the Putneedar. He had bought the estate for better and for worse. He was entitled to the benefit of all alluvion which might be formed. He was consequently the person to receive any additional rent which might be paid in consequence of the alluvion. Whereas, if the alluvion were let to farm reserving Malikana to the proprietor, the farmer would be entitled to the rents paid for the alluvion, whilst the Malik or proprietor of the estate would receive the Malikana. He (Mr. Peacock) would ask, how many separate and distinct estates were to be made? Alluvion might form upon alluvion, and if each formation must be granted as a separate estate, you might have three or four new, distinct, and separate estates between the original estate and the river, whilst the original estate might be deprived of its river-frontage and irreparably injured.

Now, this was not merely a theoretical argument. He had before him the opinions of practical men. He had the opinions of two of the Members of the Board of Revenue. All the Members of the Board of Revenue were in favor of returning to the rule laid down in 1838. With regard to the present Bill which altered that rule, Mr. Dampier, one of the Members, said:—

"In my opinion the Preamble is wrong; the proposed Bill enacts new rules for the settlement of land gained by alluvial accession to estates paying Revenue to the Government, and I think it is clear that such is the intent of the Law, where by Section II it legalizes the separate settlements of alluvial lands, heretofore made under the Circular Orders of the Board and Government contrary to the existing law.

I think that the proposed Law will complicate settlements of such alluvial lands much, and, where these lands are increments on under-tenures, will cause serious inconvenience to the holders of such tenures, to whom it is an object to have such lands, valuable from their river-frontage, incorporated with, and to be a part of these tenures. I also think that the wording of the proposed Law in Section I is obscure and confused. The alluvial land is to be assessed and settled as a separate estate with a separate jumma, subject to all provisions respecting the rights of property thereon which are contained in Section IV Regulation XI. 1825, and it is thenceforward to be treated as independent of the original estate—this is so far as the *estate* is concerned; but by Section IV Regulation XI 1825, the proprietor of the under-tenure has the same right in the increment as he has on his tenure of which it is part. Is the estate to be separate, and the tenure not? or if both are to be separate, and the tenure is a Putnee, how is the zemindar to proceed for the recovery of his rents when due under Section VIII Regulation VIII. 1819? Is he to take a fresh pottah for the increment? and what course is he to pursue when he has, in the pottah of the original tenure, expressly relinquished any demands for rent on an increment of alluvion? whilst the alluvial lands formed part of the parent estate this was easily arranged, but the new Law will embarrass the under-tenants and lead to much litigation.

Again, why is the zemindar to have the right of objecting to the alluvial lands being added to the parent estate, and the Revenue Authorities have no power to insist on such an arrangement? and why should the Revenue Authorities have the option of not assessing them as part of the estate, where the proprietors are willing? These rules interfere with the old customs and laws of the country supported by the decisions of the highest Courts, and are uncalled for. Section V Act IX of 1847 secures to the proprietors of estates deductions from their assessment whenever any proceedings under that Law are taken. Sections V and VI must be put in force simultaneously. Under all circumstances, and particularly with reference to Act IX of 1847 which secures to the zemindars indemnity for losses, and to the Government its Revenue; from alluvial increments by periodical surveys; I can see no object to be gained for the Government, the proprietors of estates, or the holders of under-tenures, by the adoption of the proposed Law."

Mr. Stainforth, the other Member, said:—

"I object to the Preamble of the Bill, and approve of that part of it which legalizes past errors in making separate settlements of alluviated land. As to the future settlements, they will mainly be those made under Act IX of 1847, and there would, I think, be little need of the Bill in respect to them if officers were placed at our disposal to survey gains and losses of land. We should then be enabled to relieve land holders losing land, and take away all substantial ground of objection to adding the jumma assessed on new lands to that of the estate to which they are added."

He (Mr. Peacock) entirely concurred in the above opinion. By all means set right all that has been done wrong, but do not do wrong for the future. According to the Bill, if the Collector and proprietor disagree, a Malikana was to be given. The proprietor gains by this course, for it would be his interest to disagree. If this Bill should be passed, it would injuriously affect private rights, and it might so affect the rights of Government also.

Mr. Samuells, who was a practical man, also said:—

"*The present practice is well understood and satisfies every one, why then should it be changed?* Would it be an improvement to render it compulsory on the Collector to form the alluvion into a separate estate in every instance in which the proprietor did not wish the jumma consolidated with that of the parent estate? I should think that the measure was likely to be distasteful to proprietors, *and I believe that it will effect a great change in the value of landed property on the banks of rivers and consequently endanger the stability of the Revenue assessed on these estates.* At present, while the proprietor avoids the risk of a settlement, he receives a fair share of the rent, and the right to all accretions of alluvion remains with his ancestral estate and greatly enhances its value."

Again he said:—

"Then, as respects the interests of Government, the Law (Regulation XIX. 1814) which has been enacted for the division of estates, does not permit zemindars to make this division themselves. The Government having the paramount interest in the estate, carries out the partition through its own officers and apportions the jumma to each share so partitioned. The aim and object of the Collector in these partitions always is to give each share its due proportion of advantages whether of water, road, or river-communication. As a general rule, when two shares applied for a division of an estate having a dcara attached to it, the Collector would divide the estate at right-angles to the river, so as to give to each share its proper proportion of alluvial lands and river-frontage."

Then again he said:—

"I would respectfully deprecate any change in the present law of alluvion, which appears to me to be working on the whole, satisfactorily. Nothing can be fairer for all parties than the present practice. If the proprietor wishes to make a separate estate of his dcara and the Collector is satisfied that the Government interests will not suffer thereby, his wish is acceded to."

Thus we had one Member of the Board of Revenue deprecating any alteration of the existing law and saying that it would cause confusion and increase litigation. We next had the opinion of another gentleman practically acquainted with the subject, who said that the Bill would injuriously affect existing private rights, and we had a Petition of the British Indian Association objecting to the Bill as it now stood.

He (Mr. Peacock) therefore wished to know why the law should be altered. If no sufficient reasons could be given (and certainly the Preamble of the Bill set forth no such reasons) why alter it? If we were to be constantly altering laws without sufficient reason, no one would know what the law was or what his rights were. He thought some better reason should be given than that set forth in the Preamble—and that, in altering existing rights, we should be satisfied that we were not injuring

private parties. This Bill, it appeared to him, materially altered the law in two respects, both as affected private rights and those of the Government.

For these reasons he should vote against the third reading of this Bill.

MR. RICKETTS said, they had now been floundering in the mud for three months, and his Honorable and learned friend seemed inclined to keep them still in the same position, fighting these slimy Sections over again. He desired to leave points of law to others, but he would not shrink from endeavoring to explain his views. His Honorable and learned friend said that legislation was not necessary, but legislation only could settle the law. The Revenue Authorities of 1838 had taken one view, and those of 1841 another; and was not this Council divided?

His Honorable and learned friend had based his argument regarding the right to a settlement in perpetuity on Clause 1 Section IV Regulation XI. 1825. He maintained that, as the law declared that the person in possession of the original estate should not have a right in the chur beyond that possessed by him in the original estate, it followed that he must have an equal right. Whether that was the necessary logical sequence, he would not pretend to say; but, admitting that it was, it appeared to him that the interest which the law gave was only to right of property. Whatever right of property he possessed in the parent estate, he was to have the same right in the chur. If owner, then owner; if mortgagee, then mortgagee; if lease-holder, lease-holder. But, as regards settlement and assessment, he was not to be exempted from the payment to Government of any assessment for the public revenue to which he might be liable under the provisions of Regulation II. 1819 or any other Regulation. Regulation II. 1819 provided for resumption, but was silent as to assessment and settlement. You might go back, but you would find no mention of alluvion between 1793 and 1819. The proclamation of 1793 regarding permanent settlement might perhaps be twisted to apply to alluvion, but there was no mention of it, and in the absence of any legal provision, the Revenue Authorities necessarily used their discretion in settling these lands, either temporarily or in perpetuity. Government was much interested in these lands, for to the eastward, alluvial formations now stretched for miles and miles to the southward, and he (Mr. Ricketts) should not be at all surprised if they were called upon at some future time to survey chur Antipodespoor far beyond the line in the latitude of the Cape of Good Hope. He would leave his Honorable friend the Member for Bengal to speak on the propriety of making it compulsory upon the Collector to settle the alluvion as a separate estate in every instance in which the proprietor did not wish the jumma consolidated with that of the parent estate. His (Mr. Ricketts') opinion on this part of the subject was not so decided; he was prepared to be guided by the judgment of the Honorable Member for Bengal.

Now for a few words regarding the Putneedar. He (Mr. Ricketts) did not think that this part of the subject was so difficult as his Honorable and learned friend would make it out to be. A party having a Putnee right of property in the alluvion, was liable to an increase of rent for land which might annex to his property, whether alluvion was settled together or divided into two or ten parts. The Putnee right still existed on the part of the Putneedar. For all the new lands accruing to his tenure, he would be separately assessed, and he would have to pay whatever rent might be assessed to the superior holder, whether farmer or proprietor of the original estate. He could not be dispossessed by any party whether farmer or proprietor; and as his rent must be adjusted by the revenue officer and not by the farmer or proprietor, he could not see what difference it would or could make to him whether he paid his Putnee rents to one or to more persons.

MR. CURRIE said, he would not detain the Council more than a few minutes. He would endeavor to avoid the topics which had been so fully discussed at previous meetings of the Council, and should confine himself to the two points of objection urged by the Honorable and learned Member; namely, that the Bill interfered with the rights of proprietors, and that it interfered with the rights of Government.

The Honorable and learned Member

contended that a proprietor of alluvial land had an absolute right to incorporate the alluvion with the estate to which it annexed, and to have the jumma assessed on the alluvion added to the original jumma. It had been shewn in the debate in Committee that the only ground upon which the Revenue Authorities could object to this arrangement would be that the land was not fit for settlement in perpetuity. It was stated that, when such was the case, it would be the duty of the Revenue Authorities, in order to protect the interest of the Government (if a permanent settlement were insisted on), to assess a jumma in anticipation which the proprietor could not with prudence agree to pay, and therefore that the practical effect would be that the alluvion must be let in farm. It was more convenient for all parties that the Revenue Authorities should determine whether the settlement should be permanent or temporary. The question involved in the learned Member's objection amounted in fact to this. Is the proprietor of alluvial land in all cases entitled to claim a permanent settlement? He (Mr. Currie) contended that he was not. The common law of the country was, temporary settlements for periods optional with the ruling power. Before the British Government, settlements for long periods were never heard of, and even now settlements in perpetuity were unknown, except in the Provinces of Bengal, Behar, and Benares. The right to permanent settlement in those Provinces, therefore, must depend upon the pledge given to proprietors at the time of the settlement; it could not extend to any lands not expressly included in that pledge. Thus it did not extend to lands which were waste and not included within the limits of any estate at the time of the settlement; and temporary settlements of such lands had frequently been made. Nor did it extend to alluvial lands which were not in existence at the time of the settlement. Indeed, the case of alluvion was altogether exceptional, and no inference respecting it could be drawn from the principles of the permanent settlement. The application of those principles would have required that no remission should be claimed by proprietors for loss of land, and no increase should be demanded by Government for accession of land. But this would have been a one-sided arrangement; the Government might of course abstain from demanding any increase, but it could not avoid loss of revenue when estates were washed away, or so much reduced in area as to be unequal to the payment of the assessed Revenue. Accordingly, so far back as the year 1798, it was found necessary to grant remissions for loss of land, and a few years later in 1804 the Government asserted its right to assess alluvial formations. As the terms in which the Government order were expressed might be thought to bear upon some questions which had been raised in this discussion, he would ask permission to read an extract from it :—

"From the reports of the Canoongoes and Sherishtadars the right of property in lands gained by alluvion in the Province of Benares, appears still to be left indeterminate. On a consideration, however, of all the circumstances of the case, it does not appear to the Governor-General in Council to be necessary for Government to have recourse to the Courts of justice, or to proceed to an immediate attachment of the lands. In all cases of that nature, the assessment which Government is entitled to demand from the lands under the general laws and regulations of the country, is the primary object to which the attention of the public officers should be directed. If that object be secured, the right of property in the soil, even supposing Government could establish such a right (which at present appears to be very uncertain), is comparatively of little importance. Under these circumstances the Governor-General is of opinion that, whenever lands may be formed by alluvion, the Collector should call upon the person in actual possession of the property to enter into engagements for the revenue of the lands in question, *as a new estate;* and in the event of a refusal on the part of such person to execute the necessary engagements (after the jumma shall have been approved by your Board and confirmed by Government), that the Collector should take charge of the lands, and provide for the management of them, *in the manner observed with regard to other unsettled Mehals,* either in Benares or in any other part of the country."

"By an adherence to the foregoing rule, it is presumable that the increase in the jumma which may be obtained from lands gained by alluvion, will be nearly equal to the remissions which it may be necessary to grant, from time to time, in consequence of losses sustained by any of the Zemindars whose estates lie contiguous to the course of the Ganges."

This order established that all lands gained by alluvion should be liable to

assessment, and fifteen years later the declaration was sanctioned by legal enactment. But why should it be assumed that the assessment must necessarily be permanent? The lands lying on the banks or in the shifting channels of the rivers of Bengal had no conditions of permanency, and this had been recognised by the last enactment on the subject which made the jummas of estates so situated subject to periodical adjustment. He thought, therefore, that it could not be made out that the proprietors of alluvial land had legally any absolute right to permanent settlement.

The Honorable and learned Member, however, said that this absolute right had never been questioned until the issue of the Circular Order of 1841. It was quite true that there were earlier Circulars which recognized such a right, and the one which had been most frequently alluded to in this discussion was the Circular of the 7th August 1838. Now, he had in his hand a paper which shewed that the Board which passed that order intended that its operation should be restricted to cases in which the alluvial land was fit for permanent settlement. A very few months after the issue of the Circular, on the 15th February 1839, they instructed the Commissioner of Dacca in the following terms:—

"Nevertheless, when, from the character of the accretion, *it may be deemed more proper to form a temporary settlement*, it will not be advisable to consolidate the jumma with that of the permanently settled estate; and in such cases, as the proprietor has a primary right to be admitted to engagement, the settlement made with him for the accretion must of necessity be distinct from that of the parent mehal."

It would be seen, therefore, that the views of the Revenue Authorities of those days with regard to the right of permanent settlement and also as to the necessity of keeping the chur attached to the old estate, were not very definite or consistent.

With regard to the learned Member's second point that the Bill alters the rights of Government, the learned Member contended that, when the proprietor refused to incorporate the alluvion with the original estate, the Government should have the right of refusing to give him a separate settlement of the alluvion and of keeping it attached to the old estate. But it had been fully shown in the debate on the second reading that, when a Zemindar refused or was not permitted to engage and the lands were let in farm, the arrangement was as much a settlement and the land became as much a separate estate for all revenue purposes, as if a separate engagement had been taken from the proprietor, and he thought that there was nothing in the letter from the Commissioner of Patna to shake the position so established. The learned Member said that Government had a lien on the alluvion for the revenue of the old estate. This was not in accordance with the first principle of revenue law: that principle was that all land was answerable for the revenue assessed upon it, and no land could be held liable for any arrears, except those which had accrued upon itself.

Then as to the risk of loss which it was said would be entailed on Government, by allowing alluvial lands to be treated in all cases as separate estates. The learned Member had referred to the case supposed in Mr. Samuells' 14th paragraph. He (Mr. Currie) had a right to assume that it was the strongest that could be put. It was certainly a very improbable, though not an absolutely impossible one. Mr. Samuells supposed the case of a highly assessed estate, the value of which consisted principally in its having a bazar on the bank of the river; a chur forms opposite the bazar, and a separate settlement of the chur is made with the proprietor: he establishes a new bazar on the chur, and allows the old estate to be sold for arrears; it is purchased by Government and re-settled at a reduced jumma. Now, what would be the result if, according to the Commissioner's principle, the chur were let in farm notwithstanding the proprietor's wish to engage for it. The damage to the old estate would be the same, for the farmer might establish a new bazar, or if restrained from this by special condition, the intervention of the chur would prevent access to the old bazar. Then why should the proprietor, whose old estate was endamaged by the formation of the chur, not be allowed all the compensatory benefit which the chur was calculated to afford? Why should he be deprived of the possession of the land and put

off with a malikana allowance which might or might not be sufficient to meet the deficiency on the old estate? It did appear to him (Mr. Currie) that, in the attempt to do justice to Government, very great injustice might be done to the individual. Then, to follow out the case put by the Commissioner, suppose the chur with the new bazar to be washed away, and Government to lose the jumma which had been assessed on the new land. What was to prevent the Government farmer of the old estate from re-establishing the bazar on its former site? and then at the end of the lease, the estate would be again equal to the payment of the former revenue. It did appear to him that, on the Commissioner's own showing, the risk of loss to Government from the admission of what he contended to be the proprietor's right of separate settlement, was very remote and visionary.

In his opinion the Bill was not open to the objections brought against it, whether as regarded its affecting the rights of private individuals or the rights of Government.

The Honorable and learned Member had also taken objection to the wording of the latter part of Section I which declared that the alluvial land when separately settled should become a separate estate, in all respects independent of the original estate. Now, with respect to the meaning to be attached to the word "estate," of course it must from the context be taken in a revenue sense, and be held to mean a portion of land assessed with a specific jumma; and in that sense he (Mr. Currie) could see no difficulty in regarding the alluvial land as a separate estate.

As to the case put of a person who made a will and named in the will only the original estate, he (Mr. Currie) supposed that, if the chur and the old estate had become distinct properties at the time of the testator's death, the will could be of effect only with respect to the property named therein. But he did not see why that should be an objection to the separation.

Then with regard to the case of the mortgagee. If an estate on the bank of the river were mortgaged and a chur formed subsequently, the mortgagee would have the same lien on the chur, as he had on the original estate; and his rights would be recognized at the time of settlement.

After what had fallen from his Honorable friend (Mr. Ricketts) on the Putnee question, he thought he was not called upon to say much. But it did seem to him that the learned Member had not put the case of the Putneedar with his usual clearness. He had not shown how the position of the Putneedar would be affected by declaring the chur to be a separate estate. If the proprietor refused or was not permitted to engage, the chur must, of necessity, be let in farm; then, whether it were considered a separate estate, or whether according to the learned Member's doctrine it were held to be attached to the old estate, there would equally in either case be a stranger farmer representing the rights of Government, which rights were paramount to all others.

The Honorable and learned Member had asked how many separate estates would be created. It did not appear to him (Mr. Currie) that the effect of the Bill would be to increase the number of entries on the Collector's rent-roll. But he could tell the Honorable and learned Member what was the actual number of chur estates now existent in the four Districts of the Nuddea Division. From a Statement furnished to him by the Commissioner, it appeared that the total number of churs brought under settlement was three hundred and ninety-seven, of these only thirteen had been incorporated with the old estates, sixty-one had been settled with farmers, and for all the rest separate settlements had been made with the proprietors—eighty-five in perpetuity, and two-hundred and thirty-eight for terms of years. The practice of this Division, therefore, was separate settlement with the proprietors. From Mr. Samuells' letter, it would appear that the practice was different in the Patna Division. But the Bill, which followed the Circular Order of 1841, was in accordance with the practice generally in force, and he was quite satisfied that, while it affirmed that practice, it would in no respect injure any existent rights, whether of private individuals or of Government. He would therefore press his motion for the third reading.

MR. HARINGTON, said that, in rising to address the Council on this occasion, it was not his intention again to go over the whole of the ground over which they had already travelled so frequently, but before they proceeded to a division on the motion of the Honorable Member for Bengal, he was anxious to assert once more and for the last time the right which, according to the law as it at present stood, he concurred with the Honorable and learned Member of Council in considering to be vested in the proprietors of estates to which land might become annexed by alluvion, to insist upon the incorporation and settlement of that land with the parent estate upon the single condition of their engaging to pay the Government Revenue assessed upon it; and he made this assertion with the greater confidence to-day, not only in reference to the paper which had recently been printed and circulated to Honorable Members, but because he believed he could now cite the Honorable Member of Council opposite (Mr. Ricketts) as a witness in support of the view taken by him. In a former debate on the present Bill, the Honorable Member of Council mentioned that he had been charged with obscurity in the observations which he had made at a previous meeting of the Council, and with having held back from expressing his own opinion upon the questions of law raised in the course of the discussions on the Bill which he had left to be determined by others whom he considered better qualified than himself to deal with those questions; and in order to show not only that he had made up his mind as to the legal rights of the owners of alluvial formations, but that the opinion entertained by him upon this point was of some standing, and had not been formed subsequently to the introduction of the Bill before the Council, he read some instructions which, in concurrence with his colleagues in the Sudder Board, he had issued to the subordinate Revenue Authorities so far back, he (Mr. Harington) believed, as the year 1850. These instructions commenced by enunciating the very doctrine as to the rights of the proprietors of alluvial lands for which he had all along contended; but when he expressed his assent to what the Honorable Member had read, he checked him, and putting a comma or semicolon where he thought there had been a full stop, he went on to read what certainly looked like a qualification of that which had gone before, and seemed to recognize a discretionary power in the Revenue Authorities, scarcely compatible with the absolute right of the proprietors of alluvial formations which had just previously been declared. He came now to the testimony of the Honorable Member of Council which he considered to support the opinion held by him. This was contained in a little work of which the Honorable Member was generally considered to have been the author, and a copy of which he held in his hand. It was entitled "The Assistant's Cutchery Companion and help to the Revenue Examinations." He did not know when this work first appeared, as the preface to the first edition was without date and signature; but the title page to the second edition, the preface to which had the initials of the Honorable Member of Council attached to it, shewed that it was published in 1853. The preface to the first edition set out by saying—

> "The object of this little book is to enable an Assistant in the shortest period possible to make himself acquainted with the Regulations, Acts, and Circular Orders of the Revenue Department, and to conduct with some confidence and efficiency the duties entrusted to him."

But although the work was thus declared to have been published for the instruction in Revenue matters of the Junior Civilians as a class, he had been informed that the Honorable Member of Council was induced to write it chiefly to assist a young relative of his own in qualifying himself for the examinations which had shortly before been introduced into the Civil Service in Bengal. The relative alluded to was, he believed, the Honorable Member's son, whose gallant deeds on the banks of the Sutlej in the early part of the mutiny were probably fresh in the recollection of all who heard him. At page 91 of this Book, he found the following question and answer; (the book was written in the form of question and answer, which shape, the Author stated in the introductory Chapter, he considered had its advantages)—

Question.

"What parties have a right to demand that the settlement of alluvial accretions should be made with them?"

Answer.

"Such lands belong to the proprietor of the estate to which a change in the channel of the river has added them, and such proprietors are entitled to terms of permanent engagement whenever they may think fit to demand it. The increment may be added to the estate, to which it is attached, or settled as a separate Mehal as the owner may desire."

Not, it would be observed, as the Revenue Authorities might think proper, but as the owner might desire; and after the word "desire" there was no comma or semicolon, but a full stop, and the next question related to quite a different matter. The Author then proceeded to give the authority upon which he had thus declared the right of the owner of alluvial lands to demand a permanent settlement of such lands and to have them either incorporated with the original estate or settled as a separate Mehal, and that authority was Section IV Regulation XI. 1825, though the Honorable Member of Council had told them to-day that Regulation XI. 1825 related only to the right of property in alluvial lands, and was in no way connected with the settlement of lands of that description. Then again at page 129 of the Book, the following question was asked—

"To whom do lands gained from the sea or rivers belong?"

Answer.

"Such lands are to be assessed as an increment to the tenure of the person to whose land or estate they may have been annexed, whether such lands be held immediately from Government by a Zemindar or as a subordinate tenure by any description of under-tenant."

And here also the authority given for the answer to the question was Clause 1 Section IV Regulation XI. 1825. Once more, at the page first mentioned it was asked—

"When a party is entitled by law to a settlement in perpetuity, must such settlement be made whatever the state of the Mehal?"

Answer.

"Yes, the settlement must be in perpetuity. The question in such cases will be a perpetual settlement at an increasing and a perpetual settlement at a fixed jumma. There cannot be a temporary settlement."

Authority—Section VIII Regulation XVIII. 1793. The Honorable Member for Bengal declared that no pledge had ever been given to the proprietors of alluvial lands that a permanent settlement of such lands should be made with them, but the Court of Directors and the Government in this country had repeatedly recognized the right to a settlement in perpetuity of parties who have a right of property or a permanent interest in alluvial formations, and he need not tell the Council that, under the law as it now stood, the proprietor of a permanently settled estate had to all intents as permanent an interest in any alluvial land which might accrete to that estate, as he possessed in the original estate. With regard to Putneedars and under-tenants generally, he would observe that, as proprietors of estates were at liberty to grant leases of their lands on any conditions and for any term that they might think proper, provided that they did not go beyond the period of their own lease, there was nothing to prevent them from entering into an agreement which should give the Putneedar or other under-tenant the benefit of any alluvion that might be formed without paying any additional rent. Such a contract would, he apprehended, be binding on the proprietor. The concluding paragraph of Clause 1 Section IV Regulation XI. 1825 would seem to support this view. It said—

"Nor if annexed to a subordinate tenure held under a superior land-holder, shall the under-tenant, whether a khoodhasht ryot holding a mouroosee istemraree at a fixed rate of rent per Beegah, or any other description of under-tenant, liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable."

So that, conversely, if the engagement of the under-tenant expressly stipulated that he should not be liable for any increased rent in respect of any alluvion

that might become annexed to his tenure, he did not see how any additional rent could be taken from him. He concluded these remarks, as he commenced them, by declaring his conviction as to the absolute right of the proprietors of estates to insist upon the incorporation and settlement with those estates of any alluvial lands that might accrete thereto, if prepared to pay the revenue assessed upon them; and considering this right to be infringed upon by the Bill as now drawn, he should vote with the Honorable and learned Member of Council against its third reading.

MR. CURRIE said, lest it should be supposed from the questions read by the Honorable Member, who had just sat down, that there was legal authority for the statement that a proprietor of alluvial land had a right to settlement in perpetuity, whatever might be the state of the land, he would just observe that the authority quoted by the Honorable Member for a right to settlement in perpetuity, Section VIII Regulation XVIII (or as it should have been printed Regulation XIX) 1793, had reference only to resumed lakhiraj tenures, and did not bear at all on the question of alluvial formations.

THE VICE-PRESIDENT said that the Honorable and learned Member had stated that the Bill affected the under-tenants, but in his opinion the Bill made no alteration in the existing law, whatever that law might be. He might observe in passing, that he had once suggested to the Honorable Member for Bengal, that he thought it would be clearer if, instead of the phrase to which objection had been taken, the Bill had used the words "for all revenue purposes." However he thought that such would be the reasonable construction which any body, looking to the general scope and objects of the Act and taking its Clauses together, would put upon it. His Honorble and learned friend had contended that, if the chur were let in farm, this Bill would injuriously affect the rights of Putneedars or under-tenants in respect of the malikana. He was unable to follow his Honorable and learned friend's argument on that point. If the zemindar failed to engage for the land, the Putneedar might do so. If both refused to engage, then the farmer would come in and undertake to pay a revenue to Government and a malikana to somebody. The first Clause of the Bill did not mention the word "malikana." Malikana was originally payable to the zemindar. In Regulation VII. 1822, Section V, he found provisions modifying the rights to malikana and prescribing new rules on the subject. How far those enactments affected the relative rights of zemindars and under-tenants to malikana, or to what districts they extended, he was not prepared now to argue. But whatever those rights were, this Bill seemed to him to leave them as it found them. Clause 1 Section IV Regulation XI. 1825 clearly contemplated a possible liability on the part of the under-tenant to pay an increased rent in respect of alluvion, for it said—

"Nor if (land be) annexed to a subordinate tenure held under a superior land-holder, shall the under-tenant, whether a khoodkhast ryot, holding a mouroosee Istimraree tenure at a fixed rate of rent per Beegah or any other description of under-tenant liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable."

But if any doubt touching the rights of the under-tenants could arise upon the 1st Section, it must be removed by the 2nd Section of the Bill, which said—

"Nothing contained in the preceding Section shall affect the rights of any under-tenant in any alluvial land under the provisions of Clause 1 Section IV Regulation XI. 1825."

It then provided that it should be the duty of the settlement officer to apply that law and to ascertain and record all such rights according to the rules prescribed in Regulation VII. 1822.

Whatever might be the effect of the existing law upon the question now under consideration, and whatever its merits or demerits, they remained very much what they now were. On the general question, whether this Bill should now be read a third time and passed, he must say that, with every respect for the very able paper from the Commissioner of Patna and for the arguments of his Honorable and learned friend, he continued to think that this Bill would effect a great improvement in the law of settlement. That some legislation was wanting, was clear. The Honorable Member for Bengal had

shown on a former occasion that, notwithstanding the Act of 1847, there continued to be frequent occasion for the settlement of alluvions on the expiration of farming leases or the like. That statement had oddly enough been confirmed during the past week by his (the Vice-President's) personal experience; for there had come before him, incidentally of course, in his judicial capacity, a revenue proceeding before the Commissioner of Nuddea for the settlement of a chur dated only a few months back. And as to the principles on which such settlements should be made, and even as to the existing law, there was obviously great diversity of opinion even amongst those most conversant with the revenue system.

On the whole, it appeared to him (the Vice-President) that proprietors of lands would be gainers by this Bill. If he were satisfied that, by practice or by any law, the proprietor was entitled to have his alluvion settled permanently when he chose and upon certain fixed terms, he (the Vice-President) would have supported the amendment of his Honorable and learned friend which gave the proprietor the right to insist on having the alluvion doubled up with the parent estate and assessed under one common jumma. It was the difficulty occasioned by the nature of the subject in saying when the settlement should be permanent, or in making a permanent settlement that would be just to both parties, that made him prefer the Bill as it stood. If we were to go back to the principles of the permanent settlement and follow them logically out, he must take leave to doubt whether the Government had any right to assess these alluvial increments at all. But that question had been settled by the Regulation of 1819; and the only question now was, how that right might most fairly be exercised. By this Bill the land must be assessed jointly with the parent estate, unless the Collector determined that the settlement ought to be temporary, or the proprietor desired a separate settlement.

The other objection was that the rights and interests of Government would be injuriously affected by giving the proprietor the right to insist on a separate settlement. He was not satisfied that this would be the case. The just principle seemed to be that each parcel of land should bear its own burden. And he thought the right would be a valuable one both to zemindars and to under-tenants. A great part of the Indigo cultivation of the country was carried on upon these churs. It would be a great advantage to the planter that he should be able to save his land from a sale for arrears of Revenue by depositing the sum assessed on the chur alone, instead of having to deposit the revenue assessed on both chur and the parent estate.

Upon the whole, therefore, he thought that the under-tenants would, as a general rule, be gainers: the proprietors would also be gainers; and not being satisfied that the public revenue would be endangered by it, he should vote for the third reading of the Bill with no more than that hesitation which every one ought to feel in dealing with a subject with which he is not conversant and on which those, who are conversant with it are greatly divided.

MR. RICKETTS said, he was sure the Council would permit him to say a few words in explanation of what had fallen from the Honorable Member of the North-Western Provinces. He could not admit that the Honorable Member had convicted him of inconsistency of opinion, but he must plead guilty to carelessness, although not quite so bad as the Honorable Member would make it out to be. He admitted the authorship of the book from which the Honorable Member had quoted. The answer which had been read was an incomplete answer, but the authority quoted was not the Regulation XI. 1825 only, but the Circular Order of the 26th November 1850 para. 74, written by himself, the provisions of which were entirely consistent with the opinions which he (Mr. Ricketts) now professed. The Honorable Member would have been more ingenuous had he pointed to the Circular Order as well as to the law.

The question being put, the Council divided.

Ayes, 7.	*Noes*, 2.
Mr. Forbes.	Mr. Harington.
Mr. Currie.	Mr. Peacock.
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	
Mr. Grant.	
The Vice-President.	

So the motion was carried, and the Bill read a third time.

FORT OF TANJORE.

MR. FORBES moved that the Bill "for bringing the Fort of Tanjore and the adjacent territory under the Laws of the Presidency of Fort St. George" be read a third time and passed.

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

PROCEEDINGS IN LUNACY (SUPREME COURTS).

MR. CURRIE moved that the Council do resolve itself into a Committee on the Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature;" 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.

Agreed to.

Section 1 being read by the Chairman—

MR. PEACOCK said, this Section authorized the Court upon an application to make an order directing any Judge or the Master of the Court to enquire whether an alleged Lunatic, subject to the jurisdiction of the Court, was or was not of unsound mind and incapable of managing his affairs.

The Bill also empowered the Court, where the alleged Lunatic was not resident within the local limits of the jurisdiction of the Court, to appoint a Commission to make the enquiry.

He considered that this involved a most important question, namely, whether the power of deciding whether a man was of unsound mind and incapable of managing himself and his affairs, should be delegated to the Master of the Court either with or without the assistance of assessors. The result of such an enquiry was most important to the person to be affected by it; and it was necessary, in order to guard against abuse, that the evidence in such cases should be strictly scrutinized.

He had had some little experience in these matters; he knew the nature of the evidence brought forward on such occasions, and how easy it was to express an opinion that a man was of unsound mind.

He recollected a case which was tried before the late Chief Justice Tindal and a special Jury in which a Doctor was called as a witness to prove that a gentleman was of unsound mind. The witness, upon his cross-examination by the late Sir Thomas Wilde, afterwards Lord Truro, admitted that he entertained the theory that no man's mind was perfectly sound. He was asked what he thought of the Chief Justice's mind, whether he believed it to be perfectly sound. His answer was "No." A similar question was asked with reference to the minds of the foreman and gentlemen of the Jury, and a similar answer given. The witness was then asked whether he believed that his own mind was perfectly sound, to which he replied, "He could not say that it was." Whereupon he was told that he might stand down, and that that was probably the truest answer he had given during his evidence.

He also remembered another case in which the state of mind of a gentleman who was formerly in the service of the East India Company was the subject of enquiry. A lady, the matron of a Lunatic Asylum in which he had been confined, was called as a witness and swore that she had not the slightest doubt that he was a mad man. Upon cross-examination she was asked what grounds she had for her opinion; she answered, "Because he ate with a voracious appetite and did not sufficiently masticate his food."

He (Mr. Peacock) recollected the precise words, for they made a great impression upon him at the time. Enquiries of this nature were as important as any that could be submitted for trial; and he was in favor of having such questions tried openly by full Court before the three Judges.

The Advocate General had stated that the expense of an enquiry under a Commission of Lunacy, according to the present practice of the Supreme Court, varied from fifteen hundred to three thousand Rupees; and the Bill recited that it was expedient to lessen the cost. He (Mr. Peacock) had not seen the bills of costs, and therefore he could not say what were the principal items of expense. He did not believe that this Bill would much diminish them. It might save the fees of the Commissioner and of the Jury, which could be only a small part

of the amount; but he could not see what other saving of expense would be effected by this Bill.

In the Statement of objects and reasons it was said that the object of the Bill was to assimilate the practice of the Supreme Courts in proceedings in Lunacy to that which prevailed in England under recent Acts of Parliament. But many of the provisions of the present Bill differed from those of the 16 and 17 Vic. c. 70 upon which it was supposed to be founded. He had not the same confidence in assessors as he had in a Jury, and he certainly thought that such enquiries should be made by the Court and not by the Master. He would therefore now move that the words "to make an order directing any Judge or the Master of the Court" be omitted from this Section.

THE CHAIRMAN remarked that this Bill had passed the second reading without any discussion. It was introduced at the instance of the learned Advocate-General who had proposed by it to assimilate proceedings in Lunacy in this country to the laws in force at home. Commissions of Lunacy were happily of very rare occurrence here. In the course of the twelve years during which he had been connected with the Supreme Court, he did not think there had been more than six. But in all cases of that nature, it was obvious that the enquiry might be very simple and it might be very intricate. The supposed Lunatic might be in a state in which there could be no rational doubt of his madness. And to subject the estate, which might be very small, to the cost of a Commission or even to that of a trial before the full bench of the Supreme Court, seemed unreasonable. He thought it would be better to follow the analogy of the English Statute, and to let the Master or a single Judge in Chambers (he had no desire to insist upon the Master, if the Honorable and learned Member objected to that tribunal) deal with such cases. Either might be presumed to be as capable of dealing with them as a single Master in Lunacy to whom they would be committed at home.

He might observe that the last Commission of Lunacy issued in the Supreme Court was in the case of a purdah lady. In such a case it was obviously necessary that those who made the enquiry, should go to the house and visit the supposed Lunatic. It seemed hardly necessary, if the case were one of a simple character, to carry the whole Court down to some family-house in the native quarter of the town. He made this objection, not on the score of dignity, but of convenience.

With respect to the more difficult cases, he had felt great doubt upon this Bill, whether it did not go too far in depriving the supposed Lunatic of a Jury if he saw fit to insist on one. And considering that the full Court would exercise that controlling power over the tribunal that made the enquiry, which was exercised at home by the Lord Chancellor—that there was no other authority which stood in the Chancellor's place—he felt doubtful whether a provision, that the more complex cases should be tried by a single Judge and a Jury, might not be preferable to the procedure proposed by the Honorable and learned Member.

On the whole, he should prefer that the question should be more deliberately considered, and he would move that the Bill be referred back to the former Select Committee with the addition of the Honorable and learned Member.

After some discussion, the Motion was put and agreed to.

CARE OF ESTATES OF LUNATICS NOT SUBJECT TO THE SUPREME COURTS.

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature;" 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.

After some conversation, the Motion was agreed to.

Sections I to III were passed as they stood.

Section IV provided as follows—

"When the Civil Court is about to institute any such enquiry as aforesaid, the Court shall appoint a Jury consisting of a Medical Officer of Government and two respectable inhabitants of the district; and the enquiry shall be conducted by the Court in the pre-

sence and with the assistance of the Jury so appointed."

THE CHAIRMAN said, this Section made it imperative to appoint a Medical Officer of Government. He thought, however, that, at the places where this Bill would be brought into operation, there would seldom be more than a single Medical Officer resident. He probably would have attended or examined the supposed Lunatic. He might obviously be able to give the most important testimony in the case; and it was better that he should do this as a witness in open Court and subject to cross-examination, rather than bring his knowledge to bear on the decision of the case whilst exercising the functions of a juror. Of course he assumed a paucity of Medical men to exist in the Mofussil. He therefore moved the omission of the words "a medical officer of Government and two," and the substitution for them of the words "at least three."

After some discussion, the Motion was agreed to, and the Section, as amended, was then passed.

MR. PEACOCK thought that the Act should contain some provision requiring notice of the intended enquiry to be given to the alleged Lunatic. He therefore moved that the following Section be introduced after Section IV namely:—

"Before the enquiry shall be held, the alleged Lunatic shall have sufficient notice of the time and place at which it is proposed to hold the enquiry."

Agreed to.

MR. PEACOCK suggested that the Bill should provide for the constitution of the jury, and also for compelling their attendance.

MR. HARINGTON drew attention to the provision on the subject of the constitution of Juries, which was contained in Section CCLX of the Code of Criminal Procedure proposed by Her Majesty's Commissioners.

After some further conversation—

MR. CURRIE moved that the Bill be referred back to the former Select Committee with the addition of Mr. Peacock, in order that the questions just raised might receive a more careful consideration.

Agreed to.

LUNATIC ASYLUMS.

MR. CURRIE postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "relating to Lunatic Asylums."

ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. PEACOCK moved that Mr. Ricketts be requested to take the Bill "to provide for the administration of the estate and for the payment of the debts of the late Nabob of the Carnatic" to the President in Council, in order that it might be submitted to the Governor General for his assent.

Agreed to.

SETTLEMENT OF ALLUVIAL LANDS (BENGAL).

MR. CURRIE moved that Mr. Ricketts be requested to take the Bill "to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal" to the President in Council, in order that it might be submitted to the Governor General for his assent.

Agreed to.

FORT OF TANJORE.

MR. FORBES moved that Mr. Ricketts be requested to take the Bill "for bringing the Fort of Tanjore and the adjacent territory under the Laws of the Presidency of Fort St. George" to the President in Council, in order that it might be submitted to the Governor General for his assent.

Agreed to.

The Council adjourned.

Saturday, August 21, 1858.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair;

Hon'ble H. Ricketts, Hon'ble B. Peacock, P. W. LeGeyt, Esq., E. Currie, Esq., Hon. Sir A. W. Buller, H. B. Harington, Esq., and H. Forbes, Esq.

POLITICAL PENSIONS.

THE CLERK presented to the Council a Petition from Ramchunder Venku-