LEGISLATIVE COUNCIL

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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

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1858.

agree with the Honorable and learned Chairman.

THE CHAIRMAN then moved that the further consideration of Sections 28, 29, and 30 be postponed.

Agreed to.

Sections 31 to 34 were severally passed as they stood.

Section 35 was passed after an amendment.

Section 36 was postponed.

Sections 37 to 43 were severally passed as they stood.

The further consideration of the Bill was postponed, and the Council resumed its sitting.

CRIMINAL PROCEDURE.

MR. HARINGTON moved that a correspondence received by him from the Secretary to the Government of the North-Western-Provinces regarding the present system of investigation into Criminal offences by Darogahs and other subordinate Officers of Police be laid upon the table, and referred to the Select Committees on the Bills for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction.

Agreed to.

MR. HARINGTON moved that certain correspondence relating to prosecutions for perjury and subornation of perjury and forgery, and knowingly issuing forged deeds in Civil proceedings, be laid upon the table and referred to the Select Committees on the above Bills.

Agreed to.

AHMEDABAD MAGISTRACY.

MR. LEGEYT moved that the Bill "to empower the Governor in Council of Bombay to appoint a Magistrate for certain Districts within the Zillah Ahmedabad" be referred to a Select Committee, consisting of Mr. Harington, Mr. Forbes, and the Mover.

Agreed to.

The Council adjourned.

Saturday, October 30, 1858.

PRESENT:

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

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

CONTINUANCE OF CERTAIN PRIVILEGES TO THE FAMILY &c, OF THE LATE NABOB OF THE CARNATIC.

THE VICE-PRESIDENT read a message informing the Legislative Council that the Governor General had assented to the Bill "to continue certain privileges and immunities to the family and retainers of His late Highness the Nabob of the Carnatic."

DELHI TERRITORY.

THE CLERK reported to the Council that he had received from the Home Department a communication from the Secretary to the Government of India with the Governor General, suggesting that, as the greater part of the Delhi Territory is now administered by the Chief Commissioner of the Punjab, an Act be passed for the formal repeal of Regulation V. 1832 of the Bengal Code.

MR. PEACOCK moved that the above communication be referred to the Select Committee on the Bill "to remove from the operation of the General Laws and Regulations the Delhi Territory and Meerut Division, or such parts thereof as the Governor General in Council shall place under the administration of the Chief Commissioner of the Punjab."

Agreed to.

SMALL CAUSE COURTS (MOFUSSIL.)

MR. HARINGTON moved the first reading of a Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter". He said, the title of the Bill of which he was now to move the first reading, would probably lead some Honorable Members

to enquire why, instead of bringing in a new Bill for the establishment of Courts of Small Causes—which in the remarks that he was about to make, he should assume to be, by general admission, the great desideratum at the present time in the administration of Civil Justice in this Country beyond the local limits of the jurisdiction of the Supreme Courts—he had not rather gone to the Honorable and learned Member of Council on his left, and proposed to him to proceed with the Bill "for the more easy recovery of small debts and demands" which had been before the Council from the time it was established, being one of the Bills transferred to it from the former Legislature, and which, having passed first through the Select Committee appointed to report upon it, and afterwards through a Committee of the whole Council, now only awaited a third reading and the assent of the Right Honorable the Governor General to become law. Probably no legislative measure had ever occupied a larger amount of the time and attention of this Council, or had ever received from it more careful and anxious consideration than the Bill to which he had just alluded. To this fact, in so far as the labors of the Select Committee were concerned, ample testimony was borne by the Honorable and learned Vice-President in the debate which took place on the motion for the whole Council going into Committee upon the Bill. On that occasion the Honorable and learned Vice-President remarked that:

"Whatever difference of opinion there might be in the Council as regarded the merits of the measure, he thought there could be none on the point last touched upon by the Honorable and learned Member of Council on his left in the speech delivered by him in making the motion, namely, the extreme care, and he would add the great ability, which the Members composing the Committee had bestowed upon the Bill, and the degree to which this Council was indebted to them for their labors."

There were therefore strong reasons for his adopting the course, which, as already suggested, some Honorable Members might think was the proper course, and which, under other circumstances, he should certainly have considered himself bound to pursue. This would no doubt have been the simpler mode of proceeding, and it would have made his task a very easy one But the objections to the adoption of that course appeared to him so weighty, and to preponderate so greatly over any thing that could be advanced in favor of it, that he had determined not to shrink from the responsibility which the bringing in of a new Bill would impose upon him, and he trusted to be able presently to show that he had good ground for the determination to which he had come, and that he should not be considered by the Council to have been guilty of any want of courtesy towards the Honorable and learned Member of Council in respect to the Bill under his charge, much less of any wish to snatch from him the honor of passing that Bill, or to deprive him of the gratification which he would naturally feel in giving to the people of this country the great blessing of a cheap, simple, and speedy mode of obtaining redress as regarded the great mass of the disputes arising amongst them. Undoubtedly it must be a subject of deep and sincere regret that all the time which had been expended, and all the labor which had been bestowed on the Bill to which he had been referring, should have been spent in vain, and that a measure which exhibited so much care and ability in its preparation as to have called forth the encomium from the Honorable and learned Vice-President which he had quoted, and which, if passed into law, would probably cover nearly two-thirds of the suits instituted in our Courts, should never come to maturity, but such, he believed, must be the result of the labors of the Council in respect to this particular measure; under existing circumstances he did not think they could have any other termination, and such being the case he felt the less compunction in bringing in a Bill which, though it might, if carried, have the effect of hastening the fate which, according to his belief, awaited its predecessor, would not be chargeable with producing the result anticipated by him. Impressed with this belief he did go to the Honorable and learned Member of Council before giving notice of his intention to bring in a new Bill. The object, however, of his visit was not to ask the Honorable and learned Mem-

ber to move the third reading of the Bill under his charge—that, after what he had just stated, he could not consistently do—but to explain why he thought that Bill should not be proceeded with, and his reasons for wishing, if the Honorable and learned Member saw no objection, to bring in a new Bill having the same end in view, though differing materially in one important respect, to which he should allude more particularly hereafter. He believed he was correct in stating that the Honorable and learned Member concurred with him that there were difficulties in the way of proceeding with his Bill, and he was good enough to say that he had no objection to his (Mr. Harington) bringing in a Bill of the character proposed by him. He was bound, however, to add that nothing that fell from the Honorable and learned Member during their interview would justify him in calculating with any degree of certainty upon his support, though he trusted that this would not be withheld, and that the Honorable and learned Member would allow his Bill to be read a second time. He could not of course ask the Honorable and learned Member to pledge himself to vote for the second reading, much less to adopt his (Mr. Harington's) Bill in lieu of the one so ably and indefatigably conducted by him to the stage which he had mentioned, because he knew that he entertained a very strong and decided opinion upon the point to which he had referred, directly opposed to the views of himself and others. Under these circumstances it seemed to him that he had no alternative, and that he must either himself bring in a Bill for the establishment of Courts of Small Causes, or leave matters in their present very unsatisfactory state, and that being the case, he could have no hesitation or doubt as to the course which it was his duty to pursue.

It would be in the recollection of some Honorable Members now present, that the Bill "for the more easy recovery of small debts and demands," after passing through a Committee of the whole Council, was ordered to be re-published for general information, and with a view to elicit the opinions of the public on the amendments introduced in Committee. Shortly after, the Code of Civil Procedure prepared in England by Her Majesty's Commissioners appointed for the purpose, reached this country, and, as the framers of that Code declared that it would apply to all ordinary Civil Courts with exception to the Courts of Small Causes at the Presidency Towns, it seemed undesirable to proceed with the Bill before the Council until there should have been sufficient time carefully to examine the Code sent out from England, with a view to ascertain whether its adoption would supersede the necessity of further and separate legislation in so far as the procedure of our Civil Courts was concerned, a single Code of procedure applicable to all classes of cases, if sufficiently summary for the simplest description of suits, and capable of being easily administered, being obviously preferable to two or more Codes applicable to different classes of cases, though to be administered by the same Courts. The Code received from England was formed into a Bill with some few modifications, and the Bill thus framed having been read a first and second time, was referred in the usual course to a Select Committee, before whom it remained for several months, and at whose hands it underwent a very careful revision. The greater part of the Code had now been considered and discussed by a Committee of the whole Council, and Honorable Members had therefore had ample opportunities of learning its character, and of judging for themselves whether it deserved what had been said of it by its framers, namely, that in the simpler classes of suits the procedure which it prescribed would be equally expeditious and economical with that of the Courts of Small Causes at Calcutta, Madras, and Bombay. Her Majesty's Commissioners had assigned this as a reason for not considering it necessary to extend the system of Courts of Small Causes to the other principal Stations in the country as had been sometimes proposed, and if the Code prepared by them should be adopted, and should be found to be of the simple and comprehensive character claimed for it,

it was scarcely necessary for him to say that it would only complicate matters, and could answer no useful purpose to pass those provisions of the Bill "for the more easy recovery of small debts and demands" which related to procedure alone. This was his chief reason for considering that so much of that Bill should not be proceeded with. He had reason to know that the Honorable and learned Member of Council on his left, whose opinion on this as well as on all other matters coming before this Legislature, must always carry with it very great weight, considered the Code sent out from England to be altogether of too cumbrous a character for Courts of Small Causes. No doubt some of the provisions of that Code were not adapted to Courts exercising merely what was understood by Small Cause jurisdiction, but those provisions were evidently framed, not so much for simple actions of debt and the like, as for suits relating to real property an other su ts of difficulty and complexity, and he thought it w uld be found that they would rarely, if ever, be brought into operation in cases of the nature of those to which the Bill "for the more easy recovery of small debts and demands" was intended to apply. But whatever might be the character of the Code received from England, he believed he might say that the Select Committee, to whom it was referred for report, had carefully abstained from proposing the introduction of any amendments which would have the effect of detracting from its simplicity, and he thought there could be no doubt that some of the amendments recommended by the Committee would, if adopted, render the Code better fitted for Courts of the character of those which he was anxious to see established, than would be the case were it to be passed exactly in the form in which it was sent out from home. He alluded particularly to the power proposed to be given to all Courts, of requiring the personal attendance of the plaintiff and defendant, with a view to their being confronted, on the day fixed for the first hearing of a suit. This power should, he thought, be possessed and freely exercised by all Courts of Small Causes, wh rsoever established, and whosoever might preside in them. The position in life of the parties, who were usually concerned as plaintiff or defendant, in cases coming before Courts of that description, was clearly not such as to oppose any obstacle to their personal attendance, and it was only very recently that he was informed by the learned and excellent first Judge of the Court of Small Causes at Calcutta, that he attributed it very much to the extent to which the practice of requiring the personal attendance of the parties was carried in that Court that it was able to get through the large quantity of work which the annual returns showed to be disposed of by it. Mr. Wylie had kindly sent him a copy of the last official year's Report, from which he observed that between the 1st May 1857 and the 30th April 1858, or on two hundred and fifty sitting or working days, he and his two colleagues disposed of no less than thirty thousand, seven hundred, and twenty-four cases, giving a daily average of more than a hundred and twenty cases, and that the amount litigated in the suits instituted during the same period exceeded eight lacs of Rupees. He could not refrain from expressing his astonishment at the immense amount of business which was shown by this Report to have been dispatched by this very useful Court, and his admiration of the zeal and attention to their duties on the part of the Judges, of which it furnished such satisfactory proof.

He passed on to consider that part of the Bill "for the more easy recovery of small debts and demands" which related to the agency by which the object comtemplated by the Bill was proposed to be effected. The original Bill, which was drawn up by Mr. Mills and himself, gave the Executive Governments of the Presidencies of Bengal, Madras, and Bombay power to invest any existing Courts under their respective Governments with Small Cause jurisdiction for the purpose of trying certain classes of suits, and, with the previous sanction of the Governor General of India, to constitute new Courts for the same purpose. It appeared to Mr. Mills and himself absolutely necessary to the success of the

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measure that on its first introduction, the caution enjoined by that distinguished Nobleman and eminent Statesman, Lord Dalhousie, who held the Office of Governor General at the time the Bill was laid before the Legislature, should be strictly observed, and that in those places in which, from the paucity of the Inhabitants, or from any other cause, it might not be considered necessary or advisable to establish separate Courts of Small Causes, only those Native Judges should be invested with Small Cause jurisdiction who were reported by the Sudder Courts competent to exercise, and otherwise fit to be entrusted with it. Such was also the opinion of the Honorable the Lieutenant-Governor of Bengal, than whom there was no Officer in India better qualified to give an opinion on the point. He said:—

"We know that Small Cause Courts are required. But we are far from knowing what existing functionaries among the Native Judges are fit to be Small Cause Judges. That knowledge will come in time and after experiment. The Commissioners do not contemplate giving such powers on this side of India to men paid and selected as the Moonsiffs now are. They contemplate a better class. (See Paragraphs 18 and 19.) They did therefore wisely, in my humble opinion, when they left the selection to the Local Governments, meaning that the Local Government would be likely, or rather would be directed, to select for such powers men adequately paid. The bulk of our Moonsiffs at a hundred Rupees a month are quite unfit to be trusted with such powers, and to give it to them would cause great discontent, and, as is not indistinctly intimated by the Commissioners, hazard the success of the whole plan."

The Select Committee, however, on the Bill refused to adopt the views entertained by Mr. Mills and himself, though supported by the high authority of the Lieutenant-Governor of Bengal, and, instead of the provision which he had quoted from the original Bill, they recommended, and the Committee of the whole Council concurred in the recommendation, that the Court of every Moonsiff in the three Presidencies should be a Court for the trial of summary actions up to fifty Rupees in amount and should exercise summary jurisdiction; while in a later part of the Bill a Section was introduced declaring it to be lawful for the Executive Government:—

"To invest any Civil Court of the East India Company now existing, or which might hereafter be established with the sanction of the Governor General in Council, with the summary jurisdiction of a Small Cause Court under the Act for the adjudication of claims to an amount not exceeding five hundred Rupees, and from time to time to determine the territorial limits within which such Court should exercise such summary jurisdiction. Provided that no Court should be invested with jurisdiction as a Small Cause Court beyond the amount of its ordinary jurisdiction."

An attempt was made in the Committee of the whole Council by his (Mr. Harington's) predecessor in the representation of the North-Western Provinces to restore the original Section, but it failed, two only out of the eight Members who attended the Meeting of the Committee having been found to vote for it. The question, therefore, as to whether, supposing a Bill of the nature of that under consideration to pass, the principle of gradual introduction proposed by Mr. Mills and himself, or of immediate extension to all parts of the country according to the recommendation of the Select Committee, should be acted upon, might be considered to have been definitively determined in favor of the latter course, and the steps which he was now taking, and which, if successful, would have the effect of disturbing that determination, might be regarded not only as an unnecessary occupation of the time of the Council, but as somewhat irregular. On looking, however, over the debates which took place during the progress of the Bill through the Committee of the whole Council, he had been led to believe that it was mainly in consequence of the introduction of the amendment to which he had alluded that the Bill was ordered to be re-published instead of proceeding at once to a third reading, the object being to elicit the opinions of the public, chiefly upon the particular Section in which that amendment was contained. The question might, therefore, be looked upon as still an open one. In support of what he had just stated he would again refer to the speech of the Honorable and learned Vice-President, from which he had already made one quotation. He remarked:—

"The first question of principle which arose upon this measure, was, whether it was desirable to make that change which the majority of the Select Committee proposed to make, namely, to constitute every Moonsiff's Court in the country a Small Cause Court at once with a jurisdiction limited to fifty Rupees;—or, whether it was desirable to leave it to the Executive Governments to confer such a jurisdiction upon certain Officers

selected at their discretion, with power to enlarge it for any particular Court or district, and, with the sanction of the Governor General in Council, to erect new Courts. He must confess that the question was one upon which he found it extremely difficult to come to a conclusion very satisfactory to his own mind; and in whatever form the Bill might leave the Committee of this Council, supposing the changes which the Select Committee recommended should be introduced, he hoped that it would be published, in order to invite the opinions of the public upon its provisions."

And the Honorable and learned Vice-President concluded his speech by observing that:—

"He should certainly prefer going into Committee upon the Bill, and should do his best to suggest any improvements in its provisions which might appear to him expedient; but, at the same time, he did not wish to commit himself to any final opinion as to the policy of extending, in Bengal at least, the jurisdiction given by it to every Moonsiff's Court, until the different Governments and the public had had a further opportunity of expressing their opinions upon the subject."

Accordingly, as suggested by the Honorable and learned Vice-President, the Bill was re-published, and what had been the result? Why, an almost unanimous verdict in favor of the views entertained by Mr. Mills and himself, and against the amendment introduced by the Select Committee and adopted by a Committee of the whole Council. With the permission of the Council he would read some of the opinions elicited by the re-publication of the Bill, taking them in the order in which they had been printed. The first report was from the Sudder Court of Bombay:—

"They consider that the Act is not suited to the object for which it professes to legislate; that the indiscriminate extension of a Native Judge's jurisdiction to try suits up to fifty Rupees is unsafe, and that the delegation of the authority and the amount should be vested in the Executive Government."

This was followed by a letter written by order of the Chief Commissioner of the Punjab, whose opinion would, he was sure, be received with the utmost respect by every Member of this Council, and could not fail to command great attention. Opinions might differ as to the comparative advantages of what was called the Punjab system and the system in force in the older or Regulation Provinces. On this point the Honorable Member of Council opposite (Mr. Ricketts) might have one opinion; he (Mr. Harington) might have another opinion; but there could be no difference of opinion amongst them as to the distinguished merits of the great man who, for so many years, had administered the former system with an ability which could not be surpassed, and whose eminent services during the past year had laid his country under a debt of gratitude to him which no honors, no rank, no money, could adequately repay. Sir John Lawrence said:—

"In the event of the new Act being introduced in the Punjab, then he would at all events earnestly recommend that the Sections relative to appeals should be excepted. He believes that the rules contained in those Sections would not work well if applied to the Tehseeldaree Courts of the Punjab. Whether the entire absence of appeal, except under certain provisions, is generally desirable or not, is a point on which he does not presume to offer an opinion. He only submits that it is not desirable in the Province.

"The power of appealing is evidently a salutary one, giving satisfaction to suitors and to the public, and operating as a proper check upon the judiciary. In his (the Chief Commissioner's) opinion the Punjabees regard the power of appeal as a kind of palladium of their rights. If it were taken away, even in an inconsiderable proportion of cases, they would be led to think less well of the administration of Justice under British Rule. Again, he would urge that, in all cases, the right of appeal is requisite as a check on our Tehseeldars. He admits the merits of these Officers as a body. But they assuredly are not all that could be desired. Some are old employés of the Sikh Government, deficient in business habits. Some were hastily appointed after annexation, without sufficient scrutiny of antecedents. Few of them are really as yet trained to judicial duties. Many of them are stationed in isolated localities at a distance from European control. All of them have heavy and varied duties to perform, and must, therefore, be liable to error from inadvertence or haste as well as from ignorance or inefficiency. He thinks that they are not the men to be left without so useful a check as that imposed by the power of appeal. While this check remains, he gladly acknowledges that they satisfy the public generally, and dispense substantial justice tolerably well. If it were removed, their attention might relax, or their morale deteriorate. Throughout India it is well known that native agency is very efficient and tolerably trustworthy, provided that it be sufficiently controlled. Such control is especially required for our Tehseeldars, and is often materially dependent on the existence of appeal in all cases. By these means the conduct of every one of these Judges is periodically supervised. Without these means misconduct or incompetency on their part might never be discovered until much mischief had been done past remedy, and until general dissatisfaction had manifested itself in some marked manner. Then, indeed, the evils might with much trouble be partially cured, which might have been entirely prevented had the power of appeal existed."

Then came a letter from the Secretary to the Government of the North-Western Provinces, containing the sentiments of the Lieutenant-Governor of

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those Provinces, the late Mr. Colvin, whose opinions, so valuable while he was alive, would lose none of their weight now that he was no longer amongst them to enforce them. This letter said :—

"The Lieutenant-Governor strongly concurs in the view urged by the Court, which is held also by a very great majority of the Judicial Officers under this Government, that it would be as yet decidedly unsafe and inexpedient to vest the Moonsiffs indiscriminately with the very independent jurisdiction to be exercised under the new law, up to the limit of fifty Rupees' value. This limit would, as shown by the Court, include more than sixty per centum of the whole number of suits instituted, of the large class for the trial of which the Bill provides.

"The Judges who may be armed with the powers of this law, will, in a country where public observation is so inactive and public opinion so feeble, be the arbiters of the fortunes and happiness of the great mass of the residents in their neighbourhoods. The general and progressive improvement in the Moonsiffs as a body is fully admitted, and is a subject of much satisfaction to this Government. Some of the objections, which are pressed in the discussion respecting the Bill, to the employment of the Moonsiffs in the new scheme of summary Judicature, spring only from prejudiced, or perhaps selfish, feelings; and to yield to them would be inconsistent with the wise and just policy which would elevate the Natives of India to places of extensive and high trust in the public administration. But it is because he would warmly wish to forward the objects of the present important measure, and to raise and use the agency the aid of which is chiefly looked to in its execution, that the Lieutenant-Governor would recommend that the Legislature should proceed with a prudent caution, and not treat as light and worthless the local experience of the public Officers, who report their opinions as to its probable acceptance and effects in different parts of the empire. Such a measure is to be introduced within the Bengal and North-Western districts for the first time. The Moonsiffs are not yet adequately paid. Nor have all the old class of Moonsiffs, inferior as it unquestionably was in character, self-respect, and public repute, yet ceased to hold office. The best of the grade will be quite new to the possession of so much authority. The right of an unrestricted appeal upon facts is one which has hitherto been fully open to all suitors. To give over at once, under such circumstances, more than half of the common litigation of the country to all the present Moonsiffs, subjected avowedly to but little practical check, is a hazard so great that the Legislative Council must, as the Lieutenant-Governor would persuade himself, hesitate to incur it. On the question whether the whole body of the Moonsiffs should be at once invested with these powers by a fixed rule in the law, the facts of the case appear to be simply these. The Moonsiffs now holding office have been appointed under a system which requires a minute verbal record of all the proceedings in their Courts, and subjects all their orders to an unlimited appeal. They have been considered fit to be retained in office under that system of close check. A majority of them would now, the Lieutenant-Governor believes, be qualified to exercise, within certain limits, the higher and more independent powers of the Small Cause jurisdiction. The remainder, chiefly older public servants placed in their posts when the standard of feeling was not what it at present is in their class, cannot be held to be so qualified. Is it right that these should be instantly removed from their employments, and, when near to the termination of their service, cut off by that means from the prospect of their retiring pension, because they have not the character and capacity required for a class of functions so novel and enlarged as entirely to alter the constitution of their Courts? Is it right, on the other hand, that they should be invested with an authority which experience does not warrant their superior Officers and the Government in recommending them for? Will it be a benefit to the people to clothe them with that authority whatever may be the feeling of the Government? The part of practical wisdom and equity seems surely to be in admitting of some little delay in the complete or universal introduction of the new Judicature. The Government, anxious to forward the purposes of the Legislature, and to make justice every where more readily accessible, will lose no time in conferring the powers on all the Moonsiffs, as soon as a more trustworthy, and generally esteemed, set of Officers has been gradually substituted for those in regard to whom doubts may now exist."

The opinion of the Sudder Court at Agra followed. The Court remarked :—

"Approving, as they do, of the general scope and principle of the new Bill, they would notice, in the first place, the two material points in which it differs from the drafts originally framed, and regarding which particularly the opinions of the Zillah Judges have been sought, namely :—

"*First.*—The investiture of the Moonsiffs in general with the summary jurisdiction of a Court of Small Causes. Section 1 of the Bill.

"*Second.*—The omission of the special limitation clauses provided by Sections VI to X of the Bill as originally framed.

"With regard to the first point, His Honor will observe that one Judge alone (the Officiating Judge of Cawnpore, Mr. C. W. Fagan), and only three Principal Sudder Ameens, namely, those of Cawnpore, Allygurh, and Jounpore, have given an opinion in favor of investing the Moonsiffs generally with the powers of Small Cause Court Judges. All the other Zillah Judges and Principal Sudder Ameens are unanimous in considering this a most dangerous experiment, and as calculated most seriously to detract from, if not entirely to nullify, the beneficial effects of the proposed Bill; the enactment of the original draft, in which it was provided that the summary jurisdiction should be conferred, according to the discretion of the Executive Government, on those Native Judges in whom they had full confidence, is, in the consideration of these Officers, preferable to the passing of the Bill as it stands.

"In this opinion of the majority, the Court fully concur. They remark that a measure, such as the present, which creates a most material change in the system of Civil Judicature, and practically invests the lowest class of Native Judges with irresponsible powers in suits up to fifty Rupees, must, to be successful, carry along with it the sense of the people whose interest it affects. That such is not the case with the present Bill is undoubted. As far as the Courts have been able to ascertain for themselves, and as is apparent from the answers of the Zillah Judges, it is clear that the Native

Community in these Provinces are strongly opposed to investing the Moonsiffs in general with those summary powers, and that they look forward with considerable distrust and apprehension to the passing of the Bill in its present shape. The Court readily acknowledge that, for some years past, the Moonsiffs, as a body, have considerably improved, and are still improving in character and capacity; but they are constrained to state (and this opinion is shared very generally by the Community) that there are some Moonsiffs who have not established that character for integrity and independence as to render it safe to invest them with the large powers provided by this Bill.

"That this is a question deeply affecting the interests of the people, and more particularly of the poorer classes, is apparent from the fact that out of 18,910 suits for money or other personal property, exclusive of suits relating to arrears or exactions of rent, instituted in the Civil Courts of these Provinces during the first three months of 1855, more than sixty per cent. (as will be seen from the accompanying return, marked B.) were for claims not exceeding fifty Rupees in value, which would, therefore, be cognizable by the proposed Small Cause Courts. It can consequently be no matter of surprise that the Native Community dislike the idea of entrusting more than half of their litigation touching pecuniary transactions to Judges in whom they have not perfect confidence, and whose decisions would be open to no appeal upon the facts."

In the Calcutta Sudder Court there was some difference of opinion, two of the Judges, Mr. Dick and Sir R. Barlow, approving of the Section as it now stood, by which every Moonsiff's Court would become a Court of Small Causes, while the other three Judges, Messrs. Raikes, Colvin, and Patton—

"would prefer to see the Act introduced gradually by the establishment of special Courts in particular Towns and Marts of importance, to be presided over by Officers selected for this duty on account of their judicial aptitude, the Executive Government having the power to extend the number and jurisdiction of those Courts as it might deem necessary."

The Court having thus given their own opinion went on to say:—

"The general feeling appears to be strong against the introduction of the Act into all the Moonsiffs' Courts unless an appeal on the merits is allowed in every case."

Last, though certainly not least in importance, they had a Minute by the Honorable the Lieutenant-Governor of Bengal, in which was embodied the opinion of the Sudder Court at Madras, and he believed the Honorable Member for Madras could tell them that the Sudder Court at that Presidency, as at present constituted, had recently given it as their opinion that the District Moonsiffs did not command the confidence of the people in point of either integrity or efficiency. Mr. Halliday said:—

"To set up my single opinion against any part of a Bill which has been approved by a majority of the Legislative Council, would be rash and presumptuous, and if I stood alone in my objections, I should be silent. But I find myself supported as to one or other of my reasons by very weighty authorities, and I may in this manner quote with assurance the opinions of the framers of the original Bill, of a majority of the Zillah Judges, and of the Sudder Court of this Presidency, of the Sudder Court and the Government of Bombay, of the Sudder Court of Madras, of the Sudder Court and the Lieutenant-Governor of the North-Western Provinces, and of the Governor General as Governor of Bengal.

"What our judicial system has appeared to me most urgently to require as an improvement upon our present dilatory and complicated methods, is a plan by which the smaller and simpler, but by far the most numerous suits, should be decided under a plain and easy procedure, and by trustworthy and competent tribunals, speedily, cheaply, and finally. Our Mofussil judicatories have heretofore been invariably constructed on the assumption (unavoidable in former days) that, either by reason of inexperience and want of training in some cases, or doubtful integrity in others, no firm reliance could be placed on any Judges of first instance, but that all their decisions and all acts and orders must necessarily be guarded by the security of constant appeal. Hence of necessity have arisen long, formal, expensive, and tedious systems of procedure and record, which, to say the least, have seriously impaired the utility of our judicatories, and hence have been engendered in the minds of the people a habit of continuous litigation, and a fondness for multiplied appeals, which, though they may have always lurked in the characters of the Natives of India, ought rather to have been checked than fostered, and had certainly no opportunity of development before the introduction of our judicial systems.

"But while we thus nourished and cultivated the litigious propensities of our subjects, we were avowedly very far from giving them satisfaction by any of our methods of judicature, and the first and only one of our multifarious experiments in this direction, which seems to have been attended with complete success, was the establishment of Small Cause Courts at the Presidencies; in which, reverting at last to the system most obviously in accordance with oriental notions and prejudices, we (practically) abolished appeal, and adopted a procedure simple, speedy, and final.

"The eminent success, and the great general popularity of this tribunal among the natives, could not fail to attract attention. For here at last appeared to be solved the question of the judicature best suited to the mass of Native litigants; and here at all events was a Court largely resorted to, giving constant satisfaction by its facile methods, and its speedy decisions, and in the judgments of which even Bengalee litigants were content to rest without further appeal.

"Accordingly, this Court was justly looked upon as the model upon which our experimental improvements in the Mofussil ought to be framed, and the first movement towards the large and difficult measure now before the Legislative Council was a proposition, which I still think wiser than the improvements since grafted upon

it, and which I greatly wish had been adhered to, for introducing gradually into the large Towns and Marts, and thence step by step into other places in the interior, Small Cause Courts after the pattern of the successful Courts in Calcutta, thereby weaning the Natives from their attachment to judicial formalities and continuous appeal, and by little and little accustoming them to the use of simple, informal, and final Courts of Justice, just as the Natives of Calcutta have been gradually accustomed to the Calcutta Small Cause Court, until it has become with them an entirely favorite institution.

"It was no part of the scheme of the framers of the original Bill that every Moonsiff should be made a Small Cause Court Judge. On the contrary, they gave good reasons why this ought not to be done, and, as I have elsewhere remarked, they not indistinctly intimated that to do this would hazard the success of their whole plan.

"The Sudder Court at Madras, though they made on the 19th October 1854 a recommendation not easily reconcileable with such an opinion, had previously, that is, on the 14th July 1854, intimated in indirect, but unmistakeable terms, that the class of Judges to whom it is now proposed to give the functions of Small Cause Judges were not men whose honesty is unimpeachable, and in whose efficiency in the discharge of their duties every reasonable confidence may be reposed. And they argued that, if this course was persevered in, it would be absolutely necessary to give an appeal on the facts.

"The Natives, chiefly of Calcutta, represented by the "British Indian Association," considered that the success of the experiment, which they designated as an innovation of magnitude, would depend mainly upon the selection of the places at which it might be tried, as well as of the agency by which it might be worked, and they suggested the utmost discrimination in selecting the places where the new Courts are to be instituted, in appointing the Judges by whom they are to be presided over, and in regulating the maximum value of the suits to which their jurisdiction in particular places shall extend. It is evident that the Association had no notion of extending the jurisdiction suddenly to all Moonsiffs, or of spreading it over the face of the whole country.

"In the papers now submitted, it will be found that eighteen out of twenty-five Zillah Judges object to giving the jurisdiction generally to all Moonsiffs, three out of five Sudder Judges being of the same opinion. Regarding appeals, the prevailing opinion of the Sudder Court seems to be that, if the measure were gradually introduced by the appointment of well-selected Judges in a few places, appeals might well be omitted, but that, if all the Moonsiffs are to be made Small Cause Court Judges, a right of appeal must be allowed to an extent beyond what the present Bill proposes. And the Native Judges and Pleaders consulted are reported to be very generally against the introduction of the Act into all the Moonsiffs' Courts, unless an appeal on the merits is allowed in every case. The general view of the kind of measure required by the circumstances of the country which is taken by the Judges of the Sudder Court, may be inferred from the manner in which they quote the opinion of the English Commissioners, that in claims of small amount the evils caused by an occasional miscarriage are more than counterbalanced by the advantages presented by a local tribunal, the proceedings of which are simple, cheap, speedy, and final.

"It appears to me from all this that the Act, as now proposed to be passed, has been settled contrary to the general suggestions of experience in all parts of India, and that it may, therefore, be expected to fail of complete success. There are many large and important towns under the Bengal Government in which the introduction of a simple, informal, and final system of Small Cause Courts would have been a great and important measure. The people would have resorted to them as the people in Calcutta have done to their Small Cause Court, the system would gradually have been popularized, more of such Courts would have been from time to time called for in other places, and thus in the most safe and certain way the principle of such jurisdiction would have become established in the habits and feelings of our subjects, and afterwards, with their entire assent and concurrence, extended over the whole country. The Act now proposed will, I fear, have no such effect. The reform it introduces into the system of procedure might be looked upon as considerable were it not so likely (may I not say so sure) to be neutralized by the incompetency of the Judges to whom it is entrusted, by the unmanageable extent of their jurisdictions, and by the inevitable consequences of appeals which are invariably productive of formality and delay in the lower Courts. And whatever there may be in the proposed Act of novelty and improvement, being entrusted indiscriminately to a body of Judges who have not yet acquired the full confidence of the Government or the public, the changes made in the law, even if worked better than I anticipate, will be received with doubt and dislike; the principle on which they proceed will gain no hold on the inclinations of the people, and the result will, I apprehend, hardly be an advance, if indeed it do not end in retrogression."

Now, he submitted that the opinions which he had just read at the risk of being thought tedious, were conclusive in favor of the proposition of Mr. Mills and himself and against that of the Select Committee on the Bill "for the more easy recovery of small debts and demands", and as the object in view in republishing that Bill was to elicit the opinions of the public on this point, he apprehended that the verdict almost universally given against the amendment introduced by the Select Committee could consistently and properly be followed only by the abandonment of the principle on which that amendment was based, and it had been abandoned accordingly in the Bill which he was about to present. He (Mr. Harington) did not think that they could turn round upon all the high authorities whose opinions he had quoted, and say to them—"We are better acquainted with the character of the Native Judges than you are; we know more of the habits, feelings, wishes, and wants of the people of this country than you do; we value your opinion at *nil*; we hold our

own opinion still, and you shall either take our Bill in all its integrity as settled by the Committee of the whole Council or you shall have no Bill at all; choose between these alternatives." It certainly did not appear to him that this would be a wise, prudent, or proper course for this Council to pursue, and he did not think that it would consist with its duty to the public.

On referring to the debate to which he had more than once alluded, he found that the Honorable and learned Member of Council on his left (Mr. Peacock) had put the following case; he said :—

"Suppose a summary jurisdiction under the provisions of this Act were conferred by the Executive Government upon the Moonsiff's Court in district A, but not upon the Moonsiff of the adjoining district B. Suppose, also, that an inhabitant of district B. were to petition the Executive Government to confer a similar procedure on district B, he would say :—

"'My friends and neighbours in district A. can sue for claims under fifty Rupees by paying a much smaller amount of stamp duty, and can recover their claims in much less time and with much less trouble than I can. I am forced, whenever I enter into a contract for a sum not exceeding fifty Rupees, to go into district A. in order to avoid the necessity of suing upon it in my own district. Do, pray, give district B., in which I live and carry on my business, a Small Cause Court also.'

"What would be the answer that the Executive Government could make to this petition? Why, if the argument against the general extension of this Act was to be used, they must say :—

"'We approve of the summary procedure which we have conferred upon the Moonsiff in district A. We would willingly give your district a Small Cause Court. It works well in district A; but the Moonsiff in your district is incompetent to exercise the jurisdiction, and we cannot trust him.'

"Now could that be said? Ought it to be said? Ought it to be said that a Judge, who was trusted to decide claims to the amount of three hundred Rupees under a system which required a record such as that to which he had before alluded, was not competent or could not be trusted to decide cases under a system very much more simple? Would not such an answer tend to throw discredit upon the whole of that class of the civil institutions of the country? Would not the petitioner have a fair right to reply—

"'Then give us a competent Moonsiff?'"

Now the reason that had always operated in his mind against the extension at once to all parts of the country of a measure of the nature of that under consideration, instead of its gradual introduction as fitting instruments could be found for carrying it into effect, was not the possible incompetency of individual Judges or of any particular class of Courts to decide suits under the new system of procedure which would be introduced thereby, but the inexpediency of permitting all Courts, whatever might be the character of the Judges presiding in them, to decide suits up to a certain amount without the safeguard of an appeal and without any thing deserving of the name of a record, which could not be dispensed with if an appeal was allowed. He did not remember ever to have said that, in so far as the mere adjudication of the matter in dispute between the parties went, the present Moonsiffs or any of them would not be just as competent to decide simple suits of the nature of those to which the Bill "for the more easy recovery of small debts and demands" was intended to apply under the rules of procedure therein prescribed, as they were to decide suits of a higher amount and of a more difficult character under the present system. This was not his position. What he had all along contended for, and what he still contended for, was that it was not wise, safe, or proper to give a final jurisdiction in any case to the lowest class of Courts, seeing that it was notorious that the greater number of the Judges appointed to those Courts were, on their first appointment, totally devoid of judicial experience, many of them never having even seen a Civil suit tried, and their judgments were consequently not matured. He should perhaps be told that they were not justified in appointing new and untried men to the Bench, and that it was their duty to select older and more experienced instruments for first appointments to the Judicial branch of the public service. But he would ask where were such men to be got? The salary now drawn by the Moonsiffs was so small and so disproportionate to their duties, responsibilities, and position in life that a respectable Vakeel in moderate practice would not accept the appointment, and there was no other school in which the Natives of this country could be trained up for Judicial employment. What was the case at home? There, he believed, only Barristers of five years' standing were eligible to the office of Judge in the County Courts or Courts of Small Causes, and if Honorable Members

would consider the birth of an English Barrister, the education which he received, his station in Society, and the experience and knowledge of the duties of a Judge which he might acquire during five years' practice in Courts presided over by some of the ablest and most distinguished men in England, with a bar unsurpassed in ability, intelligence, and integrity by any bar in the world, and then contrast all this with the antecedents of the class of men from which the Native Judges were from necessity drawn, their birth, their position in society, their means of education beyond the Presidency Towns, and their previous occupation if they had had any, and the vast superiority of the one class over the other would be painfully apparent. To the former class almost any amount of Judicial power might be safely entrusted, whereas any power given to the Native Judge would almost certainly be abused unless he was most vigilantly supervised and controlled by his European superior. Nor in making the comparison should the fact be lost sight of, that the duties of the two classes were precisely similar, the cases of the simplest description decided by the Native Judges in this country presenting the same difficulties as the cases tried by the Judges of the County or Small Cause Courts at home, or, if there was any difference, it was against the Native Judge arising out of the character of the people with whom he had to deal, and the vices inherent in almost all litigation in this country in which the Natives were concerned; so that he thought he was justified in saying that, if the right of appeal was taken away in cases up to a certain amount, and those cases were left to be decided by the lowest class of Courts without distinction, (many of the Judges presiding in those Courts being, as already noticed, young and inexperienced men) they would commence at the wrong end, and give large powers to those who were the least fit to be entrusted with them, and that, too, over the most indigent and most helpless classes of the people who could ill afford to lose the smallest sum and who were the most destitute of power to complain or make known their grievances.

From the letter from the Chief Commissioner of the Punjab, part of which he had already read, it would be seen that Sir John Lawrence was very decidedly of opinion that, even in the smallest causes, at least one appeal should be allowed either on law, procedure, or matter of fact on any point whatever regarding which either of the litigants might feel dissatisfied. He (Mr. Harington) observed also that, in a Code of Civil Procedure which Mr. George Campbell, the intelligent Judicial Commissioner in Oude, was engaged in preparing for the use of the Civil Courts about to be established in that Province, he proposed that in every case there should be one appeal as the right of a dissatisfied party, and that, when an order in favor of any party was reversed on the appeal of the other party, he in turn should have an appeal. Under this rule it was obvious that there might be two appeals in every case—one on the part of the unsuccessful party in the Court below, and should he succeed in appeal, one on the part of the party defeated in the Appellate Court. Mr. Campbell supported his proposition by saying that in India, with so little fixity of the law, and without a proper public opinion, they must have appeals; they could not be avoided. But the great thing was to have good and discreet appellate tribunals, which would not interfere unnecessarily. He had already quoted what Sir John Lawrence had said on this subject. He declared the power of appeal not only to be a salutary one, giving satisfaction to the suitors and the public, and operating as a proper check upon the Judiciary, but that it was looked upon by the Punjabees as a kind of palladium of their rights, and that, if it was taken away, even in an inconsiderable proportion of cases, they would be led to think less well of the administration of Public Justice in India. A somewhat similar opinion had been given by Mr. Mills and himself in laying the draft of the Bill "for the more easy recovery of small debts and demands" before the Government of India. They said—

"We are aware that our proposal to vest the Courts established under this Act with summary jurisdiction to try cases even of the smallest

amount and of the most simple nature, without an appeal upon the facts, will be received with dissatisfaction by the Native Community."

Now he was very sensible that it might be retorted on him that, if these views were correct, instead of doing away with the right of appeal in any case, they should follow the recommendation of the Chief Commissioner of the Punjab, and give one appeal at least in every case, however small in amount, however simple in character, and however competent the Judge of the Court of first instance; and he was bound to say that such was the opinion of almost every Native to whom he had spoken on the subject, as well as of many old and experienced European Judges. Only a few days ago, he had been told by an intelligent Vakeel of the Calcutta Sudder Court, that, if a final jurisdiction was given to the Courts of first instance in cases up to a certain amount, every plaintiff would raise his claim above that amount, not in the expectation of getting a decree for the full sum claimed, but in order that he might preserve the right of appeal; that this right was so much prized, and so little confidence was felt in the Courts of first instance, that, if appeals were abolished in any cases, the people would prefer that the right of suit in the same class of actions should also be taken away. He might be asked whether he thought that this tenacity of purpose in Native litigation and this feeling of distrust as regarded the Courts of first instance, should be encouraged or humoured. That question he could have no hesitation in answering in the negative; but in order to overcome the tenaciousness of the Natives in this respect, or their litigiousness, if that was the proper term, and their want of confidence in the Courts entrusted with the adjudication of more than three-fourths of the entire Judicial business of the country, instead of hastily introducing what would certainly be regarded by many as a violent measure of reform, he would proceed cautiously, and, again, to quote the words of the Honorable the Lieutenant-Governor of Bengal—

"Introduce gradually into the large Towns and Marts, and thence step by step into other places in the interior, Small Cause Courts after the pattern of the successful Court in Calcutta, thereby weaning the Natives from their attachment to Judicial formalities and continuous appeal, and, by little and little, accustoming them to the use of simple, informal, and final Courts of Justice, just as the Natives of Calcutta had been gradually accustomed to the Calcutta Small Cause Court, until it had become with them an entirely favourite institution."

There could be no doubt that in some parts of the country Courts of Small Causes were more required than in other parts, and that, where they were most required, not only would the amount of litigation which would fall within the cognizance of Courts of that description furnish ample employment for the Judges appointed to them, but it might fairly be expected that the income derived from the sale of Judicial Stamps which would be used in their proceedings, would nearly, if not altogether, cover the salaries of the Judges and their establishments. It was well known that the cost of the greater part of the Moonsiffs' Courts was defrayed from this source; and from the returns of the Court of Small Causes at Calcutta, to which he had already referred, he found that, while the fees credited to Government during the last official year amounted to Rupees 1,12,624-6-9, the charges, including the salaries of the Judges and of their establishment, came to only one lac, three thousand, two hundred, and sixty-four Rupees leaving a balance in favor of Government of nearly ten thousand Rupees on the year. There was not the same demand for Courts of Small Causes in the rural districts, and should the Rent Bill brought in by the Honorable Member for Bengal pass into law, as he hoped it would, a large proportion of the small causes arising in those districts would be cognizable under that Bill, the Revenue Officers acting as Judges of first instance. It was at the Sudder Stations of the different districts and in the large towns and cities in the interior where the want of Courts of Small Causes was so much felt, and at those places, should his scheme be adopted, he hoped to see separate Courts of Small Causes with a jurisdiction extending over a radius of about twenty miles at once established wherever they might be shown to be required. The Judges appointed to these Courts should have no other duties to perform. He

considered it to be essential to the successful working of a system of Courts of Small Causes, that the Officers who presided in them, when the amount of litigation was sufficient to keep them fully employed, should be able to devote their whole time and attention to the cases instituted in their Courts. Every case should, if possible, be taken up on the day fixed for a hearing, and the work of each day should, as far as practicable, be disposed of before the Court rose. But this could scarcely ever be done if the Judges of Courts of Small Causes were also Criminal Judges or Magistrates and had other Civil suits to decide. If Civil duties of different kinds as well as Criminal duties were combined in the same Officer, he could never command his time, and his attention was constantly liable to be diverted from work which should be performed at once, to other work which was or appeared to be of a more pressing character. Great care should be taken in selecting men for the Courts which he wished to see established, and in order that there might be a large field for selection, liberal salaries should be given to the Officers appointed; five hundred, seven hundred, or even one thousand Rupees a month would not, he thought, be too much, looking to the duties to be performed and the amount of trustworthiness required. As regarded the other parts of the country, where, owing to the scantiness of the population, or from any other cause, separate Courts of Small Causes could not conveniently be established, he would invest such of the existing Judges with Small Cause jurisdiction as might be reported by the Sudder Courts to be competent and otherwise qualified to exercise it. In this way he hoped at no distant date to see the whole country covered either with separate Courts of Small Causes or with Courts exercising small cause jurisdiction concurrently with their other jurisdiction. He could see no reason why, the want being admitted, though not capable, from causes already mentioned, of being immediately met in every place, they should not at once supply it where they could, and where the want was most felt, instead of waiting until they could do at one time all the good which it was their anxiety and wish to accomplish. Had the principle of not doing good here because they could not do good there at the same time, been always acted upon, the present Courts of Small Causes at Calcutta, Madras, and Bombay would not now be in existence, though he had never heard that the persons residing beyond the limits of those Courts had ever complained that similar Courts were not established for their benefit. They were willing to wait until the Government was in a position to extend the advantages of the system to them. At the same time it must be remembered that they were about to give a vastly improved Code of Civil Procedure to the whole country by which all cases would benefit, the only difference really made by this Code in the trial of different classes of suits being that, while in cases in which no appeal was allowed the evidence of the witnesses would be recorded in detail, in cases in which an appeal was not allowed, a brief memorandum only of what each witness deposed would be made by the Judge with his own hand. Whether the Natives would consider this latter mode of proceeding any advantage, was open to question. He observed that, under the Bombay Code, if both the parties to a suit expressed a wish in writing to that effect, the recording of the evidence and of the proceedings at length was dispensed with, and the Court's notes only were preserved. The Honorable Member for Bombay could tell them whether the option thus given was often taken advantage of—he (Mr. Harington) could only say that, so far as his own experience went, if a similar rule was introduced on this side of India, it would quickly become a dead letter, while, as regarded the right of appeal, he thought he might safely affirm that those to whom that right was continued while it was taken away from others, would not complain of the distinction. and that, if any complaint was made, it would be of the loss of the right, not of its retention.

He would proceed now briefly to notice the principal provisions of the

Bill of which he was about to move the first reading.

It proposed to give to the Executive Government of any Presidency or place, with the previous sanction of the Governor General in Council, power to constitute Courts of Small Causes at any places within the limits of their respective Governments with the required establishment of Officers, and, without such sanction, to invest any of the existing Courts under their Governments with small cause jurisdiction for the trial of cases under the Bill, and to fix and, from time to time, to alter the territorial limits of the jurisdiction of the Courts so constituted or invested.

The cases which would be cognizable by the Courts constituted or invested with small cause jurisdiction under the Bill would be the same as were described in Section II of the Bill "for the more easy recovery of small debts and demands"; but, instead of restricting the cognizance of those Courts to cases not exceeding in value or amount the sum of fifty Rupees, it was proposed that five hundred Rupees should be the limit of their pecuniary jurisdiction.

Whenever a Court was constituted in the manner provided, all suits cognizable under the provisions of the Bill, which might arise within the local limits of the jurisdiction of such Court, would be cognizable by it, and by no other Court, and in like manner all suits of the same description arising within the local limits of the jurisdiction of a Court invested with small cause jurisdiction, would be governed by the provisions of the Bill.

The Code of Procedure to be observed in the trial and decision of cases cognizable under the Bill, would be that now passing through a Committee of the whole Council under the title of a Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter."

No appeal would be allowed in suits not exceeding in amount or value the sum of fifty Rupees, nor any special appeal in suits exceeding that amount; but it would be competent to every Court trying a case under the Bill, whether originally or in appeal, in which any question of law or usage having the force of law, or the construction of a document affecting the decision of the case, might arise in respect of which the Court might entertain reasonable doubt, to state a case for the opinion of the Sudder Court, either of its own motion, or upon the application of any of the parties to the suit, and every Court would also be at liberty to grant one new trial, on sufficient cause shown, if applied for within a reasonable time from the date of the decision objected to.

From this sketch of the Bill, the Honorable Members for Madras and Bombay would observe that the passing of the Bill would not necessarily be followed by the introduction of Courts of Small Causes into those Presidencies or by the investment of any of the existing Courts with small cause jurisdiction; but that it would rest with their respective Governments to extend the provisions of the Bill at such time and to such places as they might think proper.

He begged to apologize for having tresspassed so long upon the time of the Council, and thanking them for the hearing they had accorded him, he would now move that the Bill be read a first time.

The Bill was read a first time.

LEASES OF GHATWALEE LANDS (BEERBHOOM.)

MR. CURRIE moved the first reading of a Bill "to empower the holders of Ghatwalee lands in the district of Beerbhoom to grant leases extending beyond the period of their own possession." He said, the principal object of this Bill was to remove an impediment to the development of the mineral resources of a portion of the district of Beerbhoom. A wild uncultivated tract in that district, supposed to be rich in minerals, was occupied by what are called the Ghatwalee mehals. These mehals were a kind of jageer, subject to a fixed rent, the holders of them being bound to the performance of certain Police services. By a special law (Regulation XXIX. 1814) the rents of the Ghatwalee lands, though included within the

Zemindaree of Beerbhoom, were made payable to Government, and certain rules were laid down explanatory of the terms on which the lands were to be held. It was declared by Section II thatthe Ghatwals

"and their descendants in perpetuity shall be maintained in possession of the land, so long as they shall respectively pay the revenue at present assessed upon them, and that they shall not be liable to any enhancement of rent so long as they shall punctually discharge the same and fulfil the other obligations of their tenure;"

and then Section V provided—

"Should any of the Ghatwals at any time fail to discharge their stipulated rents, it shall be competent for the Governor General in Council to cause the Ghatwalee tenure of such defaulter to be sold by public sale in satisfaction of the arrears due from him, in like manner and under the same rules as lands held immediately of Government, or to make over the tenure of such defaulter to any person whom the Governor General in Council may approve, on the condition of making good the arrear due; or to transfer it by grants assessed with the same revenue, or with an increased or reduced assessment, as to the Government may appear meet; or to dispose of it in such other form and manner as shall be judged by the Governor General in Council proper."

Such were the legal conditions of these tenures. They differed from the ordinary Zemindaree or Talookdaree tenure, inasmuch as they provided for other obligations besides the punctual payment of the revenue, and gave the Government the option of transferring the lands to any person it might think proper in case of default, instead of bringing them to auction sale. The nature and incidents of the Ghatwalee tenure had been more particularly defined by decisions of the Sudder Court. In a suit for a share of a Ghatwalee Talook, decided in June 1837, the Court ruled that

"the Ghatwalee lands are grants for particular purposes, especially of Police, and to divide them into small Portions amongst the heirs of the Ghatwalee, would be to defeat the very ends for which the grants were made."

The Judges of the Court, with one exception, were of opinion

"that a mehal of this nature cannot be divided, but should, on the death of an incumbent, devolve entire on the eldest son or the next Ghatwal."

This decision, therefore, established the point that the peculiar conditions of the Ghatwalee tenure are such as to remove it from the operation of the ordinary law of inheritance.

There was another decision bearing on the question. It arose out of the attachment of a Ghatwalee Mehal in execution of a decree for debt. The Judge held, with reference to the opinions expressed by Government and the Sudder Court in regard to the intent and object of Regulation XXIX. 1814,

"that a Ghatwalee tenure could not legally be held under attachment with a view to the liquidation from the profits of the debts of the Ghatwal."

The case being appealed to the Sudder Court, was referred to a full Bench, and the judgment was—

"that, under the law, the Ghatwalee tenures of Beerbhoom, being not the private property of the Ghatwals, but lands assigned by the State in remuneration for specific Police services, are not alienable or attachable for personal debts."

Such being the law and the ruling of the Courts in respect of these tenures, a question had lately arisen of the competency of a Ghatwal to grant a lease extending beyond the period of his own possession. It seemed that one of these mehals had come under the superintendence of the Court of Wards, and the Manager appointed by the Court was desirous of granting a lease of the mineral products of the mehal to an English gentleman on terms advantageous to the estate. But as the outlay for working the Mines would be considerable, it was necessary that the lease should be for a long term of years, and the Commissioner was of opinion that a Ghatwal, and by consequence the Court of Wards acting on his behalf, had not power to grant a lease which would be binding on his successor in the Ghatwalee. The Superintendent of Legal Affairs was of the same opinion, and it seemed to him (Mr. Currie), with reference to the precedents established by the Sudder decisions, that they were correct. The Sudder had ruled expressly that the Ghatwalee talooks were not alienable, and, as Mr. Beaufort said,

"to admit that the Ghatwal has the power to create an incumbrance which his successor is bound to respect, is to admit the power of alienation."

If, therefore, the mineral resources of this wild country were to be developed, the interference of the Legislature must be accorded. There could be no question of the advantages which would result to the estate, and to all

the neighbouring country, from the Mines being worked. He had accordingly prepared a short Bill giving to the Beerbhoom Ghatwals the same power which was enjoyed by all other proprietors of granting leases for any term they might think desirable—with this proviso that the lease should be submitted to and have the sanction of the Commissioner. This restriction was necessary, with reference to the declared nature of the tenures, in order to prevent an improper alienation of their resources.

There was a second Section giving the same power to the Court of Wards and the revenue authorities in the event of any Ghatwalee mehal coming under the superintendence of the Court or being otherwise subjected to the direct control of the Officers of Government. This was necessary, because under the existing law a Manager under the Court of Wards could not grant a lease extending beyond the life of the proprietor, and the Court of Wards could not give a farm of any estate under the management of the Court for a longer period than ten years.

The Bill was read a first time.

CIVIL PROCEDURE.

On the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The consideration of the postponed Section 14 of Chapter IV was again postponed on the motion of Mr. LeGeyt.

The postponed Section 23 provided as follows:—

"If the decree be for a house or other immoveable property not in the occupancy of a defendant or some person in his behalf, delivery thereof shall be made by putting the party to whom the house or other immoveable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same."

MR. PEACOCK moved that this Section be omitted and that the following be substituted for it:—

"If the decree be for a house, land, or other immoveable property in the occupancy of a defendant or some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the institution of the suit, the Court shall order delivery thereof to be made by putting the party to whom the house, land, or other immoveable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same."

Agreed to.

The postponed Section 24 provided as follows:—

"If the decree be for land or other immoveable property in the occupancy of ryots or other persons entitled to occupy the same, delivery thereof shall be made by erecting a pole upon some place within or adjacent to the land or other immoveable property, and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, the substance of the decree in regard to the property."

MR. PEACOCK moved that this Section be omitted, and that the following be substitued for it:—

"If the decree be for land or other immoveable property in the occupancy of ryots or other persons entitled to occupy the same, the Court shall order delivery thereof to be made by affixing a copy of the warrant in some conspicuous place on the land or other immoveable property and proclaiming to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place or places, the substance of the decree in regard to the property."

Agreed to.

The postponed Section 28 provided as follows:—

"If it shall appear to the satisfaction of the Court that the resistance or obstruction to the execution of the decree has been occasioned by any person, whether a party to the suit or not, on the ground that the property is not included in the decree, or by any person claiming *bonâ fide* to be in possession of the property on his own account or on account of some other person than the defendant, the Court shall, without prejudice to any proceedings to which the defendant or other person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like powers as if the claimant had been made originally a defendant to the suit, and shall pass such order for staying execution of the decree, or executing the same, as it may deem proper in the circumstances of the case."

MR. HARINGTON said that, when this Section and the following two Sections were last under the consideration of the Committee, it was suggested by the Honorable and learned Chairman that as, under Section 28 as it now stood, it would not only be competent to, but it would be the duty of the Court to investigate any claim

Mr. Currie

which might be preferred under that Section in the same manner and with the like powers as if the claimant had been made originally a defendant to the suit, there seemed to be no good reason for allowing a new suit to contest the decision to which the Court might come in respect of such claim, and that it would be sufficient for the ends of justice if an appeal was allowed on the part of either party who might be dissatisfied with the decision. This suggestion was concurred in by the Honorable Member for Bengal and himself, and he undertook to prepare a new Section in conformity with the opinion expressed by the Honorable and learned Chairman. It had since occurred to him, and the Honorable Member for Bengal to whom he had spoken on the subject agreed with him, that the words in italics in lines 6, 7, and 8, and at the commencement of line 9, as well as the words "the defendant" in lines 13 and 14, which had been introduced by the Select Committee, had been wrongly inserted and that the framers of the Bill had properly restricted the application of the Section to parties other than the defendant. In cases in which the resistance or obstruction was occasioned by the defendant, there was no reason why a fresh suit should be allowed to contest the decision of the Court in respect of such resistance or obstruction. Any dispute arising between the decree-holder and the defendant should be disposed of by the Court charged with the execution of the decree in the miscellaneous Department. The Sections of which he had given notice had been framed in accordance with these views, and he begged now, therefore, to move that the following new Section be substituded for Section 28 :—

"If it shall appear to the satisfaction of the Court that the resistance or obstruction to the execution of the decree has been occasioned by any person other than the defendant claiming *bonâ fide* to be in possession of the property on his own account or on account of some other person than the defendant, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant; and the Court shall, without prejudice to any proceedings to which the claimant may be liable under any law for the time being in force for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like powers as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of this Act, and shall pass such order for staying execution of the decree, or executing the same, as it may deem proper in the circumstances of the case".

Agreed to.

The postponed Section 29 provided as follows :—

"If any person, whether a party to the suit or not, who shall be dispossessed of any land or other immoveable property in execution of a decree, shall dispute the right of the decree-holder to be put into possession of the property, on the plea that it was not included in the decree; or if any person, not being a party against whom the decree was passed, shall dispute the right of the decree-holder to dispossess him of such property under the decree; it shall be lawful for the Court, upon the application of the person so dispossessed, if the application be made within one month from the time of such dispossession, although no resistance or opposition shall have been offered, to summon the party who shall have been put into possession and proceed to investigate the claim of the applicant and pass an order for restitution if the Court shall be satisfied that the applicant ought not to have been dispossessed, or such other order as the Court may deem proper in the circumstances of the case."

Mr. HARINGTON moved that this Section be omitted and that the following be substituted for it :—

"If any person other than the defendant shall be dispossessed of any land or other immoveable property in execution of a decree and such person shall dispute the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bonâ fide* in his possession on his own account or on account of some other person than the defendant, and that it was not included in the decree, or, if included in the decree, that he was not a party to the suit in which the decree was passed, he may apply to the Court within one month from the date of such dispossession; and if, after examining the applicant, it shall appear to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff and the decree-holder as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like powers as if a suit for the property had been instituted by the applicant against the decree-holder."

Agreed to.

The postponed Section 30 provided as follows :—

"Any order passed by the Court under either of the last two preceding Sections shall not be subject to appeal, but the party against whom the order may be pronounced shall be at liberty to bring a suit to establish his right at any time within one year from the date thereof."

MR. HARINGTON moved that this Section be omitted, and that the following be substituted for it :—

"The decision passed by the Court under either of the last two Sections, shall be of the same force as a decree in an ordinary suit, and shall be subject to appeal under the rules appli-

cable to appeals from decrees; and no fresh suit shall be entertained in any Court between the same parties or parties claiming under them in respect of the same cause of action."

MR. LEGEYT said, he was opposed to the alteration. The published returns of the average duration of suits gave a very false idea of the real length of time suits occupied from the commencement till the claim was satisfied, if the time when a decree-holder had to wait for execution was excluded. Sometimes for six or seven years he got nothing, that time being occupied by the disposal of suits to remove attachments. He considered the provision that there should be no appeal a decided improvement.

THE CHAIRMAN drew attention to this, that though the appeal was taken away by the original Section, it allowed what was perhaps a greater evil than an appeal, namely, a regular suit to try the question over again.

MR. LEGEYT was aware of that, but it did not involve the staying execution of the decree,

MR. HARINGTON said that the Section proposed to be substituted for Section 30 gave a right of appeal instead of the right of instituting a new suit. If a new suit was allowed, the unsuccessful party would have his regular appeal, and there might be a special appeal also; so that he did not see how the alteration proposed by him would be less beneficial to the decree-holder than the Section as it now stood. It appeared to him that the contrary would be the case. According to the existing practice a summary enquiry was made, and the order was not only open to a summary appeal, but from the order passed in appeal there might be a special appeal, which again might be followed by a regular suit and two more appeals, so that in every case there might be six stages instead of the two or at the most three stages now proposed. Under the new Code he trusted that the procedure in a regular suit would be nearly as summary as it was now in the Miscellaneous Department, in which case he did not think that the decree-holder would have much cause to complain, and he should therefore press his amendment.

The motion was carried.

Section 26, after providing for the investigation of complaints of obstruction or resistance to execution of decrees for immoveable property, proceeded as follows:—

"If reasonable ground shall be shown to the satisfaction of the Court for believing that the obstruction or resistance in question was occasioned by the defendant or by some other person at his instigation, the Court shall also issue a summons to the defendant calling upon him to appear on the day appointed for investigation."

MR. HARINGTON desired to go back to Section 26, in which some alteration had become necessary, in consequence of the amendments which had been adopted in Sections 28 to 30. The special provision, moreover, for summoning the defendant, contained in the latter part of Section 26, did not seem to him to be required. He should therefore move that all the words after the word "same" in line 12 be omitted.

The motion was carried, and the Section then passed.

MR. HARINGTON then moved that the following new Section be introduced after Section 26:—

"If it shall appear to the satisfaction of the Court that the obstruction or resistance was occasioned by the defendant or by some person at his instigation on the ground that the land or other immoveable property is not included in the decree, or on any other ground, the Court shall enquire into the matter of the complaint and pass such order as may be proper under the circumstances of the case."

Agreed to.

Section 27 was passed after a verbal amendment on the motion of Mr. Harington.

MR. PEACOCK moved that the following new Section be introduced before Section 31:—

"If there be cross-decrees between the same parties for the payment of money, execution shall be taken out by that party only who shall have obtained a decree for the larger sum, and for so much only as shall remain after deducting the smaller sum; and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum; and if both sums shall be equal, satisfaction shall be entered upon both decrees.

"The above rules shall apply to decrees sent to a Court for execution as well as to decrees in the same Court.

"Whenever a suit shall be pending in any Court against the holder of a decree of such Court, by the person or persons against whom the decree was passed, the Court may, if it appear just and reasonable so to do, stay execution

on the decree until a decree shall be passed in the pending suit."

THE CHAIRMAN said, the proposal of the Honorable and learned Member seemed to meet what was desired. He would only ask, with reference to the latter part of the proposed Section, if it would not be an improvement to insert words importing that the Court might do so either absolutely or on such terms as it might consider just. The Court staying execution might consider that there was such a degree of doubt respecting the merits of the pending suit as to make it proper to require security from the plaintiff.

MR. PEACOCK said, he quite agreed in the suggestion of the Honorable and learned Chairman, and thought that the Section would be greatly improved by the introduction of the proposed words.

MR. CURRIE said, he had no objection to the proposed Section, but he felt some doubt whether this Section was altogether effective as a substitute for set-off—probably on a reconsideration of the Bill some provision for a set-off in the case of actual debts might be made.

MR. PEACOCK assented. The present Section was prepared with reference to the discussion at the last Meeting. He thought that, where there were simple debts all being within the jurisdiction of the Court, a set-off should be allowed.

THE CHAIRMAN agreed. The difficulty seemed to be, in the absence of any substantive law of set-off, to say what limit should be laid down to the right. He had no objection to a further consideration of the question.

MR. PEACOCK'S motion with the Chairman's amendment, was then put and carried.

The postponed Section 36 provided as follows:—

"Where the property shall consist of money, or of any security standing in the name of the defendant or to his account and in deposit in any Court of Justice or Office of Government, the attachment shall be made by a notice to such Court or Office, requesting that the money or security may be held subject to the further orders of the Court by which the notice may be issued."

MR. HARINGTON moved that this Section be omitted, and that the following be substituted for it:—

"Where the property shall consist of money or of any security in deposit in any Court of Justice, or in the hands of any Officer of Government, which is or may become payable to the defendant or on his behalf, the attachment shall be made by a notice to such Court or Officer requesting that the money or security may be held subject to the further order of the Court by which the notice may be issued. Provided that, if such money or security is in deposit in any Court of Justice, any question of title or priority which may arise between the decreeholder and any other person, not being the defendant, claiming to be interested in such money or security by virtue of any assignment, attachment, or otherwise, shall be determined by the Court in which such money or security is in deposit.

He said it had been objected to this Section, as at present worded, that it gave larger powers to the Court ordering the attachment of any money or of any security in deposit in any other Court, over such money or security, than to the Court in which the same was deposited, which seemed to be reversing the natural order of things, and the Section proposed by him had been framed with a view to meet this objection.

Agreed to.

Sections 44 to 52 were passed as they stood.

Section 53 prescribed the period for making good the amount of the purchase money, and provided that—

"In default of payment within such period, *then and afterwards as often as such default shall occur*, the deposit, after defraying the expenses of the sale, shall be forfeited" &c.

MR. CURRIE moved that the words in italics be omitted. They were taken from the Revenue Sale Law, and were intended to provide for the contingency of a re-sale. But they were not absolutely necessary, and their meaning was not very clear.

The motion was carried, and the Section then passed.

Section 54 provided as follows:—

"If the proceeds of the sale which is eventually consummated be less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules for enforcing the payment of money in satisfaction of a decree of Court."

MR. CURRIE moved that the words "and such difference shall be treated as part of the purchase money" be added to the Section.

THE CHAIRMAN thought the addition scarcely necessary, for the difference was in fact a part of the purchase money.

MR. CURRIE said, it was not expressed what was to be done with the money levied, and he had therefore moved the addition of the proposed words. But if it was thought that there could be no question as to the effect of the Section as it now stood, he would not press his motion.

The motion was by leave withdrawn, and the Section then passed.

Sections 55 to 59 were passed as they stood.

MR. CURRIE moved that the following new Section, taken from the Revenue Sale Law, be introduced before Section 60 :—

"The certificate shall state the name of the person who at the time of sale is declared to be the actual purchaser; and any suit brought against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs."

Agreed to.

Sections 60 and 61 were passed as they stood.

Sections 62 and 63 were amended so as to correspond with Sections 23 and 24.

Section 64 was passed after a slight amendment on the motion of Mr. Currie.

Section 65 was divided into two separate Sections, which were severally passed, with slight alterations.

Section 66 provided as follows :—

"If the purchaser of any property sold in execution of a decree shall be resisted or obstructed in obtaining possession thereof, the provisions hereinbefore contained, relating to resistance or obstruction to the party in whose favor a suit has been decreed in obtaining possession of the property adjudged to him, shall be applicable in the case of such resistance or obstruction."

MR. HARINGTON moved that this Section be omitted, and that the following be substituted for it :—

"If the purchaser of any immoveable property sold in execution of a decree shall be resisted or obstructed in obtaining possession of the property, the provisions contained in Sections 26 and 27 of this Chapter, relating to resistance or obstruction to a party in whose favor a suit has been decreed in obtaining possession of the property adjudged to him, shall be applicable in the case of such resistance or obstruction."

Agreed to.

MR. HARINGTON moved that the following new Section be introduced after Section 66 :—

"If it shall appear that the resistance or obstruction to the delivery of possession was occasioned by any person other than the defendant claiming a right to the possession of the property sold as proprietor, mortgagee, lessee, or under any other title, or if in the delivery of possession to the purchaser any such person claiming as aforesaid shall be dispossessed, the Court, on the complaint of the purchaser or of such person claiming as aforesaid, if made within one month from the date of such resistance or obstruction or of such dispossession as the case may be, shall enquire into the matter of the complaint and pass such order as may be proper in the circumstances of the case. The order shall not be subject to appeal, but the party against whom it is given shall be at liberty to bring a suit to establish his right at any time within one month from the date thereof."

Agreed to.

Sections 67 to 69 were passed as they stood.

MR. HARINGTON said, the Sections which he was anxious to see introduced in the part of the Bill to which the Committee had now come, had been suggested to him in a great measure by the amendments to Sections 72 and 76 of the same Chapter, of which the Honorable Member of Council opposite (Mr. Ricketts) had given notice, and which they would have to consider presently. The first of these Sections appeared to him to raise the whole question of imprisonment for debt, and as to whether, if a judgment debtor, on being arrested, surrendered or placed at the disposal of the Court, whatever property he might be possessed of, or should be able to satisfy the Court of his inability from want of means to satisfy the decree, he should still be subjected to the disgrace of being sent to jail, and of being confined therein though only for a brief period. The amendments proposed by the Honorable Member of Council, if adopted, would not interfere with the power now possessed by a judgment creditor of causing the imprisonment of his judgment debtor in every case, but they seemed to regard that imprisonment rather as a punishment for indebtedness than as a means of enforcing payment of the

debt, while the maximum period of imprisonment fixed by the first of the Honorable Member's amendments, when the amount of the decree did not exceed the sum of fifty Rupees, was so short that he thought it would be found that the great majority of persons by whom that small sum would generally be owing, would elect to go to jail for thirty days rather than pay the amount. It was on this ground chiefly that he objected to the Honorable Member's amendments, which appeared to him to proceed on an erroneous principle. It must be remembered that, under the law as it now stood, and the Bill before the Committee did not propose to introduce any change in that respect, no judgment debtor could be imprisoned except at the instance of the judgment creditor and at his expense. If, therefore, imprisonment for debt was to be by way, not of coercion, but of punishment, of what benefit, it might be asked, would it be to the judgment creditor who, after the expiration of the time for which the judgment debtor could be detained in custody, would often find himself in a worse position than when he took out process of arrest against the person of his debtor, inasmuch as he would have had to feed him in the interval, so that, if it was considered correct in principle that imprisonment for debt should be of a punitive and not of a coercive character, he submitted that the judgment creditor should at least be relieved from the charge of maintaining the judgment debtor while in jail, which should be borne by the Government. No doubt imprisonment of every kind, whether under Civil or Criminal process, or whether undergone in the Civil or Criminal jail, carried with it some degree of punishment, the one being inseparable from the other; but that the punishment of the judgment debtor was not what was aimed at in his imprisonment, and that his confinement was intended merely as a process to compel payment of what he owed, was, he thought, clear from the fact that, as soon as the judgment debtor surrendered whatever property he possessed, and showed that he had not been guilty of any fraudulent conduct as regarded the means at his disposal for satisfying the decree passed against him, he became entitled to his release, which he could claim as of right, although the value of the property surrendered might fall far short of the amount of the judgment creditor's claim. It was this principle which he was anxious to see extended, and instead of confining the application of it to cases in which the judgment debtor was actually in jail, he would allow a judgment-debtor, on being arrested, to obtain his discharge from custody without going to jail, on the same terms as he might claim his release after going to jail, namely, by surrendering whatever property he possessed and satisfying the Court that his inability to pay the claim in full arose from no dishonest conduct on his part. This was not a new idea. In the Code of Civil Procedure drawn up by Mr. Mills and himself, they proposed that no debtor should be imprisoned in execution, if he satisfied the Court that he had done his best to pay the debt, and had no property or effect remaining from which the debt could be discharged, and in their remarks on this Section they observed that—

"with the view of mitigating the law of arrest, in order that it might operate with less severity on the honest debtor, they had made provision that no debtor should be imprisoned if he could show to the satisfaction of the Court that he had done his best to pay the debt, and that the Court might at any time suspend execution of a decree upon proof of the inability of the debtor from any temporary cause to discharge the debt or damage awarded against him."

With these observations he would move that the following new Section be introduced before Section 70:—

"Any person arrested under a warrant in execution of a decree for money may, on being brought before the Court, apply for his discharge on the ground that he has no present means of paying the debt, either wholly or in part, or, if possessed of any property, that he is willing to place whatever property he possesses at the disposal of the Court. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family, and the necessary implements of his trade,) and of the places respectively where such property is to be found, or shall state that, with the exceptions above-mentioned, the applicant is not possessed of any property, and the application shall be subscribed and verified by the applicant in the

manner hereinbefore prescribed for subscribing and verifying plaints."

MR. RICKETTS had no objection to offer to the proposed Section. His object was to proportion a man's sufferings to his sins. As the 72nd Section then stood, it authorized imprisonment for two years for the smallest debt; according to the old law the principle which he supported was in some measure preserved. But as he had no objection to what was proposed, he would reserve what he had to say until Section 72 was brought forward.

The motion was then put and carried.

MR. HARINGTON moved that, after the above Section, the following new Section be introduced:—

"Upon such application being made, the Court shall examine the applicant in the presence of the plaintiff or his pleader as to his then circumstances, and as to his future means of payment, and shall call upon the plaintiff to show cause why he does not proceed against any property of which the defendant is possessed, and why the defendant should not be discharged; and should the plaintiff fail to show such cause, the Court may direct the discharge of the defendant from custody. Pending any enquiry which the Court may consider it necessary to make into the allegations of either party, the Court may leave the defendant in the custody of the Officer of the Court to whom the service of the warrant was entrusted, on the defendant making the necessary deposit for paying the fees of such Officer, or if the defendant furnish good and sufficient security for his appearance at any time when called upon while such enquiry is being made, his surety or sureties undertaking in default of such appearance to pay the amount mentioned in the warrant, the Court may release the defendant on such security."

Agreed to.

MR. HARINGTON moved that, after the above Section, the following new Section be introduced:—

"The discharge of the defendant under the last preceding Section shall not protect him from being arrested again and imprisoned, if it should be shown that, in the application made by him, he had been guilty of any concealment or of wilfully making any false statement respecting the property belonging to him, whether in possession or in expectancy or held for him in trust, or had fraudulently concealed, transferred, or removed any property, or had committed any other act of bad faith; nor shall such discharge exempt from attachment and sale any property then in the possession of the defendant, or of which he may afterwards become possessed."

THE CHAIRMAN said, he was not quite clear as to this Section. His doubt was that, although this was a sort of Insolvent law, there was no provision for distribution among all the creditors. On the other hand, the right of arrest was suspended without giving the particular decree-holder a preferable claim to the debtor's future property. It seemed unjust to take all his present and future property for the satisfaction of the particular decree-holder. It was much to be regretted that, in consequence, he supposed, of the difficulties of the machinery, the Code must be defective for want of provisions for the distribution of the assets of an Insolvent, and also for the administration of the estates of deceased persons.

The Section was then put and agreed to.

Sections 70 and 71 were passed as they stood.

Section 72 limited imprisonment for debt to two years.

MR. RICKETTS having enquired what would be the operation of the amendments just carried by Mr. Harington, said, he thought they might suffice without his amendment.

MR. HARINGTON explained that the effect of his amendment, if carried, would be that a judgment debtor who, on being arrested, could satisfy the Court of his inability to pay the debt, need never go to jail at all.

The Section was then put and carried.

Sections 73 and 74 were passed as they stood.

Section 75 provided for applications for discharge on a surrender of the whole of the debtor's property.

MR. PEACOCK asked, whether there should not be some power given to the Court to deal with cases in which debts had been fraudulently contracted. Supposing the debtor was willing to give up all his property, but the Court was satisfied that he had contracted the debt fraudulently or without having any prospect of paying it. In England the Court might commit him to custody. By the Statute 7 and 8 Vic. c. 96, s. 57, imprisonment for a debt below £20 was abolished, and all such debtors were authorized to be discharged out of custody. But there were many remonstrances by tradesmen

against that law, and in consequence the Statute 8 and 9 Vic. c. 127 was passed. That Statute gave a power to summon a judgment debtor before a Commissioner of Bankruptcy or Court of Requests. The debtor appearing was examined, or failing to appear he might be committed to prison. If he had been guilty of fraud in contracting the debt, or having wilfully contracted it without reasonable prospect of being able to pay it, he might be committed to prison.

The English County Court Act, 9 and 10 Vic. c. 95, repealed this Act as to all places having Small Cause Courts established under the Act. The jurisdiction of such Courts (then limited to £20) had since been extended. The present law was that, if a man obtained credit under false pretences or by means of fraud, or wilfully contracted a debt without reasonable expectation of being able to pay it, he might be committed to the Common Jail or House of Correction. They could not extend that provision to India in consequence of the difficulties of knowing what persons to exempt from its operation, but he felt some doubt whether the present Clause should stand so as to apply to persons who had been guilty of fraud in contracting debts or who had contracted debts without any probable means of paying them. Under the Insolvent Act the Court could commit such a debtor to custody, or leave him to the mercy of his creditors; it did not absolutely discharge him. He should wish to propose some such words as those in the Insolvent Act.

MR. CURRIE said, it seemed to him that the legitimate object of a suit in the Civil Court was simply to recover money due. If the defendant satisfied the Court that he had not the means of paying it, and gave up all his property, it would seem that the Civil Court had discharged its duties, and that it was hardly its province to punish a man for having committed what might be considered a fraud in contracting a debt for which he had not probable means of payment. If there was any fraud in the transaction before the Court, the previous Section provided for the debtor being detained in custody, and he did not think it necessary to go farther.

THE CHAIRMAN said, the Code gave to the creditor who had been defrauded by an actual fraud, though perhaps one not within reach of the Criminal Law, the option of keeping his debtor in prison for any time less than two years. The proposal was to extend that option to a creditor who had been defrauded by that species of moral fraud which consisted in a man recklessly contracting debts which he knew he would be unable to pay. The object of the Clause now under discussion was to prevent the imprisonment of a man who was not guilty of fraud and who had done what he could to pay his debt.

There was nothing inconsistent in limiting the indulgence to really honest debtors: if a man recklessly, and therefore dishonestly, incurred the debt, let him be left to the general law of imprisonment.

MR. HARINGTON thought that the proposed provisions would be inoperative in the Mofussil.

MR. PEACOCK said, he would not press his amendment.

The Section was then passed as it stood.

Section 76 provided as follows:—

"A defendant once discharged shall not again be imprisoned on account of the same decree, except under the operation of the last preceding Section, but his property shall continue liable under the ordinary rules to attachment and sale until the decree shall be fully satisfied."

MR RICKETTS said, he had given notice of an addition to this Section, but since it had been printed he had seen occasion to alter the amendment which he proposed. It was true that, as the Section stood, it was in conformity with the laws of 1806 and 1850. His object was that the old man should not for ever sit on the shoulders of the debtor, but that he should be discharged from his debt. He could not think such a provision suitable to the state of things in this country. He had originally given notice of an amendment empowering the Court to give an absolute discharge to the extent of five hundred Rupees. Upon further advice, he was afraid to go so far. He believed that such a law would be a great blessing to all the poorer classes of natives. A man now got a decree and

held it over his debtor for the remainder of his life. There were other Code Makers besides themselves. By Clause 28 of the Sonthal Code, it was provided that—

"Imprisonment for debt is altogether abolished."

Clause 30 provided that—

"If a Sonthal appear before a Hakim and request to be released from his debts, his statement shall be taken on solemn affirmation as to the amount thereof, and his means of discharging it, and a day shall be fixed for the appearance of his creditors, of which due notice will be given them. The Majee of applicant's village, and applicant himself, with all the male members of his household, shall be warned to appear on the same day, and the Hakim shall then make full enquiry, and if satisfied that the applicant's statement is true as to the number and names of his creditors, and the amount due to each, and the extent of his property, he shall take measures to sell or transfer the latter to the creditors, and give the applicant a release in full from all debts due to the creditors whom he has named and upon whom notice has been served;"

and then this Clause proceeded to provide—

"Release under this rule is absolute as regards all property acquired by the Insolvent after release. Property which he may not have surrendered at his release is always liable when discovered, and at the same time Insolvent may be punished as if for a false claim."

The Sonthal Pergunnah was thus in advance of all the rest of India, which had no Insolvent Code. He did not however go so far. He only proposed that, when the debt did not exceed a hundred Rupees, the Court should be allowed to give an absolute discharge.

Such a law, it was possible, might increase the interest demanded on small debts. It would not have that effect where the borrower was a man of substance and of character, but if it stopped altogether an advance to a person of a different class, this he thought would be no evil. He then moved that the following be added to the Section—

"Unless the decree shall be for a sum less than one hundred Rupees and on account of a transaction bearing date subsequent to the passing of this Act. When the decree shall be for a sum less than one hundred Rupees and on account of a transaction bearing date as above, the Court may declare a defendant who shall be discharged as aforesaid absolved from further liability under that decree."

MR. PEACOCK asked, if it ought to apply to every case. Suppose a man took away his neighbour's cow and sold it, and then told the owner—"I have only one Rupee; here it is—" should he be discharged. There were certain cases, for example criminal conversation, slander, &c., in which it would be wrong to give an absolute discharge. He had no wish to offer opposition, but he thought it should be confined to cases of contract.

MR. HARINGTON said, his objection to the amendment proposed by the Honorable Member of Council was, that it would put the vigilant or active judgment creditor, at whose instance the judgment debtor had been arrested and sent to jail, in a worse position than all other creditors of the same person. It was not proposed to release the judgment debtor from all his debts to whomsoever owing, but only from that particular debt the non-payment of which had led to his being imprisoned. The judgment creditor who took out process of arrest against the person of his debtor had committed no wrong; he had simply been active. Why then should he be placed upon a different footing from the other creditors? Again, if the amendment was carried, a judgment creditor might abstain from arresting the person of his judgment debtor lest the result of his imprisonment should be his discharge from further liability, but he would still hold his decree over him, and there would be nothing to prevent him from seizing and selling the property of his judgment debtor as fast as he acquired any; from that the amendment of the Honorable Member would not relieve the judgment debtor, so that he did not think that much would be gained by the adoption of the amendment, and he should prefer to leave the Section as it stood.

THE CHAIRMAN said, all the Sections were open to the objection that they provided a rude and imperfect Insolvent law. The judgment creditor got the fat as well as the lean, for, if his debtor was discharged, the creditor on the other hand got all the property in preference to all other creditors, and not *pari passu*. So far he had the advantage: the disadvantage was that he alone was prevented from going against the future property when his debt was limited to a hundred Rupees. He was in favor of the principle of letting a man start fair again if he relinquished all his property.

Mr. Ricketts

Mr. PEACOCK thought that the first objection made by the Honorable Member for the North-Western Provinces was not so tenable as the second, for every creditor had the same power. As to the second objection, he should vote for the amendment of the Honorable Member (Mr. Ricketts), because, if the creditor chose to imprison his debtor, and the Court afterwards thought he should be discharged, it seemed reasonable that it shou'd be an absolute discharge, the creditor choosing that remedy must be satisfied with the discharge of his debtor.

Mr. RICKETTS' motion was then carried, and the Section agreed to.

Section 77 was passed after a verbal amendment.

Sections 78 to 90 were passed as they stood.

Mr. PEACOCK said that, though it might be some what irregular, he would ask to return to Section 72. It had occured to him, when the Honorable Member (Mr. Ricketts) withdrew his amendment, that two years was too long a period of imprisonment, and he was about to suggest a shorter period. The Small Cause Court Act both here and in England provided a limit of six months when the debt was five hundred Rupees.

It was reasonable, especially as the Honorable Member for the North-Western Provinces proposed to extend that law, that there should be the same limit.

MR. CURRIE said, he entirely concurred so far as the limit of six months was concerned, but doubted whether they should go farther: the object was not to punish by imprisonment but to coerce; a poor man might think it better to go to jail for three months than to pay a debt of fifty Rupees.

MR. PEACOCK said, even in the case of a felony, a distinction was made.

Mr. HARINGTON—Yes, but in a case of felony imprisonment was intended as a punishment.

MR. PEACOCK continued—The object was to compel the debtor to give up his property; the Code gave the creditor power to take it, and to bring the debtor before the Court for examination; it was too severe also to give him the power to lock up his debtor for a long period.

THE CHAIRMAN said, admitting the principle (that the debtor was locked up to make him disclose his property), then, if six months was the presumable period of imprisonment, which, rather than undergo, he would pay five hundred Rupees, if he had the means of paying, it might be supposed that, given the same means, he would rather pay fifty Rupees than undergo three months' imprisonment. No doubt a ryot whose time was of no very high value might prefer imprisonment to payment, but that was not the class of people who had the means of concealing their property, which consisted perhaps of bullocks, or something not capable of concealment. If the debtor really possessed property, he would ordinarily be a person whose time would be of such value that he would gladly pay rather than undergo imprisonment. He thought that in principle there was nothing inconsistent in the proposed amendment.

MR. HARINGTON said, they had just adopted a Section which rendered imprisonment under certain circumstances payment in full of a debt, and it behoved them to be careful that they did not make the period of imprisonment so short as to hold out a strong inducement to judgment debtors generally to go to jail rather than make an effort to pay what was owing by them. The object in view in imprisoning a party against whom a judgment had been given, was not only to oblige him to disclose his property, but also to compel him to make some arrangement for satisfying the claim either by instalments, giving security for their payment, or in some other way, or to induce his friends to come forward to assist him.

THE CHAIRMAN said, the amendment which had been adopted only gave the Court power (if it thought fit to use it) to discharge the debt absolutely.

MR. PEACOCK'S amendment was put and carried, and Section 72 then passed.

Section I Chapter VIII was passed after verbal amendments.

Sections 2 to 10 were passed as they stood.

Section 11 provided as follows:—

"It shall be in the discretion of the Appellate Court to demand security for costs from the appellant or not as it shall see fit, before the respondent is called upon to appear and answer."

MR. CURRIE moved that the following proviso be added to the Section:—

"Provided that the Court shall demand such security in all cases in which the appellant is residing out of the British Territories in India and is not possessed of any land or other immoveable property within those territories independent of the property to which the appeal relates; and in the event of such security not being furnished at the time of presenting the memorandum of appeal, or within such time as the Court shall order, the Court shall reject the appeal."

Agreed to.

Sections 12 to 27 were passed as they stood.

Section 28 was passed after an amendment.

Sections 29 to 35 Chapter VIII, Sections 1 to 5 Chapter IX, and Sections 1 to 3 Chapter X, were passed as they stood.

Section 4 Chapter X was passed after an amendmeut.

Sections 1 to 5 Chapter XI., and Sections 1 and 2 Chapter XII, were passed as they stood.

Sections 3 and 4 Chapter XII were passed after verbal amendments.

Sections 5 to 7 Chapter XII, and Schedules A, B, and C were passed as they stood.

The postponed Section 14 Chapter IV was passed as it stood.

MR. LEGEYT moved that the following new Sections be introduced after the above:—

"But if the defendant points out any of his property for sale in preference to that specified by the plaintiff, the property so pointed out shall be first sold. Such implements of manual labor and such cattle and implements of agriculture as may, in the judgment of the Court from which the process issues, be indispensable for the defendant to earn a livelihood in his calling or trade, shall be exempt from attachment.

Land and its crop, of whatever kind, shall not be attached and sold separately until after the crop has been reaped or gathered.

Second. When corn or other production of khalsa land paying annul rent to Government is attached and sold, the Collector or his officers may prevent its being sold or carried off such lands, unless the purchaser shall pay the amount due on account of the revenue; but in no case shall the purchaser be liable for more than one year's revenue.

Third. The same right of detention for arrears of rent, similarly restricted, shall be exercised by a landholder where his tenant's corn or other production of the soil is attached."

MR. HARINGTON said, during the recess he had carefully considered the amendments which the Honorable Member for Bombay wished to see introduced in the part of the Bill now before the Committee, and the conclusion to which he had come in regard to them was that, with exception perhaps to the second clause of the first amendment, they would not benefit either the judgment creditor or the judgment debtor. It had often occurred to him to witness, and he had done so with surprise and regret, the different treatment received from our Courts by the same party in the successive characters of plaintiff and decree-holder. So long as he appeared in the former character only, he found the Court willing and anxious to afford him assistance and to expedite the decision of the suit as far as lay in its power. This was no doubt all very proper. But the scene changed; the second act of the drama commenced; the party who had hitherto appeared in the sober garments of a plaintiff, now came upon the stage in the gayer habiliments of a decree-holder, and in that character he fully expected, and not unreasonably, that he should speedily attain the end which he had in view in instituting the suit. But he quickly discovered his mistake; he now found that all the sympathies of the Court, of which, so long as he was only a suitor for redress, he was the object, were transferred to the defendant; he was deemed an inexorable creditor; the defendant was regarded with feelings of compassion; in fact, the treatment which he received was such that he was not sure that in getting a decree he had not committed some crime; at any rate he looked back with regret to those comparatively happy days when he was a plaintiff only. Now all this consideration for the defendant might be very benevolent, but the benevolence was of that character which was most fitly described by the epithet "speculative;" it was speculative

benevolence, which was often more injurious to its object than a sterner line of conduct would be. He (Mr. Harington) had himself seen numerous instances in which, had the property seized by a judgment creditor in execution of his judgment been at once sold, and the proceeds applied to the liquidation of the claim, the debt would have been paid, and the debtor would have been a free man; but Mr. Speculative Benevolence intervened, pleaded for delay, and otherwise assisted the judgment debtor in throwing obstacles in the way of the decree-holder, and in the end, instead of a portion of the judgment debtor's property being found sufficient to satisfy the decree, it became necessary to sacrifice the whole of the property possessed by him, and still a balance remained. The amendments proposed by the Honorable Member for Bombay appeared to him to furnish an illustration of these remarks. In connection with the first amendment, he would take the case of the judgment debtor's horse and cow which had been put by the Honorable Member at the last meeting of the Committee. A party obtained a decree for two hundred Rupees, and in execution seized a horse belonging to the judgment debtor, worth about that sum, or it might be a little more, and requested that it might be sold; but the judgment debtor did not wish his horse to be sold; he had no idea of losing his evening ride, and he said to the Court, take my cow and sell that instead. Under the first amendment proposed by the Honorable Member for Bombay the Court would have no alternative but must sell the cow. Well, the cow was sold, and brought fifty Rupees; then the horse had to be sold and realized two hundred and fifty Rupees. In this case he would ask how was the judgment debtor benefited; had the horse been sold first, in accordance with the request of the judgment creditor, the cow would have been saved, and the judgment debtor's family would have continued to enjoy its milk, whereas, in consequence of the option given by the first amendment, both horse and cow had been sacrificed. Then came the amendment which declared that land and its crop of whatever kind should not be attached and sold separately until after the crop had been reaped or gathered. Why not? If the judgment creditor was content to sell the standing crop alone in the expectation that the price of it would be sufficient to satisfy his demand, why compel him to sell the land also? why oblige him to deprive the judgment debtor of perhaps the only means that he possessed of supporting himself and family not only for a single year, but for all future time, which might be the consequence of selling his land as well as the crop standing upon it? and what interest would the judgment debtor have in looking after the crop after its attachment, or in watering and weeding it, and should it be destroyed by blight or drought, would not the loss fall upon him, and not upon the decree-holder? For these reasons he considered the amendments proposed by the Honorable Member for Bombay objectionable, and he should therefore vote against them.

MR. RICKETTS said according to his recollection the Honorable Member for Bombay had withdrawn a part of his proposed amendment.

[MR. LEGEYT signified dissent.]

MR. RICKETTS resumed.—He would prefer that the amendment should run thus—that standing crops should not be sold without the consent of the cultivator—he would not allow standing crops to be sold under any circumstances, in execution of a decree; no one was benefited by such a proceeding. Standing crops could now be sold for arrears of revenue, but it was seldom that any one applied for their sale, the expense was so great—when such an application was made, it was usually from some motive of revenge or desire to injure. What with the expense of reaping, carrying, storing, &c., nothing was left for the decree-holder. Moreover it might be argued that it was unfair to allow the decree-holder to deprive the debtor of food for himself and his family.

MR. HARINGTON said, the motion only proposed that the land and the crop standing thereon, should not be sold separately, not that standing crops should on no account be sold in execution of a decree. The present

motion made no objection to the standing crop being sold with the land.

MR. CURRIE said, he quite agreed that it was very inexpedient that standing crops should be attached and sold in execution of decrees. He supposed they might according to the law be sold at any time after the land was sown, or as soon as the crop began to grow, in that case they would realize but little, whereas, if allowed to come to maturity, the case would be very different. Moreover, the crop was hypotheticated to the landlord for the rent, and the claim of the landlord would often conflict with that of the decree-holder. So long as this crop was in the ground, and until it had been reaped or gathered, he thought it could hardly be considered as property liable to attachment.

MR. PEACOCK said, he also had supposed that the amendment had been withdrawn. The debtor might say—"sell my cow," but when sold, a third person might come forward asserting that the cow was his property, whereas the debtor had a horse which was his undoubted property. Was the plaintiff to be involved in another suit because of this? One of the proposed exemptions was "cattle and implements of Agriculture"; why was Agriculture so much looked after? The hackeryman's hackery and bullocks were seized, though he might be prevented earning his livelihood by the loss of them, but if the bullocks were employed in Agriculture, they were to be privileged, the only assignable reason was that the interests of landlords were thereby protected. They might be sold for revenue, because there the Government was concerned, but if it was right to sell them for revenue, why should they not be sold for other claims? Again, implements of manual labor were exempted, but nevertheless the workman might be locked up in prison so that he could not use them. Again, as to land and crops; in most cases they belonged to different persons; if the crops belonged to the ryot, they could not be sold for the Zemindar's debt—but was not the crop to be sold for the ryot's debt? It might be ripe, yet the ryot was to be allowed to reap, and to have full opportunity of making away with it. Whatever property the execution debtor had, he would allow it to be sold. He would oppose the amendment.

MR. RICKETTS referred to Regulation V. 1812, Section XIV, which provided that—

"ploughs and other implements of husbandry, bullocks and other cattle employed in Agriculture, shall not be subject to distress and sale on account of arrears of rent, although the tenant from whom such arrears may be demanded shall not possess other property sufficient to make good the arrear."

MR. PEACOCK said, in such cases there was no decree of a Court, but the landlord distrained by virtue of the authority which the law gave to him. It might be that no rent was really due to him. But it was very different allowing the execution creditor, whose claim had been investigated, to execute his decree against his debtors' property.

The question being put, the Council divided:—

Ayes 2.	*Noes* 6.
Mr. LeGeyt.	Mr. Forbes.
Mr. Ricketts.	Mr. Harington.
	Sir Arthur Buller.
	Mr. Currie.
	Mr. Peacock.
	The Chairman.

So the motion was negatived.

The Preamble and Title were passed as they stood, and the Council having resumed its sitting, the Bill was reported.

LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

Mr. CURRIE gave notice that he would, on Saturday the 6th Instant, move the first reading of a Bill for the registration of Literary, Scientific, and Charitable Societies.

RYOTWAR SETTLEMENTS (MADRAS PRESIDENCY)

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table, and referred to the Select Committee on the Bill "for the better recovery of arrears of Revenue under Ryotwar Settlements in the Madras Presidency."

Agreed to.

PENAL CODE.

MR. CURRIE moved that two communications received by him from the Bengal Government be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

NABOB OF SURAT'S PROPERTY.

MR LEGEYT moved that a communication received by him from the Bombay Government regarding the distribution of the private property of the late Nabob of Surat, be laid upon the table and printed.

Agreed to.

OATHS.

MR. Forbes gave notice that at the next meeting of the Council he would move the first reading of a Bill to provide for the admission, in certain cases, of testimony on Oath.

CIVIL PROCEDURE.

MR. PEACOCK gave notice that he would, at the next meeting of the Council, move for the re-publication of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter."

The Council adjourned.

Saturday, November 6, 1858.

PRESENT:

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

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

POLICE CHOWKEYDARS (BENGAL.)

THE CLERK presented to the Council a Petition of Inhabitants of Dacca concerning defects in the administration of Act XX of 1856, "to make better provision for the appointment and maintenance of Police Chowkeydars in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal."

MR. CURRIE moved that the above Petition be printed.

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL.)

THE CLERK reported to the Council that he had received from the Home Department, a copy of an Extract from Proceedings in the Foreign Department respecting the evasion of the provisions of Act I of 1857 (to prevent the over-crowding of vessels carrying Native Passengers in the Bay of Bengal) by vessels clearing out from Foreign Ports within the Coast limits of the Madras Presidency.

MR. FORBES moved that the above communication be referred to a Select Committee consisting of Mr. Peacock, Mr. LeGeyt, Mr. Currie, and the Mover.

Agreed to.

MERCHANT SHIPPING ACT 1854. (SINGAPORE.)

THE CLERK reported that he had received from the Home Department a copy of a Despatch from the Court of Directors regarding the Merchant Shipping Act 1854 as it affects Singapore.

MR. CURRIE moved that the above communication be printed.

Agreed to.

CIVIL PROCEDURE.

THE CLERK reported that he had received from the Home Department, for consideration in connection with the Code of Civil Procedure, an Extract of a communication from that Department to the Bengal Government on the subject of relieving the Bengal Sudder Court of a large mass of its least important business, in order to allow the regular number of Judges to dispose of the most important portion satisfactorily, and without falling into arrears.

MR. PEACOCK moved that the above communication be printed.

Agreed to.

DELHI AND MEERUT.

MR. PEACOCK presented the Report of the Select Committee on the Bill "to remove from the operation of the General Laws and Regulations