

Saturday, July 17, 1858

**LEGISLATIVE COUNCIL
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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

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1858.

**INSTITUTION OF SUITS AND APPEALS
(N. W. PROVINCES).**

MR. HARINGTON presented the Report of the Select Committee on the Bill "for the relief of persons who, in consequence of the recent disturbances, may have been prevented from instituting or prosecuting suits or appeals in the Courts of the North-Western Provinces within the period allowed by law."

**SETTLEMENT OF ALLUVIAL LANDS
(BENGAL).**

MR. CURRIE presented the Report of the Select Committee on the Bill "to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal."

NOTICE OF MOTION.

MR. HARINGTON gave notice that he would, on Saturday the 17th instant, move the first reading of a 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.

The Council adjourned.

Saturday, July 17, 1858.

PRESENT :

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

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

**BOMBAY MUNICIPAL ASSESSMENT:
OFFENCES AGAINST THE STATE.**

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor General had assented to the Bill "for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in the Town of Bombay,"—and the Bill "to make further provision for the trial and punishment of offences against the State."

**ESTATE OF THE LATE NABOB OF
THE CARNATIC.**

MR. PEACOCK presented the Report of the Select Committee on the Bill "to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic."

**POLICE OF THE PORTS OF THE
PRESIDENCY TOWNS.**

MR. FORBES presented the Report of the Select Committee on the jurisdiction of the Commissioner of Police and of the Police Force within the Ports of the Presidency Towns.

LUNATIC ASYLUMS.

MR. CURRIE presented the Report of the Select Committee on the Bill "relating to Lunatic Asylums."

**PROCEEDINGS IN LUNACY IN THE
SUPREME COURTS.**

MR. CURRIE postponed the presentation of the Report of the Select Committee on the Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature."

CANTONMENT JOINT MAGISTRATES.

MR. HARINGTON moved the first reading of a 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."

In doing so, he said, the proposition to invest Cantonment Joint Magistrates with civil jurisdiction in certain cases, and to appoint those Officers Registers of Deeds within the limits of their respective jurisdictions, was not now submitted to the consideration of the Legislature for the first time. From a correspondence which had been handed to him by the Clerk of the Council, he found that, so far back as the year 1847, Brigadier Steel, who at that period held the appointment of Superintendent of Cantonment Police, brought to the notice of the Commander-in-Chief certain objections which appeared to him to exist as respected the working of Act XI of 1841, the 2d Section of

which declared that, in the Territories of the East India Company, subject to the proviso contained in the 1st Section,

"actions of debt and other personal actions against native officers, soldiers, and other persons amenable to the Articles of War for the Native Forces in the Military services of the East India Company, or residing within any station or Cantonment, and carrying on any trade or business in a Military bazar, shall be cognizable before a Military Court, and not elsewhere, provided the value in question shall not exceed two hundred Rupees, and the defendant was a person of the description mentioned when the cause of action arose, and when the suit was instituted, and provided also that no suit shall be brought before any Military Court under the Act to determine any dispute of caste, or concerning any right to real property."

Brigadier Steel's objections to this Act were that the temporary constitution of the Courts held under it would not admit of their making any investigation into the character of the parties who came before them; and that the consequence was that these Military Courts were a source of as much injustice as justice;—that the Members, including the European President, being changed every month, anything that occurred before one Court to establish the false swearing of an individual as prosecutor or witness, was entirely unknown to any other Court sitting subsequently, which Brigadier Steel considered a great disadvantage;—that it was not an uncommon thing for the Native Members of the Court, when they could not get over the affirmative evidence of the Plaintiff, to decree half the claim, and dismiss the rest;—and that, owing very much to these causes, a class of men had been raised up in almost every Military Cantonment who gained their livelihood by constantly appearing as Plaintiffs or witnesses in fictitious cases of debt. In a subsequent communication, Brigadier Steel gave the population of the Military Cantonment at Meerut, not including fighting men, at 45,480, and of Cawnpore at 49,975; and he annexed a statement of the claims submitted to the Military Courts of Requests at those two stations for six months ending with October 1847. From this statement, it appeared that from the 1st May to the 31st October 1847, 1,204 cases were instituted at Meerut, and 817 at Cawnpore; and as the

Courts which heard and determined this large number of cases sat for only a few days in each month, Brigadier Steel pointed out how impossible it was for those Courts properly to have sifted the evidence brought before them in each case. To remedy what appeared to him to be the evils of the existing law, Brigadier Steel proposed that all actions of debt and other personal actions cognizable by Military Courts of Requests under the provisions of Act XI of 1841 should ordinarily be tried at stations where there was a Cantonment Joint Magistrate by that Officer, on a reference from the Commanding Officer of the station, except when the Defendant should be a native officer or soldier, or a mustered camp follower; and he submitted the draft of an Act, framed in accordance with these views, to be in force in all three Presidencies. The opinion of the Judge Advocate General having been called for on this proposition, it not only met with his entire approval, but he went farther, and, instead of excepting mustered camp followers from the Civil jurisdiction of the Cantonment Joint Magistrate's Court, as suggested by Brigadier Steel, he recommended that the exception should extend only to native officers and soldiers, and that, with these exceptions, all classes of persons liable to be sued before a Military Court of Requests under the provisions of Act XI of 1841, should be made amenable to the Civil jurisdiction of the Military Joint Magistrate's Court, from the operation of which he anticipated such beneficial results, that he thought it very probable that at no distant date it would be found expedient to extend the jurisdiction of that Officer's Court to native officers and soldiers likewise. With regard to Madras and Bombay, the Judge Advocate General observed that no new Act was necessary for those Presidencies, inasmuch as Section 1 Act XI of 1841 expressly provided that nothing contained in that Act should be held to alter or affect the jurisdiction of a single officer duly appointed under the rules in force in the Madras and Bombay Presidencies, for the trial of small suits in Military Bazars at Cantonments and stations occupied by the troops of those Presidencies respectively, or the trial by Panchayet of suits

against Military persons according to the rules in force under the Madras Presidency. In submitting the correspondence for the consideration of the Supreme Government, the Adjutant General of the Army was instructed to state that the Commander-in-Chief entirely concurred in the suggestions of the Judge Advocate General, and there was every reason to believe, from notes contained in the correspondence to which he (Mr. Harington) had referred, that those suggestions would have been adopted and made the subject of a new enactment, had it not appeared to the Supreme Government that the wording of the 3 and 4 Vic. c. 37, s. 54 commonly called the East India Mutiny Act, presented an obstacle to the passing of a law in this country of the nature proposed. The Section referred to, enacted that—

“in all places where the forces of the East India Company now are or may be employed, or where any body of Her Majesty's forces may be serving with the forces of the said Company, situate beyond the jurisdiction of the Court of Requests established at the cities of Calcutta, Madras, and Bombay respectively, actions of debt and all personal actions against officers, all persons licensed to act as sutlers to any corps or detachment, or at any station or cantonment, all persons resident within the limits of a Military cantonment, or other persons amenable to the provisions of this Act, shall be cognizable before a Court of Requests and not elsewhere, provided the value in question shall not exceed four hundred Rupees, and that the defendant was a person of the description mentioned when the cause of action arose;”—

and in the face of this provision the President in Council remarked that he did not see how a single Officer could act as a Court of Requests without contravening the Act of Parliament. The decision of the Supreme Government having been communicated to Brigadier Steel, he addressed a letter to the Commander-in-Chief through the Adjutant-General of the Army, in which he said:—

“Had I proposed any interference with the European Courts of Requests, I am aware that I should have found the Act of Parliament an obstacle. But Native Courts of Requests were first established by Regulation XX. 1810, and since amended by Act XI of 1841, whilst the 12 and 13 Victoria c. 43, s. 1, (and a similar if not a stronger Clause exists in the 3 and 4 Victoria), reserves to the local Government the right of making laws and regulations for the Native Army and followers in the same way as they have always exercised that power for their native subjects generally. I have stated

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in my former letters on this subject the total inadequacy of Courts of Requests, as at present constituted, to deal with the pecuniary differences of a population of upwards 45,000 people, exclusive of Military, who reside in the Cantonments of Meerut and Cawnpore severally. Under these circumstances, should Sir Charles Napier concur in my opinion, I hope he will see no objection to bringing the question again under the consideration of Government, more especially as the 1st Section of Act XI of 1841 adverts to the existence of the tribunal of a single Officer at the other Presidencies; and if considered legal there, I presume they cannot be deemed otherwise here.”

This letter was also submitted, though without comment, for the consideration of the Supreme Government; but as the President in Council continued of opinion that the Act of Parliament precluded the proposed alteration in the law, he considered it sufficient to direct that a communication to that effect should be made to Brigadier Steel; and here the matter was allowed to rest.

The question of conferring upon Cantonment Joint-Magistrates the power of adjudicating petty Civil cases arising within their jurisdiction, had now been revived by Major Williams, the present able and energetic Superintendent of Cantonment Police; and the Right Honorable the Governor General considering it very desirable that Cantonment Joint-Magistrates should be empowered to dispose of Civil cases of a limited amount arising within Military Cantonments, provided that a simple and speedy mode of procedure for the trial of such cases should be at the same time introduced by the Legislative Council, he (Mr. Harington) had been desired to take the necessary steps to obtain legal sanction to such a measure, and he had accordingly prepared the Bill of which he was now about to move the first reading.

In drawing up this Bill, he had had to consider first the reason assigned by the Honorable the President in Council for declining to accede to a similar proposition when formerly made by the Military authorities; and secondly, whether the obstacle which was at that time stated to preclude the passing of an Act of the nature now contemplated, had been intermediately removed. Though this Council had no power to alter the Statutes which regulated Military Courts of Requests for the Queen's and Company's European

troops, there could be no doubt of its competency to legislate for Courts of the same description for Native troops. This power was indeed expressly given to the Council by the 3 and 4 William IV, c. 85, s. 73, the 43rd Section of which contained the prohibition against any interference on the part of the Governor General in Council with the Acts for punishing mutiny and desertion of Officers and Soldiers, whether in the service of the Crown or of the East India Company; and taking these two Sections together, there could be no doubt, he thought, that the East India Mutiny Acts passed from time to time at home applied exclusively to the Queen's and Company's European troops serving in India, and had no application to the Native Army. The term "camp-followers" was certainly not to be found in the Section of the Act first quoted; but that the provisions of that Section were intended to apply and did apply to all persons amenable to the Indian Articles of War as described in Section 157 of Act XIX of 1847, was, he thought, clear from the proviso contained in the 20 and 21 Victoria, c. 68, s. 1, and the corresponding Section of the 13 and 14 Victoria, c. 43, which, though it had passed, had probably not reached India at the date of the order of the Supreme Government on Brigadier Steel's original reference. That proviso declared that

"nothing contained in the Act should in any manner prejudice or affect any Articles of War or other matters made, enacted, or in force, or which may afterwards be made, enacted or in force, under the authority of the Government of India respecting Officers, or Soldiers, or followers, being natives of the East Indies or other places within the limits of the Company's Charter; and that in the trial of all offences committed by any native Officer, or soldier, or follower, reference shall be had to the Articles of War framed by the Government of India for such native Officers, Soldiers, or followers, and to the established usages of the service."

It was, he presumed, under the authority of this Section and of the corresponding Sections in previous enactments, as well as of the Charter Act, that Act XI of 1841 was passed, and the Superintendents of Military Bazaars in the Presidencies of Madras and Bombay, were invested with Civil jurisdiction to try petty suits; and he

confessed he could discover nothing in any Act of Parliament existing at the time, to have prevented the Government of this country from passing a law of the nature proposed by the Judge Advocate General of Bengal, in so far as the persons amenable to the Indian Articles of War, and therefore to Acts XI of 1841 and XII of 1842, were concerned. But while the Judge Advocate General and Brigadier Steel would have excluded Native Officers and soldiers from the operation of any such law, and Brigadier Steel would have extended the exemption to mustered camp-followers, both Officers would have made the law applicable to mere residents of Military Cantonments, though holding no Military post, and though not amenable to the Articles of War for the Native Army; and he apprehended that it was in respect of persons of this description that the Supreme Government considered itself to be precluded from adopting the suggestion of the Military authorities by the wording of the 3 and 4 Victoria, c. 87, s. 64, which expressly made all persons resident within the limits of a Military Cantonment amenable, in personal actions up to four hundred Rupees, to the Courts of Requests held under that Section, and to no other tribunal. The same provision was also to be found in the corresponding Section of the 13 and 14 Victoria c. 43; but as it had been omitted, he presumed designedly, from the last Mutiny Act passed for the Queen's and Company's European troops in India, the obstacle which formerly existed to the passing of a law of the nature proposed, as regarded non-Military residents of Cantonments, would seem to have been removed; in which case, so far as he could perceive, there was nothing now to prevent this Council from legislating for those persons in respect of Civil matters as well as for all persons of the description mentioned in Section II Act XI of 1841 as extended by Act XII of 1842; and he had framed the Bill in accordance with these views.

It proposed to give the Governor General in Council and the local Government of any Presidency or place, power to invest the Military Joint Magistrate of any Cantonment or Military Bazaar or Station, within the limits of their respective Governments, with Civil

jurisdiction to hear and determine actions of debt or other personal actions against all persons of the description mentioned in Section 157 Act XIX of 1847, and other persons who, though not amenable to the Articles of War for the Queen's and Company's European Troops serving in India, or for the Native Army, were nevertheless resident within the limits of a Military Cantonment, provided that the value in question should not exceed the sum of two hundred Rupees and the defendant was a person of the description mentioned when the cause of action arose and when the suit was instituted. The procedure to be observed in the trial of such cases would be the same as that prescribed for Military Courts of Requests in Act XI of 1841. This procedure seemed sufficient for all useful purposes, and was, he thought, as simple and speedy as could be desired. It was not intended that there should be any appeal from the decisions of the Cantonment Joint Magistrate in cases cognizable by them, and those Officers would be at liberty at once to execute their decisions on the application of the decree holders, under the rules applicable to the execution of awards of Military Courts of Requests. No appeal was now allowed from the decrees of the Courts of Requests; and, considering that Cantonment Joint Magistrates were required to pass the same examination as Junior Civilians, and as it might be presumed that they would always be chosen for their general fitness for the duties which would be entrusted to them, he thought that we might anticipate that their decisions would be at least as good as those of the Native Military Courts of Requests; while he had no doubt that they would generally give much greater satisfaction. Under these circumstances, and looking to the limited amount of the Civil jurisdiction which it was proposed to give to the Officers in question, it did not appear to him to be necessary to render their decisions open to appeal. As regarded Madras and Bombay, in which Presidencies, as already noticed, the Superintendents of Military Bazaars had authority to hear Civil cases of small amount, the Bill would in no way affect the laws under which that jurisdiction was exercised unless the Governors in Council of those Presidencies should think proper to

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extend its provisions to them, which, as the amount of Civil jurisdiction exercised by the Superintendents of Military Bazaars in Madras and Bombay was exceedingly small, extending at Madras to only twenty, and at Bombay to only thirty Rupees, they might find it convenient to do.

These were the principal provisions of those Sections of the Bill which related to the Civil jurisdiction to be exercised by Cantonment Joint Magistrates in certain cases. It remained for him to notice the part which provided that these Officers might also be appointed Registers of Deeds within the limits of their respective jurisdictions; and on this portion of the Bill, it would not be necessary for him to occupy much of the time of the Council—on which, he feared, he had already trespassed too largely.

From papers which he had also received from the Clerk of the Council, he found that in the year 1845, the Officer commanding the Hyderabad Subsidiary Force brought to the notice of the Madras Government that a fraudulent practice had become prevalent at Secunderabad of executing fictitious mortgages for the purpose of evading the awards passed by Courts of Requests under Act XI of 1841, and he recommended that a law should be passed declaring that no Deed of Mortgage executed by native merchants or others, being British subjects, should be valid unless registered at or shortly after the date of execution in the office of the Superintendent of Police. Subsequently, in March 1850, Sir Charles Napier recommended a proposition made by Sir George Parker, Cantonment Joint-Magistrate at Meerut, and concurred in by the Advocate General of the Army and the Superintendent of Cantonment Police, for a similar law in respect of deeds of sale of houses within Cantonment Bazaars, the registry to be made in the office of the Cantonment Joint Magistrate. The matter having been referred to the Legislative Council, the Judge Advocate Generals of Bengal, Madras, and Bombay were called upon to furnish a draft of rules for registering the sale of houses within Military Cantonments, such as, in their opinion, should be embodied in a legislative Act, shewing how and where and with what fees and formalities registration should

be made, what power of investigation should be adopted by registering Officers, and what should be the penalties for non-registration. Draft rules were framed in accordance with these instructions by each of the Judge Advocate Generals of the three Presidencies, which were referred to the Legislative Council to be taken into consideration with the amended general Law of Registration then before the Council, since which no further steps had been taken in the matter. He believed, however, that at no distant date a new Law of Registration applicable to all India would be proposed to the Council, probably by the Honorable Member on his right (Mr. Forbes); but this was no reason why, in the meantime, the proposition made so long ago for constituting Cantonment Joint Magistrates Registers of Deeds within the limits of the Cantonments to which they stood appointed, should not be carried into effect; and as it was now proposed to give these officers Civil jurisdiction in certain cases, it seemed desirable that the opportunity should be taken of extending their powers to the registration of Deeds also within the same limits. From the position which they occupied, and from the knowledge which they must possess of the people residing in the Cantonments subject to their jurisdiction, it might, he thought, fairly be assumed that Cantonment Joint Magistrates were better qualified for the office of Register of Deeds within the Cantonments than the Native Judges living outside, by whom the appointment was generally held; and he anticipated that by appointing them to this post, much fraud and chicanery would be prevented. He did not consider it necessary that any special rules should be laid down at this time for the guidance of the Cantonment Joint Magistrates in the discharge of their duties as Registers of Deeds, particularly as it was probable, as already mentioned, that a general law would soon be introduced which would apply to all offices of Register of Deeds, by whomsoever held; and all that the Bill prepared by him proposed, was to give the Governor General in Council and the local Government of any Presidency or place, power to appoint any Military Joint Magistrate Register of Deeds within the limits of the Cantonments or Military station

to which his jurisdiction extended, and to declare that, when such appointment was made, all rules now in force applicable to Registers of Deeds, should be applicable to the Military Joint Magistrate so appointed, and to the Deeds registered by him, or brought to him for registry. With these observations, he begged to move that the Bill be read a first time.

The Bill was read a first time.

STAMPS (BENGAL PRESIDENCY).

THE CLERK presented to the Council a Petition from Rammohun Bannerjee and Guddadhur Bannerjee, Zemindars of West Burdwan, praying that the Council may exempt from the operation of the Bill "to amend Regulation X. 1829 of the Bengal Code," cases instituted and pending in any of the Courts at the time of its passing.

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

Agreed to.

POLICE OF THE PORTS OF THE PRESIDENCY TOWNS.

MR. FORBES moved that the Report of the Select Committee on the jurisdiction of the Commissioners of Police and of the Police Force within the Ports of the Presidency Towns presented this day, be adopted.

Agreed to.

MADRAS MARINE POLICE.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "for the maintenance of a Police Force for the Port of Madras;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Section I provided that, to meet the expense of a Marine Police, the sum of three annas should be taken by the owner of every boat employed to convey cargo or goods to or from any ship or vessel in the Port of Madras, in addition to the hire payable under Act IV of 1842.

MR. PEACOCK said, he did not propose to move any amendment in this Section; but he had an amendment to

move in Section II; and if that should be carried, it might be necessary to add some words to Section I. Section II provided that "no cargo or goods of any description shall be conveyed in any boat to or from any ship or vessel in the Port of Madras, unless accompanied by an Officer of Police." He thought it quite right that every boat which was hired for the purpose of carrying cargo, should pay the tax required by Section I; but it appeared to him objectionable that every boat carrying cargo should be accompanied by an Officer of Police, whether it was a private boat, or a boat engaged for hire, or whether the person or persons hiring it wished it to be accompanied by an Officer of Police or not. He could not see why he, for instance, if he chose to put himself and his luggage on board a catamaran at Madras to go off to a ship, should be bound to take a Police Officer with him; nor could he see why one or more merchants, if they employed a boat to convey cargo belonging to them, should be bound to send a Police Officer on board whether they wished it or not. The object of this Bill was to prevent depredations being committed in the boats employed in the conveyance of cargo in the Madras Roads; and if a merchant desired to send his own clerk or supercargo in charge of his goods, he saw no reason why he should not be permitted to do so, but should be bound to send a Police Officer instead. It appeared to him—and he had mentioned it on the motion for the second reading—that the obligation imposed by the Section to take a Police Officer in every case, might throw great impediment in the way of trade. Police Officers might not always be at hand to accompany boats, and the owner of the cargo might prefer to send his own clerk in charge to waiting for a Police Officer.

He (Mr. Peacock) proposed, therefore, when Section II came under consideration, to move the addition to it of words which would enable the owner or owners of cargo employing a boat for the conveyance of cargo, to dispense with the attendance of a Police Officer by giving a consent in writing that the boat should not be accompanied by such an Officer. If that amendment should be adopted, it might be necessary to insert words in Section I to the effect that

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whether a boat employed to convey cargo carried a Police Officer or not, the owner of the boat should be bound to receive and account for the tax prescribed by the Section. The Madras Government themselves did not press for the adoption of Section II in its present form. They said:—

"The present scheme, including the attaching of a Police Officer to each cargo boat, has, it must be observed, the full concurrence of the Merchants of Madras, by whom the fees are to be paid, and who may be presumed to be well acquainted with the local circumstances and requirements of the Port. If, however, it should, in the judgment of the Legislative Council, be deemed objectionable that the taking a Police Officer in every cargo boat should be rendered compulsory, it might be made optional. It might be left to the discretion of the party shipping or landing goods to have a Police Officer in the boat or not, as he thought fit."

He should move that the consideration of Section I should be postponed until the question as to Section II was determined.

Agreed to.

Section II being read by the Chairman—

Mr. PEACOCK said, for the reasons he had just stated, he should move that the following words be added to the Section:—

"unless the person by whom the boat shall be hired or employed to convey such cargo or goods, shall consent in writing that the boat shall not be accompanied by an Officer of the Police Force; or if such boat shall be hired or employed as aforesaid by several persons not jointly interested in such cargo or goods, unless all such persons shall give such consent in writing as aforesaid."

Mr. FORBES said, when this Bill was introduced by his Honorable friend Mr. Elliott, the Honorable and learned mover of the amendment and the Honorable Member for Bombay took the same exception to it which had just been so ably put. The objections urged on that occasion had been communicated by Mr. Elliott to the Government of Madras, and had been laid by the Government before the mercantile community of the place as represented by the Chamber of Commerce. That Body had considered all the arguments which had been advanced in support of them, and they stated that, in their opinion, it was

to the interest of the mercantile community which they represented that no boat should convey cargo to or from any ship in the Port unless it was accompanied by an Officer of the Police Force. British Merchants were not in the habit of pressing upon the Legislature the enactment of a Law which, when passed, would operate injuriously against their interests by throwing obstacles in the way of business, and being a hindrance to trade. But this was the course which the Honorable and learned mover of the amendment assumed the mercantile community of Madras to have taken in the present instance. It was to be observed that the entire expense of the proposed Marine Police Force was to be met by contributions from that community. No part of it whatever would be provided by the Government. The whole would come from those whose property was to be guarded by the Force; and it did appear to him that, when the mercantile community of the Port had proposed a particular guard for their goods, and had offered to pay for the maintenance of that guard out of their own pockets, it was somewhat hard to deny them the privilege which they sought.

He had another objection to the amendment proposed. He thought that it was the duty of the Government to guard the property of every individual of the community, whether he desired it or not. We did not on shore find that any resident applied to have his house guarded by Policemen. Every man's property or land was guarded by the Police whether he wished it or not; and he (Mr. Forbes) was unable to see why the same principle should not be extended to property on the sea. Successful pilfering on boats might lead to petty larceny on shore; successful larceny on shore might lead to burglary; and burglary might lead to dacoity and all the evils that usually attend that crime. In a moral point of view, therefore, it was the duty of the Government to put an end to the commencement of the minor evil, and so to prevent the greater evil from falling on the community.

Moreover, it should be remembered that the circumstances of the Port of Madras were different from those of the Port of Calcutta. Here, a Captain or

Merchant might employ any kind of boat to convey him or his cargo to or from a ship; but at Madras, where there was always a heavy surf, it was only masoolah boats, which were manned by crews trained to the particular duty, that could be employed for the purpose. It was impossible for any Captain or Merchant to communicate with the shore or with his ship except by means of those boats. If, then, the Merchants of Madras must employ masoolah boats for the conveyance of cargo between the beach and the shipping, he could not see any reason to suppose, as the Honorable and learned Member did, that the Peons of a Force established for the express purpose of accompanying these boats, would not be found when they were wanted. If thirteen boatmen could be had to convey cargo in a boat, one Peon could certainly be had to accompany the boat. Besides, the Marine Force was not to be an independent body acting without control, but it was to be under the superintendence of a European Officer, who would be subject to the Commissioner of Police; and there really was no more reason to suppose that a Marine Police so superintended, would be absent from their duty than that the Land Police would always be absent from theirs.

The Honorable and learned Member said he thought it quite right that owners of cargo carried in boats to or from vessels should pay the tax imposed by Section I, even though no Peons of the Marine Force were placed on board the boats to protect the cargo. But he (Mr. Forbes) thought that the owners might, in such cases, reasonably object to being charged with a tax which was to be levied merely for remunerating the Government for maintaining a Force from which, under the circumstances supposed, they would derive no benefit.

It was true that the Government of Madras said that "if, in the judgment of the Legislative Council, it should be deemed objectionable that the taking a Police Officer in every cargo boat should be rendered compulsory, it might be made optional;" but on the other hand, they expressly stated that

"the present scheme, including the attaching of a Police Officer to each cargo boat, has the full concurrence of the Merchants of Madras, by whom the fees are to be paid, and who

may be presumed to be well acquainted with the local circumstances and requirements of the Port ;”

and it was obvious that, although the Government did not press the present scheme contrary to the wishes of the Council, they, together with the Merchants of Madras, having given full consideration to that scheme, which had been before them since the year 1854, were of opinion that it was the one best adapted to the wishes and wants of the community.

For these reasons, he should vote against the amendment, and in support of the Section as it stood.

THE CHAIRMAN said, he did not think he could rest his objection to the amendment on the high moral ground taken by the Honorable Member for Madras ; because the same train of reasoning might lead each of us to walk arm in arm with a Policeman in order to prevent some possible pick-pocket from taking the first step on that “*facilis descensus Averni*,” which might conduct him to the gallows. A far stronger argument, to his mind, against the amendment was that which the Honorable Member had also urged, namely, that after this question had been mooted here on the second reading of the Bill, it had been considered at Madras ; and that those who were to be subjected to the tax for the maintenance of a Marine Police Force there, and for the protection of whose interests that Force was designed, had expressed a strong preference of the Section as it now stood. He thought that, in matters of local legislation, it was always desirable to meet as far as possible the wishes of the class for whom the enactment was intended. The Sections in question, if examined, would, he thought, be found to apply only to boats employed in the conveyance of cargo or goods for the trade of the Port. They would hardly apply to a boat carrying a passenger with his baggage ; and if one could conceive any thing so unlikely to present itself as his Honorable and learned friend (Mr. Peacock), a Member of the Supreme Government of India, and his portmanteau on a catamaran, he (the Chairman) believed that he would not be within the purview of this Law.

He thought, therefore, that it would be better to leave the Section as it stood ; though he admitted that, to his

Mr. Forbes

mind, there was nothing really objectionable in the proposed amendment.

MR. GRANT said, he saw no provision in the Bill for the supply of these Peons. The effect of the Bill as it now stood would be that no masoolah boat could convey cargo without a Police Officer being on board. It should, therefore, be obligatory on some one to supply Police Officers for the duty.

MR. FORBES said, the calculation was that the Police Force would cost one thousand Rupees a month, and that, according to the present trade of the Port, three annas on each cargo boat would provide that sum. If the trade increased so that new Peons would be wanted, the aggregate sum collected would, of course, increase in the same proportion ; and there was, therefore, no reason to anticipate that the Force would be insufficient.

MR. GRANT said, the provision for funds for the maintenance of the Force was quite ample enough. He had no doubt of that ; but the point to which he would draw attention was that there was no provision making it the duty of any person to provide Police Officers for boats conveying cargo. He should suggest that a Clause be inserted requiring some Authority to provide a Police Officer for every such boat.

MR. FORBES said, he could not have the slightest objection to the insertion of such a Clause. He would impose the duty on the Commissioner of Police.

MR. CURRIE said, as a Member of the Select Committee to which this Bill had been referred, he wished merely to state that the point raised by the Honorable and learned mover of the amendment had been considered by the Select Committee, and that, for the reasons suggested by the Honorable and learned Chief Justice, they had come to the conclusion that it would be better to leave the Section as it stood. They thought that the merchants of Madras were quite able to determine what was best for their own interests and convenience ; and, as that body had determined, after full consideration of the arguments urged by the Honorable and learned Member on the motion for the second reading, that it would not be expedient to make the taking of Police Officers on board cargo boats optional

with the owners of cargoes, they had made no alteration in the Section.

The Honorable and learned Member proposed that when a boat conveying cargo was not to be accompanied by a Police Officer, the person or persons hiring it must consent in writing that it should not be so accompanied. But it did not appear to whom the written consent was to be delivered. He (Mr. Currie) should think that the formality of each person giving a consent in writing would be at least as troublesome a matter as placing a Peon on board.

MR. HARRINGTON said, he did not understand the amendment to go to the length of refusing any boon or privilege that was asked or was necessary. On the contrary, the Honorable and learned Member agreed to give all the money that was required for the maintenance of a Marine Police at Madras, but would only make it optional with merchants to send Police Officers in charge of their cargoes or not. So long as they paid the fee required by Section I, he (Mr. Harrington) could not see why they should not have this option.

MR. PEACOCK said, he would offer but a very few words in reply to what had been urged against his amendment.

If he were quite sure that Police Officers would always be ready on the beach to accompany boats for the protection of cargo, he should have no objection to the Section as it stood; but they might not always be at hand, and a merchant might much rather send off his cargo in charge of a supercargo of his own, than be subjected to the delay of waiting until a Police Officer arrived.

Besides this, the Section applied, not only to cargo, but to "goods of any description," and not only to cargo boats, but he believed to the classes of boats which were mentioned in Act IV of 1842; for Section I referred to that Act. There was a distinction made in the Act of 1842 between private boats and cargo boats.

The Honorable Mover of the Bill had said that the Council, if it adopted the amendment, would be denying the Chamber of Commerce their request; but he (Mr. Peacock) did not know that the Chamber of Commerce could bind every one in Madras. The Section did not say that no merchant or no Member of the Chamber of Commerce

should send cargo in a boat except under the charge of a Police Officer, but that no person whatever, whether he resided within or without the Presidency, should send goods of any description except under such charge. Was it that these Police Officers were to prevent goods from being taken out of the boats, —or that they were to prevent goods from other boats being transferred to them? If they were to prevent goods from being taken out of the boats, he conceived that a merchant had a right to commit his property to the guardianship of his own clerk or supercargo, if he wished it. What he (Mr. Peacock) objected to was, the making it imperative on persons to take a Police Officer in every case. Why should not a merchant have the option of keeping his own boat to land or ship his own cargo under the care of his own clerk or supercargo? The Honorable Member had not said that this provision was intended for the purpose of preventing stolen goods being received into the boats. He had said that every man's property on land was guarded by the Police whether he wished it or not, and that he was unable to see why the same principle should not be extended to property on the sea; but every man was not bound to have a Police Officer in his house for the purpose of seeing that stolen goods were not taken into it. If the Chamber of Commerce at Madras chose to say that no goods belonging to any Member of the Chamber should be carried in boats except in the charge of a Police Officer, he should have no objection to make; but he did object to their saying that goods belonging to every person whatever should be subject to the same prohibition. The Honorable Member had said that if thirteen boatmen could be had to convey cargo in a boat, one Peon could certainly be had to accompany the boat. But boatmen must always be on the beach to obtain hire, whereas it would not be the interest of the Police Peons to be always there, since they would get their wages whether they were present or not. If a merchant should sustain damage in consequence of a delay in obtaining a Peon to go with his cargo, would the Chamber of Commerce indemnify him? He believed that the Chamber of Com-

merce did not include the whole of the mercantile community of Madras; and he thought that the Council ought to be careful not to pass this Bill as it stood, merely because the Chamber approved of it, if it considered that it would be a hindrance to the trade of the Port.

MR. FORBES said, the Honorable and learned Member had remarked that, while it would be the pecuniary interest of the boatmen away to be at hand, it would not be the interest of the peons to be always on the beach, and that, therefore, they might not be at hand when they were wanted; and he had laid some stress on this point. But it appeared to him that it would be just as much the interest of the Peons to be always on the beach as it would be that of the boatmen; for they would be paid for performing a certain duty; and if they did not perform that duty, they would of course lose their situations.

MR. LUGRETT asked if the words "goods of any description" included passengers' baggage? If they did, the Section would be most vexatious. There could be no doubt that the Bill was designed only for the protection of mercantile cargo. That being its object, it was extremely probable that there would be great hesitation on the part of the Police Authorities in giving a man who was going off to a ship, a Peon to see that his great coat and portmanteau were not stolen; and yet, under this Section as it stood, no owner of a boat would carry him to the ship without a Peon. The point had escaped him and his colleagues in Select Committee; but he thought that some words ought to be introduced into the Section stating that "goods of any description" did not include light baggage.

He had the same objections to the Section itself as the Honorable and learned Member opposite (Mr. Peacock), and had stated them on the motion for the second reading; but they had been received at Madras in a spirit so different from that in which he had brought them forward, that he had not thought it necessary to follow them up in Select Committee. To his mind, none of those objections had been removed; and he still thought that the Bill, if passed as it stood, would be found to be very cumbrous, and in fact

Mr. Peacock

inoperative. As, however, the mercantile community of Madras appeared to wish to have it so, and as they would pay all expenses, it was their own affair. But the question whether the Section extended to passengers' baggage or not, affected the public convenience. He did not suppose that the Chamber of Commerce at Madras contemplated that a Police Officer should accompany a boat to protect a gentleman's umbrella and portmanteau; and he should suggest that light baggage be expressly excluded from the operation of the Section.

MR. FORBES said, he was quite willing to admit the objection taken by the Honorable Member for Bombay. It was very undesirable that mere passengers' baggage should be held to be subject to the provisions of the Bill; and if, when Section IX, which exempted boats conveying mails from its operation, came to be proposed, he would move that such baggage be included in it, he (Mr. Forbes) would be prepared to agree to the amendment.

With regard to the remark of the Honorable and learned Member on his left (Mr. Peacock) that the Chamber of Commerce at Madras did not represent every body, he would observe that this question had not originated with the Chamber, but was first brought to notice in a presentment from a Grand Jury in 1846, and a Grand Jury was selected, not from the mercantile body exclusively, but from all sections of the community.

MR. PEACOCK said, the words used were "cargo or goods of any description," and it was quite clear that the Section as it stood included every thing,—a gentleman's umbrella and portmanteau, just as much as mercantile cargo.

As to the value of the protection which the Section proposed to give to goods, it appeared from one of the printed papers annexed to the Bill that the Chamber of Commerce themselves had no great confidence in the Peons who were to be employed; for the Chairman suggested that "a European Constable should always be on duty in working hours on the top of the Master Attendant's Office, provided with a powerful telescope to watch both boatmen and Peons!" Now, if the Peons on board required watching with a powerful telescope from the shore, it was clear that

much confidence could not be placed in them.

THE CHAIRMAN said, he would put it to the Honorable Member for Madras whether it might not be better to meet the wishes of the Honorable and learned Member, and to consent to the amendment. The feeling at Madras, no doubt, was that it was expedient that Peons should accompany all boats carrying cargo to or from vessels in the Port. The amendment, however, would not force any one to send his boat unaccompanied by a Peon; and there might be cases not contemplated, in which Peons might not be at hand, and in which it would be for the interest of the parties employing the boat, to exercise the option which the amendment would give them.

He himself did not believe that such cases, or even the difficulties regarding passengers' luggage which had been suggested, were very likely to arise. The Council was not dealing with an ordinary Port, in which there was an unlimited supply of boats. Nature had taken the matter into her own hands. There was but one class of boats which could be employed in the conveyance of goods across the surf. The number of them, he believed, was not so great but that, when this Act came into operation, each of them would easily have a Peon attached to it.

As to catamarans, he had never seen any person except a naked savage in one; and he was certain that no one would think of taking on board of such craft goods of whatever description.

MR. FORBES said, the amendment would give rise to the very evil which it was the object of the Honorable and learned Member who had moved it to guard against. If it were obligatory on the owner of every boat carrying cargo to take a Peon on board, Peons would always be ready on the beach to be taken; but if it were left to the option of owners of such boats to take Peons or not, the Peons, not being always wanted, would not always be at hand.

With respect to catamarans, the Honorable and learned Mover of the amendment was doubtless aware that a catamaran never went over the surf, but through it; and that, therefore, there was very little likelihood of any man putting either himself or his goods on board of one!

MR. GRANT moved that the words "or goods of any description" be omitted from the Section. That would leave the Act applicable only to cargo which was really the intention of the Chamber of Commerce and the Government of Madras.

THE CHAIRMAN said, he had, from the first, had a very clear opinion that if this Section was passed as the Honorable Member for Madras wished it, it would be necessary to introduce a new Section such as that which had been suggested by the Honorable Member on his right (Mr. Grant), to throw on the Commissioner of Police the duty of providing Peons for the boats; because if it were made compulsory on owners of boats to take Peons, and it should not be obligatory on the Commissioner of Police to provide Peons, it would be possible for that Officer, in the arbitrary exercise of his discretion, to prevent any particular owner of cargo boats from employing them profitably.

MR. PEACOCK said, the amendment proposed by the Honorable Member on his left (Mr. Grant) would require consideration with reference to Section I. If "goods" were not to be taxed, the question would arise whether the property to be carried was "cargo" or "goods?"

MR. GRANT said, he doubted whether there would be any difficulty on that point, because "cargo" always passed through the Custom House.

MR. CURRIE said, it would be safer to leave the words in the Section as they stood, and specially to exempt baggage of passengers in Section IX. That would be much more to the convenience of the public than the course which the Honorable and learned Member proposed; because if the Section were passed in the form in which he desired to amend it, every Passenger with a portmanteau who did not wish to take a Peon would have to go through the form of giving his consent in writing.

MR. GRANT, with the leave of the Council, withdrew his amendment.

MR. PEACOCK'S amendment was then put. The Council divided:—

Ayes, 4.
Mr. Harington.
Mr. Peacock.
Mr. Rickets.
Sir James Outram.

Noes, 5.
Mr. Forbes.
Mr. Currie.
Mr. LeGeyt.
Mr. Grant.
The Chairman.

Mr. GRANT then moved that the following words be added to the Section :—
“and it shall be the duty of the Commissioner of Police to provide every such boat with an Officer of the Police Force for this purpose.”

The motion was carried, and the Section then passed.

The postponed Section I was then put and agreed to.

Sections III to VIII were passed as they stood.

Section IX provided as follows :—

“None of the foregoing provisions of this Act shall be taken or deemed to extend or apply to any boat which shall convey Mails to or from any ship or vessel in the Madras Roads.”

Mr. LKGEYI moved that the word “only” be inserted after the word “convey” in the fourth line of the Section.

Agreed to.

Mr. LKGEYI moved that the word “only” after the word “mails” in the fifth line of the Section be left out, and that the words “or the baggage or private property of a passenger accompanied by such passenger or some other person in charge thereof” be substituted for it.

The question that the word proposed to be left out be left out, was put and agreed to.

The question that the words proposed to be substituted be substituted, being proposed :—

Mr. FORBES moved by way of amendment that the words “or private property” be left out of the question. Those terms, he said, had a very large acceptation, and might be taken to include a carriage, for instance, which could hardly be said to be baggage.

After some discussion, the amendment was by leave withdrawn.

Mr. GRANT moved by way of amendment that the words “or passengers with their baggage” be substituted for the words proposed to be substituted.

The motion was agreed to, and the Section as amended then carried.

Mr. FORBES said, at the last Meeting of the Council, he had obtained the nomination of a Select Committee to consider whether any amendment was necessary in Act XIII of 1856, in consequence of a doubt having arisen whether the authority of the Commissioners of Police and the Police Forces of

Calcutta, Madras, and Bombay extended under that Act to the Ports of those Presidencies respectively. The Report of that Select Committee he had presented this day. The Committee stated that they did not consider any amendment in the Act necessary, but that they were of opinion that the peculiar circumstances of Madras required that some Section should be inserted in this Bill to give the Police of that town the same authority within the limits of the Port which they already had within the limits of the town. In accordance with the recommendation of the Committee, he should move that the following new Section be inserted after Section IX :—

“From and after the passing of this Act, it shall be lawful for the Commissioner of Police and the Members of the Police Force at Madras to exercise within the limits of the Port of Madras, as defined under the provisions of Act XXII of 1855, all powers given to them respectively by Act XIII of 1856; and all provisions of the last mentioned Act applicable to the said Commissioner and Police Force at Madras, shall apply to them respectively in the execution of the powers hereby given.”

Mr. PEACOCK said, he did not think that the words “all powers given to them respectively by Act XIII of 1856” would be quite sufficient. Act XIII of 1856 gave the Magistrate jurisdiction to try cases of larceny under fifty Rupees. If a man stole property above the value of fifty Rupees, the Magistrate could not try him. But it appeared to him (Mr. Peacock) that, under this Bill, Police Officers ought to have the power of apprehending persons who stole goods in transit even though the value should exceed fifty Rupees. He should, therefore, move, as an amendment, that the words “or which may be lawfully exercised by constables within the local limits of the jurisdiction of the Supreme Court” be inserted after the words and figures “Act XIII of 1856.”

The amendment was agreed to, and the Section then passed.

Section X, the Preamble, and the Title were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

INSTITUTION OF SUITS AND APPEALS.—(N. W. PROVINCES.)

Mr. HARRINGTON moved that the Council resolve itself into a Committee

on the Bill "for the relief of persons who, in consequence of the recent disturbances, may have been prevented from instituting or prosecuting suits or appeals in the Courts of the North-Western Provinces within the period allowed by law;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

The Bill passed through Committee without amendment.

The Council having resumed its sitting, the Bill was reported.

ADJOURNMENT.

MR. GRANT moved that the Council adjourn till Wednesday next, the 21st instant, at 10 O'Clock, to enable him to introduce a Bill to extend Act IV of 1858 (for providing for the exercise of certain powers by the Governor General during his absence from the Council of India.)

Agreed to.

Wednesday, July 21, 1858.

PRESENT :

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

Hon. J. P. Grant,	E. Currie, Esq.
Hon. Major Gen. Sir	Hon. Sir A. W. Buller,
J. Outram,	H. B. Harrington, Esq.
Hon. H. Bicketts,	and
Hon. B. Peacock,	H. Forbes, Esq.
P. W. LeGeyt, Esq.	

ABSENCE OF GOVERNOR GENERAL.

THE VICE PRESIDENT read the following Message from the President in Council to the Legislative Council:—

"MESSAGE No. 148.

"The President in Council informs the Legislative Council that the Governor General has represented that it is expedient that he should be enabled to prolong his absence from the Presidency for a further period of six months.

"By order of the Honorable the President in Council.

"CECIL BEADON,

"*Secy. to the Govt. of India.*

"FORT WILLIAM, }
"July 17th, 1858." }

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MR. GRANT said, in pursuance of the notice which he had given at the last Meeting of the Council, he now moved the first reading of a Bill to continue in force for a further period of six months Act IV of 1858, for providing for the exercise of certain powers by the Governor-General during his absence from the Council of India. When these Acts were first introduced into the system of Indian Government, the practice was not to limit their duration to a fixed time, but to make them cease on the return of the Governor General to the Presidency, whenever that should be. But in the administration of Lord Dalhousie, it was thought by that Nobleman right that, as such Acts provided for an abnormal state of affairs, and were in their nature temporary, they should bear that appearance on the face of them; and accordingly, they had since been passed only for a certain fixed period, it being always in the power of the Legislative Council to prolong them if the circumstances in which they originated continued to be the same. When Act IV of 1858 was passed, the same course was followed; and though the operation of the Law was limited to the short time of six months, he thought he might say that this was done rather on the possibility that events might so fall out that the country might be restored to its usual state of tranquillity in the course of that time, than in the expectation that this would be the case. That this had not been the case was manifest. Progress, and great progress had been made; but every Honorable Member was aware that the work had not yet been completed. He did not, of course, speak of the work of reorganization and reconstruction. That most arduous duty, which the Government had still before it, required deliberation and consultation. He did not speak in consequence of that work not having been yet done; but he spoke of the prompt daily action rendered necessary by the occurrence of daily events in the North-Western Provinces. One point which alone required the continued presence of Supreme Authority in the Upper Provinces, Honorable Members must be well aware of. In the Province of Oude, much remained to be done. It must be manifest to every body that for Military operations to be renewed