LEGISLATIVE COUNCIL

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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

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1858.

the word "estate" in the 18th line of Section I of the above Bill, and to substitute the following for them:—

"If it be not agreed as aforesaid, and the Revenue Authorities and the proprietor or proprietors agree that the alluvial land shall be assessed and settled as a separate estate, it may be settled accordingly, and such separate settlement shall be permanent if the settlement of the original estate is permanent. Whenever alluvial land is assessed separately, it shall thenceforward be regarded and treated as in all respects separate from and independent of the original estate. If the Revenue Authorities and the proprietor or proprietors cannot agree that the revenue assessed shall be added to the original jumma, or that the alluvial land shall be assessed and settled as a separate estate, the land shall be let in farm for a period not exceeding years, reserving Malikana at the usual rate to the proprietor or proprietors for the time being of the original estate."

MR. PEACOCK also gave notice that he would on the same day move to introduce the following new Section after Section II of the above Bill:—

"Whenever a settlement of alluvial land is made, the Revenue Officer shall determine whether any and what additional rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original estate, to the proprietor or proprietors or to the farmer or farmers of the original estate; and if the alluvial land be let on lease under this Act, whether any and what rent shall be payable by the person or persons holding such under-tenures, to the farmer or farmers of the alluvial land."

MADRAS MARINE POLICE.

MR. FORBES moved that Mr. Ricketts be requested to take the Bill "for the maintenance of a Police Force for the Port of Madras" to the President in Council in order that it may be submitted to the Governor General for his assent.

Agreed to.

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

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill "for the relief of persons who, in consequence of the recent disturbances, may have been prevented from instituting or prosecuting suits or appeals in the Courts of the North-Western Provinces within the period allowed by law" to the President in Council in order that it may be submitted to the Governor General for his assent.

Agreed to.

INSOLVENT DEBTORS (MOFUSSIL).

MR. LEGEYT gave notice that he would on Saturday the 31st instant move that the Report of the Select Committee on the subject of a Law for the relief of Insolvent Debtors in the Mofussil be adopted.

NABOB OF SURAT.

MR. PEACOCK gave notice that he would on the same day move that Meer Jaffeer Alee Khan be informed that the Legislative Council have considered his Petition and that they see no sufficient ground for complying with the prayer thereof or for amending Act XVIII of 1848.

The Council adjourned.

Saturday, July 31, 1858.

PRESENT:

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

Hon. H. Ricketts,	H. B. Harington, Esq.
Hon. B. Peacock,	and
P. W. LeGeyt, Esq.	H. Forbes Esq.
E. Currie, Esq.	

GOVERNOR-GENERAL'S ABSENCE.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor-General had given his assent to the Bill "to continue in force for a further period of six months Act IV of 1858 for providing for the exercise of certain powers by the Governor-General during his absence from the Council of India."

STAMP DUTIES (BENGAL).

THE CLERK presented a Petition from the Rajah of Burdwan stating that the Petitioner's pecuniary interests were very largely involved in the success of the proposed Bill "to amend Regulation X. 1829 of the Bengal Code" for the

collection of Stamp Duties), and praying (with reference to the Petition of Zemindars of West Burdwan presented on the 6th Instant) that the Petitioner might be permitted to be heard by his Counsel in support of his interests at any time previous to the final consideration of the Bill.

MR. CURRIE said, the Bill had been introduced at the instance of an Agent of the Rajah himself, and its object was to carry out what the Rajah desired. There could, therefore, be no possible reason for his being heard by Counsel. He (Mr. Currie) should move that the Petition be printed and referred to the Select Committee on the Bill.

MR. PEACOCK said, this was a case entirely out of the rule under which parties could be heard by Counsel. The Bill was one affecting, not the Rajah's private rights, but the Stamp Laws generally. He should, therefore, oppose the Motion for referring the Petition to the Select Committee, if the Petition contained nothing else than a prayer to be heard by Counsel.

THE VICE-PRESIDENT suggested that the Petition should be read in full at the table.

The Petition having been read—

THE VICE-PRESIDENT said, although the Standing Orders admitted of persons being heard by Counsel in support of a Bill, it was obvious that, if the Council acceded to the prayer of this Petition, they could not refuse to hear Counsel on behalf of the promoters of the Petition to which it took exception, and this would lead to an indefinite litigation of the question.

MR. PEACOCK said, any reasons which the Rajah of Burdwan might have to urge in support of the Bill, further than those which he had already advanced, he should urge by Petition. This was not a case in which he should be heard by Counsel merely because others had come forward to object to the Bill. As the Honorable and learned Vice-President had very justly remarked, if the privilege were conceded to him, it must also be conceded to those who objected to the Bill; and the result might be an indefinite number of Petitions from other persons to be heard by Counsel. The Rajah was not the only person interested in the Bill. It was a Bill which affected the general Stamp Law; and though, by reason of his large estates, he might be interested in an amendment of the Law to a greater extent than others, yet he was not so peculiarly interested as to entitle him to be heard by Counsel in support of the Bill.

MR. CURRIE said, when he moved that the Petition be referred to the Select Committee on the Bill, he was not acquainted with its contents, and supposed that there may be something in it which might be advantageously considered by the Select Committee. Having now heard the Petition read, however, he begged, with the leave of the Council, to withdraw his Motion.

MR. PEACOCK then moved that the Clerk be requested to inform the Maha Rajah of Burdwan, that this was not a case in which he was entitled to be heard by Counsel in support of the Bill.

Agreed to.

EXCLUSIVE PRIVILEGES TO INVENTORS.

THE CLERK presented a Petition from Mr. George Rogers, Solicitor, praying that Section XXXV of the Bill "for granting exclusive privileges to Inventors," might be so amended as not to revive so much of Act VI of 1856 as provided that exclusive privileges obtained under that Act should cease, unless put into practice in India within two years after the passing of the proposed Act.

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

Agreed to.

SETTLEMENT OF ALLUVIAL LANDS (BENGAL).

THE CLERK presented a Petition from the British Indian Association against the enactment of any Law which might disturb or alter the existing Law as to the proprietary right to lands composed of alluvial formations, and praying that, for the protection of such right, a Clause be inserted in the Bill "to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal", in the terms of the amendment of which notice had been given by the Honorable Mr. Peacock.

ESTATE OF THE LATE NABOB OF THE CARNATIC.

THE CLERK presented a Petition from Prince Azeem Jah Bahadoor praying to be heard by Counsel against the Bill "to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic."

THE VICE-PRESIDENT said, he thought it his duty to bring to the notice of the Council that this Petition must be taken as presented to-day, whereas, under the Standing Orders, it should have been sent in before the Report of the Select Committee on the Bill. He did not wish to throw any technical difficulty in the way of the Petitioner, but to observe that any motion for the reception of this Petition should be accompanied by one for the suspension of the Standing Orders if they were not already suspended. He thought, however, that the Standing Orders had already been suspended in regard to this Bill.

MR. PEACOCK said, they had been suspended only with one object, namely, to enable the Select Committee to present their Report on an earlier day than they would otherwise have done. In consequence of the several Petitions which had been submitted by Prince Azeem Jah, however, the full term of twelve weeks had now elapsed since the Bill had been referred to the Select Committee. If, therefore, the prayer of the Petition presented to-day was to be granted, it would be necessary to suspend the Standing Orders. To him, it appeared that this was a case in which it would be very proper to allow Prince Azeem Jah to be heard by Counsel. He thought, however, it should be distinctly understood that Counsel was to be heard only on the subject of the Bill, and not upon the construction of Treaties, or upon the question whether Prince Azeem Jah was entitled to be recognized as Nabob of the Carnatic or not. The question as to the effect of the Treaty had already been determined by the Government of Madras, by the late Governor-General, and by the Home Authorities. He should now move that the Standing Orders be suspended in order that Counsel on behalf of Prince Azeem Jah Bahadoor be heard on Saturday next at 11 o'clock upon the above Bill.

MR. HARINGTON seconded the motion.

MR. FORBES said, the Honorable and learned Member had said that Counsel should be restricted to advocate the private interests of Prince Azeem Jah, and should not enter upon the construction of Treaties. This, it appeared to him (Mr. Forbes), was a very proper restriction. But he hoped that the Honorable and learned Member would give a distinct engagement that he would move the third reading of the Bill on Saturday next either if Counsel should not appear, or if, appearing, Counsel should fail to satisfy the Council that Prince AzeemJah's rights were injuriously affected by the Bill. The Bill had been introduced in the latter part of March, and read a second time and published for general information in April. It had therefore now been before the Council upwards of four months. Prince Azeem Jah had had all April, all May, all June, and all July to appear by Counsel against it, but either from a sense of his supposed dignity as uncle of the late Nabob, or for some other reason not explained, he had taken no steps whatever in the matter until the end of June. There were other parties besides Azeem Jah who were affected by the Bill. There were many creditors of the late Nabob whose money had been locked up for a great number of years, and who would receive interest at only six per cent. from the date of the Nabob's death. Not a few of these were mercantile men, who could lay their money out to better advantage. He was the last person to oppose any obstacle to any claimant of the estate being heard in support of his just rights; but in doing full justice to Prince Azeem Jah, he thought that the Council should see that it did not do less than justice to the other parties. As four months had already elapsed since the Bill was brought in, he hoped the Honorable and learned Member would not object to give a distinct intimation that if Counsel should not appear on Saturday next in behalf of the Prince or, appearing, should fail to shew that this Bill injuriously affected the interests of his client, he (Mr. Peacock) would move the third reading.

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for Madras. If the delay in the progress of the Bill had been in any way owing to himself, there would have been good reason for requiring it of him; but he thought that the Council would acquit him of any share whatever in the delay, and would trust to him for the performance of his duty at the proper time. He had never shrunk from performing his duty, and he hoped that he never should. There was no reason why the pledge suggested by the Honorable Member, should be demanded of him. He should therefore decline to give it, and would reserve to himself the right of moving the third reading of the Bill whenever he should think fit, so that he might be free to act as circumstances might require. If he should not do so in proper time, there was nothing to prevent the Honorable Member for Madras from moving the third reading.

MR. FORBES said, he had no intention whatever, in his previous remarks, to invade the rights and privileges of the Honorable and learned Member. When on the 3rd Instant the presentation of the Report of the Select Committee on the Bill was postponed for a fortnight, so as to allow time for the arrival of an amended Petition from Prince Azeem Jah, the Honorable and learned Member had himself intimated that

"it must be distinctly understood that on the 17th July the Report of the Select Committee would be presented, unless some fresh Petition should that day come before the Council which would induce it to refer it to the Select Committee for consideration;"

and he (Mr. Forbes) had meant nothing more by his observations than to request that the Honorable and learned Member would see whether it would not be expedient for him to give to-day a similar intimation to that which he had given of his own accord on a former occasion.

MR. PEACOCK'S motion was put and agreed to.

DESPATCH FROM THE COURT OF DIRECTORS.

THE CLERK reported to the Council that the had received from the Under Secretary to the Government of India in the Home Department, a copy of a Despatch from the Court of Directors reviewing the Acts of the Legislative Council for 1857.

SETTLEMENT OF ALLUVIAL LANDS (BENGAL).

THE CLERK stated that he had received a communication from the Acting Secretary to the Indigo Planters' Association applying, on behalf of the Central Committee of the Association, that the consideration of the Bill "to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal," be postponed for at least three months.

MR. CURRIE observed that he must say this was a very unreasonable request.

THE VICE-PRESIDENT said, he did not think that the communication which had been read by the Clerk was such a communication as was admissible under the Standing Orders.

MR. PEACOCK said, if the application to postpone the further consideration of the Bill was one which the Council thought should be entertained, the circumstance that it was made in an informal mode ought not to prevent it from being considered; but it appeared to him that there was no reason for staying the progress of the Bill through the Council.

MR. CURRIE said, he had not given any heed to the form in which the paper was drawn up. When he rose to address the Council, he was under the impression that it was in the usual form, and therefore he was proceeding to explain why the request which it contained, should not be granted. The feeling of the Council seemed to be that the request should not be complied with; but it might be as well to remark that ample time had been given to the Association and others to bring forward any objections which they might have to make to the Bill. The Bill had now been before the Council very nearly five months. Its subject had been fully discussed on the motion for the second reading, and, as was stated at the Meeting of the Association at which this application for delay was resolved on, full reports of the dis-

cussion were published in the newspapers of the 31st March and 8th April. Therefore, it was quite clear that the Association had had full warning and ample opportunity to bring forward whatever it had to say regarding the measure. Now that the Bill was about to be disposed of, the application was most unreasonable.

MR. RICKETTS said, if he thought that the interests of those whom the Association represented, would be injured by the Bill as it stood, he should have been disposed, however informal the nature of the communication presented, to give the time applied for; but he had before him a newspaper report of the proceedings of the Meeting at which the Bill was taken into consideration, and he did not see from it that the Bill would at all injuriously affect the interests of the applicants.

THE VICE-PRESIDENT said, at all events, it was desirable to pass the Bill through Committee to-day. The Association would then have an opportunity of seeing how the Bill was settled, and, if so advised, might object to the third reading of the Bill by a Petition properly framed, and containing such reasons as it might think proper to advance.

FORT OF TANJORE (MADRAS).

MR. FORBES presented the Report of the Select Committee on the Bill "for bringing the Fort of Tanjore and the adjacent territory under the Laws of the Presidency of Fort St. George."

ESTATE OF THE LATE NABOB OF THE CARNATIC.

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

SETTLEMENT OF ALLUVIAL LANDS (BENGAL).

On the Order of the Day for the adjourned Committee on the Bill "to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal" being read, the Council resolved itself into a Committee for the further consideration of the Bill.

MR. PEACOCK said, the Council had determined, by its vote last Saturday, in reference to the first branch of Section I, that the Revenue Authorities should have power to say whether alluvial formations in estates should be settled as part of such estates or not. But the second branch of the Section provided as follows:—

"If the proprietor or proprietors object to such an arrangement, or if the Revenue Authorities are of opinion that a settlement of the alluvial land cannot properly be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessed and settled as a separate estate with a separate jumma, and shall thenceforward be regarded and treated as in all respects separate from, and independent of, the original estate."

He proposed that all these words should be left out of the Section, in order that the following might be substituted for them:—

"If it be not agreed as aforesaid, and the Revenue Authorities and the proprietor or proprietors agree that the alluvial land shall be assessed and settled as a separate estate, it may be settled accordingly, and such separate settlement may be permanent if the settlement of the original estate is permanent. Whenever alluvial land is assessed separately, it shall thenceforward be regarded and treated as in all respects separate from, and independent of the original estate. If the Revenue Authorities and the proprietor or proprietors cannot agree that the revenue assessed shall be added to the original jumma, or that the alluvial land shall be assessed and settled as a separate estate, the land shall be let in farm for a period not exceeding twenty-one years, reserving malikana at the usual rate to the proprietor or proprietors for the time being of the original estate."

After the debate of last Saturday, it was unnecessary to enter into any further discussion of these questions. He would simply mention that the only particular in which the amendment he now moved differed from the amendment of which he had given notice was that it substituted the word "may" for the word "shall" between the words "such separate settlement" and "be permanent." The amendment as it originally stood gave the Revenue Authorities the option of settling alluvial lands as a

separate estate or not; but it required that, when such settlements were made, they should be permanent if the settlement of the original estate was permanent. It might be that, in the absence of any knowledge of the nature of the soil, and of other particulars, the Revenue Authorities might find it inconvenient to make separate settlements of alluvion permanent; and consequently, having no power to make a separate settlement for a term, they might object to make a separate settlement at all. Thus, the proprietors might be injured. The substitution of the word "may" for the word "shall" would enable them to exercise a discretion in the matter.

He had also filled up the blank reserved in the amendment for the number of years during which alluvial land might be let in farm, with the figures 21. He thought a 21-years' lease would give the lessee such an interest in the land as would induce him to improve it. If, however, the Honorable Member for Bengal, who was more conversant with these details, preferred any other number, he (Mr. Peacock) should have no objection to substitute it for that which he had adopted.

MR. CURRIE said, he had two objections to the amendment. The first was that it militated against the principle of the Bill, inasmuch as it gave the Revenue Authorities the option of objecting to a separate settlement of the chur with the proprietor. The principle of the Bill was that the proprietor of alluvial land had in all cases the right to a separate settlement of such land. His second objection to the amendment was that it left untouched the doctrine laid down by the late decision of the Sudder Court, which was to the effect that, when alluvial land was let in farm, it remained attached to the original estate, although it was assessed with a separate jumma, and was entered in the Collector's rent-roll as a separate estate. Both these points had been already so fully discussed, and the vote which the Council had given upon them had so clearly affirmed the contrary principle, that he thought it would be impertinent in him to occupy their time and attention by further argument on the subject. The Honorable and learned Mover of the amendment still maintained that the Revenue Authorities should have authority to object to the separation of the alluvial land from the original estate. But even he did not say that the proprietor should be compelled to incorporate the alluvion with the original estate;—in fact, such compulsion would be impossible; and if the alluvion was not so incorporated, whether it were engaged for by the proprietor, or whether it were farmed, it became *de facto* a separate estate, as had been shewn at the adjourned debate on the motion for the second reading of the Bill by the Honorable Member (Mr. Grant) who, he regretted, was not present to-day. The argument in which the Honorable Member had made this appear, had been so clearly and ably put, that he (Mr. Currie) thought it unnecessary now to detain the Council by going over the same ground again.

It did not occur to him that he need say anything more than to remind the Council of what had transpired on that occasion, and to urge upon them that to adopt this amendment would be to reverse the vote which they had come to then, and to defeat the object of the Bill.

MR. RICKETTS said, as the Honorable and learned Member had substituted the word "may" for the word "shall" in his amendment, his chief objection to the amendment as it previously stood had been removed, because the substitution left it discretionary with the Revenue Authorities whether the settlement of the alluvion should be made for a term or in perpetuity. He had been told by many that what he had said on this subject on Saturday last was in several respects extremely obscure; and he had also been told that, when he modestly said that he would leave it to those learned Members who were better versed in construing Law, to decide which of the two varying opinions held by the Revenue Authorities in 1838 and in 1841 as to the meaning of the Law in question was the correct one—he had, in a manner, neglected his duty;—that, having been so long connected with the Revenue Department himself, he ought to have expressed his own opinion on the question, if he had one. He certainly had an opinion on the question; but as the point then under discussion was strictly a legal one, it had appeared to him that

it was desirable to relieve the Council from a dissertation on a legal point by one who was not a Lawyer. That he had an opinion upon it, however, and that, in former days, he had been bold enough to avow that opinion, he would shew. In the year 1850, when in the Board of Revenue, he, with the concurrence of his colleagues, drew up a paper of instructions for Settlement Officers from which he would read one or two very short extracts:—

"The settlement of the alluvial lands should also be made with the occupant owner. Such lands belong to the proprietor of the estate to which a change in the channel of the river had added it, and his right to it is exactly co-equal with that by which he holds the estate to which the alluvion has attached itself. The proprietors have a right to admission to terms of permanent engagement, whenever they may think fit to demand it, unless the alluvion have been let out in farm for a specified term in consequence of their recusance, and unless the increment be not in a state for permanent settlement; in which cases, the local Commissioner will determine whether a temporary or permanent settlement shall be made, and should the partly entitled to settlement object to the consolidation of the jumma with that of the original estate, the increment shall be assessed as a distinct mehal."

He contended in 1850 for the point for which he was prepared to contend now; but the substitution of the word "may" for the word "shall" in the amendment before the Council, would, if that amendment were adopted, leave the Section very much as it was originally drafted. As originally drafted, the second branch of Section I provided as follows:—

"In cases in which such union is not agreed on, the alluvial land shall be assessed and settled as a separate estate with a separate jumma, and shall thenceforward be regarded and treated as in all respects separate from, and independent of, the original estate."

The substitution of the amendment now before the Council for the second branch of Section I of the Bill as amended by the Select Committee, would have exactly the same effect as the words he had just read would have had—that was to say, the permanent or temporary settlement of alluvial formations when settled separately from the original estate, would be at the discretion of the Revenue Authorities. He had nothing more to urge upon that point.

Mr. Ricketts

But there was one point remaining on which he felt bound to occupy the attention of the Council for a few minutes. There would, he thought, be some uneasiness out of doors as to the effect of the words "unless the increment be not in a state for permanent settlement." The Revenue Authorities, in determining whether a separate settlement of alluvion should be made in perpetuity or for a term, were to take into consideration the condition of the land. Then would come the question—In what state must the land be to warrant a permanent settlement? That allowedly must be a question of great difficulty, and the words might be differently understood by different Settlement Officers. At the Meeting of the Indigo Planters' Association at which this Bill was considered, he observed that Mr. F. A. Goodenough put

"the case of the old bed of a river whose course has been changed;"—and said:—"the chur land formed in the old bed not being subject to increase or diminution, it should be the right of the Zemindar of the parent estate to be able to claim a permanent settlement with himself of the old chur land; for, the chur in question not being subject to change, it seems unfair that the Zemindar and his ryots should be subjected to the extortions of the subordinates in the employ of the Revenue Authorities in the periodical visits for the purposes of re-measurement and re-assessment, &c."

In a case like that, he (Mr. Ricketts) could not imagine that any Settlement Officer would, under the discretion which the amendment before the Council would give him, refuse to grant a settlement of the chur in perpetuity. On the contrary, he thought that he certainly would grant such a settlement; and therefore, if that was all that the Association had to ask, there was no occasion to delay the passing of this Bill. But, as it had been put to him a few days ago, supposing that one half only of alluvial land was under cultivation, should a permanent settlement be refused? Probably, it should not. Then, it might be asked if one-half, or one-fourth, or one-tenth were cultivated, should perpetual settlement be refused? It was utterly impossible to lay down any fixed rule for such cases; and he thought that the duration of the settlement must be left to the discretion of the Revenue Authorities.

MR. HARINGTON said, he had nothing to add to the observations which he had already made on the subject of the present Bill, and he should not have trespassed further upon the time of the Council to-day, but should have contented himself with giving a silent vote in favor of the amendment of the Honorable and learned Member of Council, though he should have preferred the use of the word "shall" to that of the word "may" in the sixth line, were it not that he was anxious to take advantage of the opportunity which the continuance of the debate afforded him, to say a few words in reference to a remark which fell from the Chair on Saturday last, and which imputed to him inconsistency of conduct in that, after having, as a Member of the Select Committee, signed the Report which recommended the passing of the Bill in its present form, he had joined the Honorable and learned Member of Council in proposing a material alteration in Section 1. He could not deny that he had done both these things; and in appearance, therefore, at least, he must admit that his conduct was open to the charge brought against it. But what were the real circumstances? These, with the permission of the Council, he would briefly explain, and the result would, he trusted, be his acquittal of the charge. Previously to the introduction of the present Bill, which had given rise to so much discussion, he had never had occasion carefully to look into the Law of alluvion as existing in this country. He knew, of course, that there was such a Law, and he was not ignorant of its general features; but he could call to mind only a single case in which, during a not very short official career, he had been required to administer its provisions; and the point for determination in the case to which he referred was, not whether the proprietor of an estate to which some alluvial land had become attached, had or had not the right to insist upon that land being incorporated and settled with the original or parent estate, but to which of two contiguous estates, in reference to their peculiar formation, a narrow strip of land belonging to the one being found to intervene between some portion of the other estate and a part of the newly-formed land, the alluvion must be held to have accreted. The consequence was that, when the Honorable Member for Bengal introduced his Bill, he had a very imperfect knowledge of the subject to which it related. He lost no time, however, in endeavoring to make himself master of the Laws bearing on the question; and the result of his investigation of them was a doubt as to the correctness of the construction placed by the Honorable Member upon Regulation XI. 1825, and upon the intention of the framers of that Regulation. This doubt, which was shared in by others, including the Honorable and learned Member of Council on his left (Mr. Peacock), he communicated to the Honorable Member for Bengal; but the Honorable Member did not concur with him. It so happened that, on the day fixed for the second reading of the Bill, he was prevented by indisposition from attending the Meeting of the Council; and the Honorable Member for Bengal, on being made aware of this circumstance, with that courtesy and love of fair play which characterized his every act in which those qualities could be displayed, at once proposed the postponement of his Motion for the second reading of the Bill until the following Saturday. The Motion came on upon that day, and it would be in the recollection of the Council that he (Mr. Harington) opposed the Motion conjointly with the Honorable and learned Member of Council on his left and the Honorable Member for Bombay, but they were in a minority. Subsequently he was appointed a Member of the Select Committee which was directed, in the first instance, to make a preliminary Report, and to suggest any alterations that might be deemed proper in the Bill before it was published, and afterwards to submit the usual Report; and he thought the other Members of the Committee would recollect that at both Meetings of the Committee, he strongly advocated what he still contended for—namely, the right of the proprietor of an estate to which land might become annexed by alluvion, to insist upon the incorporation of that land with the parent estate on the sole condition of his agreeing to pay the revenue assessed upon it; and that he recommended that the Bill should be altered accordingly. The other Members of the Committee, however, did not agree with him; and finding that he stood alone, he consented to sign the Reports presented to the Council; and

he submitted that those Reports would still have been the Reports of the Select Committee, even though he had refused to sign them, and had recorded his dissent, which, properly speaking, he ought to have done, and which he regretted now that he had not done. The next stage in the Bill was the presentation of the Reports of the Select Committee; and on the day on which the second Report was presented, he intimated to the Honorable Member for Bengal that, although he did not intend to propose any amendment of the Bill to make it accord with his views, yet, in the event of the Honorable and learned Member of Council on his left moving such amendment, which he fully expected he would do, he should consider it his duty to support him; and that was what he had done on Saturday last. He would only further observe that the conduct pursued by him in respect to the present Bill, was not altogether without precedent; in proof of which he need only refer to what had taken place during the passage through the Council of the Bombay Municipal Assessment Bill, which had been lately read a third time, and had now become Law. The Honorable Member for Bombay, who had charge of that Bill, candidly told the Council that he was opposed to some of the amendments proposed and adopted by the Select Committee, but that as he had found himself in a minority, he had signed the Report of the Select Committe without making any objection to it, and he afterwards allowed the Bill to pass through a Committee of the whole Council without any opposition on his part. Subsequently, in consequence of the receipt of a representation from Bombay, he himself moved several amendments in the Bill, to which, he (Mr. Harington) understood from what had fallen from him, he had all along been favorable, and some of these amendments were adopted by the Council, notwithstanding that they had previously passed the Bill in the form recommended by the Select Committee, and the Bill had been reported accordingly. Now, he did not recollect that any charge of inconsistency had been brought against the Council at large or against the Honorable Member for Bombay for their conduct in this instance, and he did not consider that they had laid themselves open to such charge.

He had to thank the Council for the indulgent hearing they had accorded to him, and had to apologize for occupying so much of their time in a matter in a great degree personal to himself.

THE CHAIRMAN said, he did not know whether his Honorable friend would be strictly in order in the House of Commons in taking notice of what had taken place a previous day; but he was the last person to oppose any technical objection to an Honorable Member offering any explanation regarding himself, and he was glad of the opportunity which his Honorable friend had now afforded him of withdrawing what he had said last Saturday respecting the consistency of the course which he had adopted with reference to this Bill. He ought to have remembered that his Honorable friend had expressed opinions in the Select Committee on this Bill similar to those which he expressed at the last debate; but he had no recollection of the fact when he spoke, nor indeed could he recall it to mind even now; though he willingly and unhesitatingly accepted the statement of his Honorable friend.

He could not think that it was necessary for his Honorable friend to quote a particular precedent for the course which he had taken in regard to this Bill. It seemed to be part of the normal state of the Select Committees of that Council. It continually happened to him before he came there to read the Report of a Select Committee which, being signed by all the Members of that Committee, and containing no indications of a difference of opinion, might be taken to imply that they were unanimous. Yet, when the Bill got into a Committee of the whole Council, one very soon discovered that this apparent "unanimity was wonderful," in the sense of its being no unanimity at all. For no sooner was the Bill in Committee, than an important debate might arise on an amendment moved by one of the Members of the Select Committee who had joined in signing a Report, recommending that the Bill should be passed as reported. These surprises were inconvenient; and he would venture to suggest that, where any Member of a Select Committee did not agree

in opinion with his colleagues, his dissent should be specified on the face of the Report, so that the Council might come prepared to hear the question raised in Committee of the whole Council, and to discuss it. This, however, was beside the question then before the Council, and he would only repeat his apology to his Honorable friend for the observations imputing inconsistency to him on the last occasion.

With reference to the question raised by the amendment, it seemed to him that the whole difficulty, as indeed the difficulties of the Bill generally, had arisen from the various senses in which the word "settlement" was understood. When he first saw the Bill as it now stood, he confessed he was struck by the latter Clause, because he understood the word "settlement" to import a settlement, whether of a temporary or of a permanent character, between the Revenue Authorities and the proprietor of the land; but he was afterwards assured by the Honorable Mover of the Bill that every Revenue Officer would understand the term as comprehending a lease of the land for a time on the failure of the proprietor to engage for it; and believing this to be the case, he did not see any objection to the Clause as it stood. He wished further to observe that, if it was proposed so to amend the Clause as to distinguish between a temporary settlement and a settlement which would be permanent or would extend to the same period as the settlement of the original estate, he should have no objection to the amendment discussed at the last Meeting, and would prefer that the proprietor of an estate should have the option, on such a settlement, of incorporating an alluvial formation with the estate, and holding both subject to one consolidated jumma. His reason for supporting on the last occasion the Clause as it stood was that it made no distinction between permanent settlements and settlements of a temporary character, and he considered it would be better for all parties to leave it to the discretion of the Revenue Authorities whether the settlement of an alluvion should be in perpetuity or for a term. That question appeared to have now been settled by the Council, and he had no desire to re-open it, especially as the Petition of the British Indian Association, which complained that the Council had not adopted the views urged by the Honorable and learned Member on his right (Mr. Peacock) with respect to the amendment negatived last Saturday, gave one also to understand that the Association would be satisfied if the amendments now proposed by him, were adopted. That Clause, as it now stood, left it to the discretion of the Revenue Authorities whether the separate settlement of alluvial lands should be permanent or temporary, and that seemed to satisfy the Honorable Member on his left (Mr. Ricketts). He thought that the Clause was better than the words in substitution of which it was proposed, because it shewed more clearly that the settlements intended were settlements to be made with the proprietors themselves, and that leases to third parties would be a distinct thing. The only remaining objection made to the amendment was that it would still leave the right to malikana in the alluvion subject to be treated as passing to the auction-purchaser in the event of a sale of the original estate for arrears of revenue. If an alluvion was let on lease, there could be no default which would result in a Government sale of the alluvion.

MR. RICKETTS said, if the alluvion should be settled separately with the proprietors, and arrears of revenue should accrue upon it, it might be sold separately for such arrears.

THE CHAIRMAN said, any settlement made with the proprietor, would come under the first branch of the amendment proposed:—"If it be not agreed as aforesaid," (that was to say, that the alluvion should be incorporated with the original estate):—

"and the proprietor or proprietors agree that the alluvial lands shall be assessed and settled as a separate estate, it may be settled accordingly, and such separate settlement may be permanent, or it may be temporary."

If the settlement was separate, the alluvion might be sold for arrears of revenue; but it could only be sold as distinct from the original estate; for the amendment provided that—

"Whenever alluvial land is assessed separately, it shall thenceforward be regarded and treated as in all respects separate from, and independent of, the original estate."

In any settlement made with the proprietor, whether temporary or permanent, the proprietor must take the alluvion subject to its liability to sale for arrears of revenue. But if the alluvion was let in farm, the only consequence, he apprehended, of a default in *the payment* of the rent would be the *forfeiture of the existing lease, and the grant of a new lease still reserving malikana to the proprietor of the soil.* But the objection suggested by the Honorable Member for Bengal was the liability of the proprietor to forfeit this right of malikana on a sale of the parent estate for the arrears of revenue assessed on that estate. He (the Chairman) was not so struck with the magnitude of this grievance, and considering that malikana was simply an incident to the right of the proprietor; that he enjoyed the right of malikana because he was proprietor of the parent estate, he did not greatly care whether it passed to the auction-purchaser or not. What he wished was, to give the proprietor the power of having a separate settlement made of the alluvion if he chose to engage for it, so that the original estate and the alluvion might be two distinct mehals, and neither be liable for the revenue assessed upon the other.

On the whole, and finding that it seemed to be viewed with favor by Zemindars and landholders, he was inclined to support the amendment.

MR. CURRIE said, when he first addressed the Council, from the great anxiety which he felt to avoid saying more than was absolutely necessary on a subject which had been so very fully discussed, and on which he had repeatedly trespassed on the indulgence of the Council, he was afraid he had said less than he ought to have done. The Honorable Member on his right (Mr. Ricketts) and the Honorable Member for Madras were not in the Council when the discussion on the Motion for the second reading took place; and he would therefore explain very briefly on what grounds it was that he objected to the amendment now proposed. He objected to the words "and the Revenue Authorities and proprietor or proprietors agree that the alluvial lands shall be assessed and settled as a separate estate." He contended that if the proprietor was, from any cause, unwilling to incorporate the alluvion with the original estate, he was entitled to claim the separate settlement of the alluvion; and, to his apprehension, the amendment ought to run thus:—

"If it be not so agreed, the alluvial land shall be assessed and settled as a separate estate."

He thought that this was the right of the proprietor. Where alluvion had accrued, the proprietor was entitled to incorporate it with the original estate; but if he did not do that, he did not lose his right to the alluvion. If he was willing to pay the jumma assessed, he was entitled to a separate settlement of the chur, and the Revenue Authorities had no right whatever to say that he should not have it. But the amendment gave them that right.

Then the amendment said, that, the Revenue Authorities and the proprietor agreeing, the alluvion "may be settled accordingly," (that was to say, as a separate estate) "and such separate settlement may be permanent, if the settlement of the original estate is permanent." And then came the following:—

"If the Revenue Authorities and the proprietor or proprietors cannot agree that the revenue assessed shall be added to the original jumma, or that the alluvial land shall be assessed and settled as a separate estate, the land shall be let in farm for a period not exceeding twenty-one years, reserving malikana at the usual rate to the proprietor or proprietors for the time being of the original estate."

If the amendment were passed, the effect of this Clause would be that to which the Honorable and learned Chief Justice had alluded; namely, that, in accordance with the doctrine laid down by the Sudder Court, the rights of the proprietor in the chur would pass with the conveyance of the original estate, should the original estate be sold for arrears of revenue. Honorable Members talked of the proprietor's right to malikana; but it was to be remembered that the rights of the proprietor in an alluvion let in farm were not only the right to malikana during the continuance of the lease, but also the recurring right of engaging for the alluvion after a certain period, which period was limited by Regulation VII. 1822 to twelve

The Chairman

years. That was a substantive and valuable right. The Honorable and learned Mover of the amendment had objected on Saturday last to this Bill, on the ground that, in his opinion, it was an invasion of private rights. Now, he (Mr. Currie) maintained that this was a very serious and flagrant invasion of private rights, to say that the proprietary right in the chur should pass out of the owner's hands on account of a default under a distinct contract, for which default a specific penalty was provided by Law. Then he supposed that the amendment would go the whole length of the doctrine laid down in the decree of the Sudder Court, and that the proprietary right in the alluvion would pass to the auction-purchaser at a revenue sale of the original estate, although the proprietor of the original estate might have sold such right to another person. Every proprietor had unquestionably a full right to sell either the whole or a portion of his estate. If that was so, why had he not a right to sell the alluvion? The alluvion was not only a portion of his estate, but a distinct and separate portion, subject to a distinct and separate jumma,—or rather it was itself a separate estate; and why should the proprietor's right of disposing of it be controlled or nullified by declaring that it must of necessity follow the fortunes of the original estate?

If the intermediate Clause in the amendment, beginning—"Whenever alluvial land is assessed separately"—were transferred to the end of the amendment, it would be an improvement, because it would then provide that the alluvion when let in farm should be separate from and independent of the original estate; but the amendment would still be objectionable, because it would take from the proprietor his inalienable right of having a separate settlement of the chur, if he was willing to pay the jumma assessed upon it.

For these reasons, he would oppose the amendment. To accept it, would, it appeared to him, be entirely to defeat the object of the Bill.

With respect to the remarks of the Honorable and learned Chief Justice as to what the term "settlement" as used in the Bill implied, he (Mr. Currie) had no doubt that the assessment of the revenue and the definition and record of the rights of tenants and proprietors constituted the settlement. Whether the proprietor accepted the terms offered by the Revenue Officers, or whether he refused them, and the land was let in farm, the arrangement made was equally a settlement. But still, as so much doubt had been suggested as to the import of the term, he should propose, at the proper time, to add the following words to the Section:—

"Whether the separate settlement be made with the proprietor or proprietors, or the land be left in farm in consequence of the refusal of the proprietor or proprietors to accept the terms of settlement."

MR. RICKETTS said, should the amendment before the Council be negatived, he should propose to introduce some words into the Section as it stood, which, he thought, would meet the views both of the Honorable and learned Member opposite (Mr. Peacock) and of the Indigo Planters' Association. If the amendment was lost, he should move the insertion of words in the latter branch of the Section which would make it run thus:—

"If the proprietor or proprietors object to such an arrangement, or if the Revenue Authorities are of opinion *that special reasons exist why a separate* settlement of the alluvial land *should not* be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessed and settled as a separate estate with a separate jumma, and shall thenceforward be regarded and treated as in all respects separate from, and independent of, the original estate."

Under that provision, the general rule all over Bengal would be to settle alluvial lands in perpetuity, except where special reasons should exist which rendered such settlement inexpedient.

MR. HARINGTON said, he had to express his acknowledgments to the Honorable and learned Chairman for the manner in which he had met the observations which he had ventured to address to the Council in reference to what had fallen from the Honorable and learned Chairman on Saturday last in connection with his conduct on the present Bill, and to say that he was quite satisfied. He agreed with the Honorable and learned Chairman that the present practice of all Members of

Select Committees signing the Reports on Bills referred for their consideration, notwithstanding that one or more of their number might be dissentient as respected the whole or some portion of the Report to be made, was inconvenient. The Report agreed to by the majority of the Select Committee, should still be the Report of the Committee; but any Member dissenting from his colleagues should record the grounds of his dissent; and he proposed to adopt this course in future.

And now as regarded the Section of the Bill under discussion. The Honorable Member for Bengal had stated that the proprietor of alluvial lands attached to the main land, had a right to demand a separate settlement of these lands; but he had not pointed out any Law as conferring that right upon him, and he (Mr. Harington) knew of no such Law. Regulation XI. of 1825 certainly did not give it; for that enactment declared that the alluvion should be an increment to the tenure of the person to whose land or estate it was annexed,—not that it should be held separately therefrom. The Government, had it pleased, might have declared its own right to all alluvial lands not existing at the time of settlement; and had it done so, he did not think that the proprietors of estates to which such lands might have subsequently attached themselves, or might hereafter become attached, would have had, or would have any just cause to complain; but instead of asserting this right, the Government consented to the alluvial formation becoming the property of the owner of the adjoining estate, intending, he thought, that, for all future time, it should belong to, and should be included within the limits of that estate. No doubt that, as stated by the Honorable Member for Bengal, the owner of an estate with which alluvial lands might have been incorporated and settled, had the power at any time to dispose of them by sale, gift, or otherwise, and by so doing, to constitute them a separate property; but in such case, he could not allot the revenue to be paid by the alluvion. That could be done by the Collector only; and in apportioning the revenue between the original estate and the alluvion, the Collector would of course take care so to distribute the amount that, in the event of the original estate being injured by the loss of its river-frontage, it should have no difficulty in paying the revenue assessed upon it such loss notwithstanding. He agreed with the Honorable and learned Chairman that it was a matter of comparatively little importance whether in the case of the alluvion being let in farm, and of the parent estate being sold for arrears of Government revenue, the sale should include the alluvion subject to the farming lease or should be exclusive thereof, provided that due intimation was given beforehand of what was to be sold, in order that intending purchasers might know what they were buying, and that there might be no ground for dispute on this point after the sale. The only objection that he had to the decree of the Sudder Court, so often referred to, was that, in the particular case in which that decree was passed, the Collector, whether rightly or wrongly, would seem purposely to have excluded the alluvion from the sale, and not to have sold it with the parent estate; in which case, the right of the purchaser of the latter to take the former also was at least doubtful.

MR. PEACOCK said, he thought that the Honorable Member for Bengal had not clearly drawn a distinction between two material points. An alluvial formation might be added to an original estate as part of that estate in perpetuity, or it might be settled as a separate estate either permanently or for a term. If it was settled as a separate estate, whether permanently or for a term, the original estate was not liable for the jumma assessed upon it. The Honorable Member for Bengal said that the proprietors of estates to which alluvion accreted, had a right to the separate settlement of the alluvion; but he had not shewn under what Law they had that right. When the Law said that land added to an estate by alluvion should be considered an increment to the estate, he (Mr. Peacock) apprehended it meant that the land should be considered a parcel of the estate, and that one consolidated jumma should be reserved to Government in respect of both. But he (Mr. Peacock) knew of no Law which entitled the owner of an alluvion to have it settled as a separate estate if he pleased. Supposing, however, that the Honorable Member for Bengal was correct, the

Honorable Member had not said what sort of a separate settlement the owner was entitled to have,—whether a separate settlement in perpetuity, or a separate settlement for a term. The second branch of Section I. as it stood, gave no information on the point. If the alluvion were settled as a separate estate, notwithstanding the decision of the Sudder Court, it would be sold as a separate estate; but if it were incorporated with the original estate, it would, of course, be sold subject to its liability for the consolidated jumma. The Sudder Court's decision appeared to him to be perfectly correct. When the alluvion was let in farm, malikana allowance being reserved, the malikana ought to go to the owner of the original estate for the time being, since it was only an incident to the right of property in the original estate, and the amendment which he proposed would provide for that.

With respect to what had fallen from the Honorable Member opposite (Mr. Ricketts), he had no objection that the general rule should be that, if the Revenue Authorities were willing to settle an alluvial formation as a separate estate, and the original estate to which it had become annexed was permanently settled, the settlement of the alluvion should likewise be permanent. If the Honorable Member should propose to add a provision to that effect to his amendment, he should not object to such addition being made; but he did not think that it was necessary; because, as he had left it to the option of the Revenue Authorities whether the separate assessment of alluvion should be in perpetuity or for a term, he apprehended that they always would make such settlements permanent, if the settlement of the original estate was permanent, unless they should see special reasons to the contrary. He thought his amendment sufficient as it stood, and should press it.

MR. CURRIE said, he would not be drawn into an argument on the interpretation of Regulation XI. 1825, a subject which had been discussed *usque ad nauseam*. He would merely repeat, what he had said before, that Regulation XI. 1825 had nothing whatever to do with arrangements between the Government and the proprietor. Its object and effect were simply to determine questions of proprietary right between individuals.

The Honorable and learned Member had said that it was quite right that, if there was a sale of the original estate, the right to Malikana in respect of the alluvion should go to the auction-purchaser, inasmuch as it was a right which belonged to the proprietor of the original estate. [Mr. Peacock explained that he spoke of a private sale.] Well, if the proprietor of the original estate sold the estate with the chur, then of course the right to malikana for the chur would pass to the purchaser; but he understood the Honorable and learned Member to argue that the malikana was incident to the right of property in the original estate. Such was not the case. Malikana was an allowance to proprietors who did not engage for the revenue of their estates. In the case supposed, Malikana was given to the proprietor, not because he was the proprietor of the original estate, but because he was the proprietor of the chur, which alone was the subject of settlement.

The Honorable and learned Member had further said that there was nothing to shew that the proprietor had a right to a separate settlement of the alluvion. He had contended that the Regulations gave the proprietor only a right to incorporate it with the original estate, and had asked him to shew under what Law he was entitled to insist on its being separately settled. He replied, under that Law which declared proprietors of land to have a preferential right to engage for the revenue assessed upon the land. If the proprietor was willing to pay the revenue which the Revenue Authorities thought should be assessed upon the alluvion, he had an absolute and indefeasible right to have it settled with him. That was the Law upon which he stood.

MR. PEACOCK said, what he wanted to know was, whether the separate settlement was to be permanent or temporary.

MR. CURRIE said, it was in the option of the Revenue Authorities to make it either one or the other. He was quite prepared to shew that the proprietors of churs had not a right to have them settled in perpetuity. The ownership gave them a right of settlement, but it did not give them a right of settlement in perpetuity. But as the

amendment before the Council did not raise that question, he declined to go into an argument upon it.

He was quite willing to assent to the amendment which the Honorable Member on his right proposed to move. His main objection, after all, was to the latter part of the amendment under discussion, which contemplated the alluvion continuing attached to the original estate, although it should have been separately settled.

THE CHAIRMAN remarked that after what had been just said, he doubted whether it would not be better to introduce a provision preventing the proprietary rights of the Zemindar in alluvion let out in farm, from necessarily passing under a revenue sale of the original estate. According to the construction of the existing Sale Law which the Sudder Court had adopted in the case of Koelwar, supposing that a Zemindar and the Revenue Authorities failed to come to an agreement as to the settlement of the chur, and that the Revenue Authorities let out the chur in farm for twenty-one years, reserving Malikana to the Zemindar; and supposing that, during the existence of the lease, arrears of revenue accrued on the original estate, and the original estate was put up for sale,—then, the right to the Malikana reserved in respect of the chur, and the right to engage for a settlement of the chur after the expiration of the lease, would necessarily pass to the auction-purchaser, even though the defaulting Zemindar had already sold or assigned those rights. [Mr. Currie—No doubt.] As he was one of those who thought that the Sale Law was far more stringent than it ought to be, he would gladly insert words which would prevent such consequences.

MR. PEACOCK'S Motion was then put that the second branch of Section I. be omitted.

The Council divided:—

Ayes. 3.	*Noes.* 4.
Mr. Harington.	Mr. Forbes.
Mr. Peacock.	Mr. Currie.
The Chairman.	Mr. LeGeyt.
	Mr. Ricketts.

The Motion was therefore negatived.

MR. CURRIE moved that the following words be added to the Section:—"Whether the separate settlement be made with the proprietor or proprietors, or the land be let in farm in consequence of the refusal of the proprietor or proprietors to accept the terms of settlement."

Agreed to.

MR. RICKETTS moved that the following words be inserted after Section I:—"The separate settlement may be permanent if the settlement of the original estate is permanent."

Agreed to.

Section II was passed after the insertion of the following words in the 11th line:—"To determine whether any and what additional rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original estate."

Section III, the Preamble, and the Title were passed without amendment.

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

INSOLVENT DEBTORS (MOFUSSIL.)

MR. LEGEYT postponed the motion, which stood in the Orders of the Day that the Report of the Select Committee on the subject of a Law for the relief of Insolvent Debtors in the Mofussil be adopted.

ABSENCE OF THE GOVERNOR GENERAL.

The Vice-President read a Message informing the Legislative Council that the Governor General had given his assent to the Bill "to continue in force for a further period of six months Act IV of 1858 for providing for the exercise of certain powers by the Governor General during his absence from the Council of India."

NABOB OF SURAT.

MR. PEACOCK moved, pursuant to notice, that Meer Jafur Alee Khan be informed that the Legislative Council have considered his Petition, and that they see no sufficient ground for complying with the prayer thereof, or for amending Act XVIII of 1848. In doing so, he said it would be right that he should state briefly the grounds upon which he thought that the Council ought not to comply with the prayer contained in the Petition. The Petitioner asked

that the Council should take his Petition into consideration, and pass an Act to amend Act XVIII of 1848, in conformity with the Draft Act submitted by him. The Draft Act submitted by him proposed—

"that so much of Act XVIII of 1848 as provides that no act of the Governor of Bombay in Council in respect to the administration to, and distribution of, such property from the date of the death of the said late Nabob shall be liable to be questioned in any Court of law, may be repealed;"

and—

"that it shall be lawful for the East India Company, or any person deeming himself aggrieved by any decision, order, or proceeding heretofore made or taken respecting the estate of Meer Ufzoloodeen Khan, the late Nabob of Surat, under the said recited Act, or hereafter to be made or taken under the said recited Act respecting the said estate, to appeal therefrom to Her Majesty in Council, in order that such appeal may be referred to and be heard by the Judicial Committee of the said Council pursuant to the provisions of an Act of Parliament passed in the Sessions of the third and fourth years of the reign of His late Majesty King William the Fourth, intituled 'An Act for the better administration of Justice in Her Majesty's Privy Council.' But any appeal against an order already made by the Governor in Council of Bombay shall be preferred within six months after the passing of this Act."

Section II of the Draft Act had been taken very nearly verbatim from a Bill which had been introduced into the House of Commons and passed there, but which was afterwards thrown out by the House of Lords, on the ground that it was not a private Bill.

The late Nabob died on the 8th of August 1842. At that time, he was not subject to the jurisdiction of the ordinary Civil Courts of the Government, and he had a certain jurisdiction over his relations and dependants. It appeared that upon his death the Government of Bombay took possession of his property, and sanctioned the payment of certain sums of money out of the proceeds of the estate for the maintenance of his family and the liquidation of his debts. In the year 1845, Sir Robert Arbuthnot, then Agent for the Governor at Surat, reported upon certain specific claims which had been preferred to property belonging to the estate of the late Nabob, and also upon the claims of the Nabob's creditors. In August 1846, Mr. Willoughby, then a Member of the Council of Bombay, suggested that an Act should be passed conferring power on the Government to arrange the affairs of the late Nabob. On the 8th September following, the Governor of Bombay recorded a Minute upon this suggestion, in which he said:—

"I certainly think, with Mr. Willoughby, that we ought to have an Act to legalize our proceedings in taking possession of and distributing, according to Mahomedan Law, the property of the late Nabob. Strictly speaking, perhaps, the Government should, on his demise, have interfered in no way whatever with any matter unconnected with the question of the continuance of the dignity, and the stipend paid by Government; but this course would evidently have given rise to endless disputes, and to the greatest injustice; and although our interference might not have been justifiable in the case of a private party, however wealthy or however high in consideration, yet it may have been so when we consider that His Highness had been recognised by us as a Sovereign Prince, while all the claimants to his property were at his demise, only ordinary subjects of the British Government."

The draft of an Act was framed and published in February 1848, Section I of which empowered the Governor of Bombay in Council to exempt from the jurisdiction of the Civil and Criminal Courts, the widows and such of the surviving relatives of the late Nabob as he should think proper, and to declare them amenable to the authority of an Agent appointed for the purpose. Section II enacted as follows:—

"And it is hereby enacted that it shall be competent to the Governor in Council of Bombay to act in the administration of the property of whatever nature left by the late Nabob of Surat, in regard to the settlement and payment of the debts and claims standing against the estate of the said late Nabob at the time of his demise, and to make distribution of the remaining property among his family; and that all acts of the said Governor in Council of Bombay, in respect to such property, from the date of the demise of the said late Nabob, shall be held to be valid, and not liable to be questioned in any Court of Law."

On the 11th of March 1848, Meer Jafur Alee Khan addressed a letter to the Governor in Council at Bombay, in which he said:—

"Having observed in the public papers that an Act for the administration of the estate of the late Nabob of Surat has been laid before

the Legislative Council, I beg to call the attention of your Honor in Council to the second Clause of the Act, which I am advised is so framed as to prevent the Agent at Surat investigating and deciding upon several very important subjects relating to the Nabob's estate, which I am desirous of submitting to him for decision.

"Being satisfied that it cannot be the intention either of your Honor in Council or of the Legislative Council, to pass a Law for the purpose of debarring me from asserting what I believe to be my undoubted rights, and denying me even an appeal to the authority specially constituted under the Act to dispense Justice, I beg to submit, for the consideration of your Honor in Council, the accompanying Clause in lieu of Clause II of the Act; and I trust that your Honor will be pleased to recommend its adoption to the Legislative Council."

His complaint, as here stated, was that the proposed Act would prevent the Agent of the Government at Surat from investigating and deciding upon several questions relating to the Nabob's estate which he desired to submit to him for decision. The Clause which he proposed in lieu of Clause II of the Draft Act, was as follows:—

"That the estate and effects of the late Nabob, and the administration thereof, shall be exempt from the jurisdiction of the Civil Courts of Justice, and shall be under the authority of the Agent, to be appointed as aforesaid, but subject to the control of Government; and that no action or suit shall be brought in any Court of Law for any act done by the Agent or other Officer of the Governor in Council at Surat since the decease of the late Nabob respecting his estate or effects."

Thus it appeared that the object of Meer Jafur Alee Khan at that time was to exempt the administration of the estate and effects of the late Nabob from the jurisdiction of the Civil Courts of Justice, and to vest it in the Agent at Surat subject to the control of Government.

The letter was sent up by the Chief Secretary to the Government of Bombay to the Secretary to the Government of India on the 10th of April 1848, with the following communication:—

"With reference to the draft Act for the administration of the estate of the late Nabob of Surat, now before the Legislative Council of India, I am directed by the Honorable the Governor in Council to transmit to you, for submission to the Right Honorable the Governor General of India in Council, copy of a letter from Meer Jafur Alee Khan, dated the 11th Ultimo, soliciting a modification of Clause II in the draft Act in question.

"In forwarding this letter, I am directed to explain that it is the intention of this Government, on the passing of the above Act, to empower the Agent for the Honorable the Governor at Surat to summon all parties who claim to participate in the late Nabob's estate, and, after full inquiry, to adjudicate their respective claims, consulting on all points of law the Mahomedan Law Officers of the greatest repute.

"The Agent's decisions will be subject to the confirmation of, and all appeals against those decisions will be entertained and finally decided by Government.

"After the proceeds of the estate have been thus distributed, all future cases of dispute, with the exemptions noticed in the Act, will be subject to the jurisdiction of the ordinary tribunals of the country.

"Under the above explanations, the Governor in Council does not consider any change necessary in the draft Act as now framed."

In 1848, then, as he understood it, Meer Jafur Alee Khan's request was that claims relating to the estate and effects of the late Nabob should be investigated and determined by the Agent at Surat, subject to the control of the Government of Bombay. The Act was eventually passed, Section II being substantially the same as Section II of the draft as published for general information; and Meer Jafur Alee Khan and the widows and grand-daughters and two other distant relatives of the deceased Nabob were exempted from being sued in the Civil Courts unless with the consent of the Governor of Bombay. After the passing of the Act, instructions were sent by the Government of Bombay to the Agent for the Governor at Surat, and, amongst other things, he was instructed to issue a notification calling upon all persons having claims upon the Nabob to submit them to him; that, on claims being preferred, he was to enter upon their investigation, summoning parties and witnesses before him in the same manner as he would do as a Judge in a civil case; and on the conclusion of each case, he was to submit his proceedings to the Government, accompanied by his opinion upon the validity or otherwise of the claim; and he was authorized, in all his investigations, to consult any of the Government Mahomedan Law Officers. Mr. W. E. Frere, the Agent at Surat, proceeded upon the investigation; and, as regards the general property, he reported that the succession to the inheritance should be in the following shares, according to

the Mahomedan Law of Inheritance; namely, The Nabob's two grand-daughters, Ruheem Ool Nissa Begum and Zeea Ool Nissa Begum, 8-16ths.
The Nabob's two widows, Padsha Begum,..... 1-16th.
And Ameer Ool Nissa Begum, 1-16th.
Two greatgrandsons of the Nabob's great grandfather's brother in the male line, Meer Moyenoodeen, ... 3-16ths.
And Meer Kumroodeen, ... 3-16ths.

That Report was approved by the Governor of Bombay in Council, after having determined the several questions submitted to them by Meer Jafur Alee for decision; and the case was determined by that Government accordingly.

He (Mr. Peacock) thought it right here to call attention to two preliminary objections made by Meer Jafur Alee.—1stly. That it was the Governor in Council who, by the Act, was empowered to administer to the estate of the late Nabob, and that that authority could not be delegated to the Agent at Surat. 2ndly. That the Nabob having died, and the Nabobship having been declared extinct, the Petitioner and his wife immediately became subject to the jurisdiction of the Zillah Court, and could only be deprived of the Nabob's estate by the course laid down in the Regulations. He did not think that such objections came with a very good grace from Meer Jafur Alee, who, as he had already shown, had proposed that Section II of the Draft Act of 1848 should be so altered as to exempt the administrator of the Nabob's estate from the jurisdiction of the Civil Courts of Justice, and to vest it in the Agent, subject to the control of the Government; nor were they consistent with the statement in the Petition preferred to this Council by Meer Jafur Alee, in which he stated that

"Your Petitioner remained under the impression he had always entertained that the proceedings of the Agent and the Government were to be of the same judicial character as those in regard to the Sirdars of the Deccan, which entitled them to appeal from the Agent to the Governor in Council and from the latter, as of right, to Her Majesty in Council."

The objections were, however, overruled for the reasons given by the Governor of Bombay in paragraphs 2 to 8 of his Minute dated 3rd June 1853:—

"Before entering on the merits of the case, I would remove an objection made in the 143rd paragraph of Meer Jafur Alee's letter. This objection did not escape my observation, as will be seen in my Minute of the 25th of September last, and was anticipated by my Honorable colleague Mr. Bell, who, in his Minute of the 2nd of October, pointed out that it is the Governor in Council who, by the Act, is empowered to administer to the estate of the late Nabob of Surat, and that that authority could not be delegated to the Agent.

"The Act, however, does not prescribe what course the Governor in Council is to pursue in the discharge of this duty, and the course we have adopted appears to me not only perfectly unobjectionable, but the most fair and convenient for all parties.

"It would have been impossible for us to have prosecuted the inquiry into all these conflicting claims ourselves; the Agent for the Governor, who was the medium of communication between the Government and the late Nabob, was therefore (as the fittest person for that purpose) directed to make the necessary preliminary investigation. This was done; and we received Mr. W. E. Frere's Report on these claims. This Report we were at liberty to have adopted as our decision, and to have acted on at once, or we might have decided and acted in any way we pleased; but instead of adopting any arbitrary mode of proceeding, having generally approved of the Report, we desired Mr. Frere to draw it up in the form of a decree, and to furnish each of the parties concerned with a copy of it, directing them to prefer any appeal they might have to make within ninety days. We now have their objections before us, and can pass any decision in the case that appears to us just and proper, and this will be our decision as the Act requires it should be, and not the decision of the Agent, or of any subordinate Officer.

"There is also another plea which, though like the above objection, not brought forward till the close of Meer Jafur Alee's letter (vide para. 138), may be deemed preliminary, and one that should be disposed of before entering on the merits of the case.

"It is that the Nabob having died, and the Nabobship having been declared extinct, the petitioner and his wife immedietely became subject to the jurisdiction of the Zillah Court, and could only be legally deprived of the Nabob's estate by the course laid down in the Regulations, which he (Meer Jafur Alee) contends would have had the effect of placing him in the strong position of a defendant, with nothing to do but to defend his possession against the claims of others, instead of having the disadvantage of being forced to prove his own title to the estate.

"The Nabob died in 1842, and it was only in October 1846 that it was finally decided that on his death his relations and dependants ceased to be exempt from the jurisdiction of the Zillah Courts.

"It is impossible at this distance of time to say what the Zillah Judge might have done had he been aware of his authority, or what the Sudder Adawlut, who would have heard

the appeal might have decided; but I find that Chapter II of Regulation VIII provides for the appointment of an administrator both when the heir is present and undetermined, and when the heir is unknown; and from the intricate nature of this case, as shown in Mr. Frere's Report, it would, I think, have been judicious in the Zillah Judge had he, under existing circumstances, appointed an administrator when the Nabob died, and in such case, Meer Jafur Alee would have been in no better position than he is at present, nor would he have been entitled to the greater consideration he now claims at our hands, in virtue of the asserted hardship of his position."

Eventually, Meer Jafur Alee appealed to Her Majesty in Council; but the Judicial Committee held that an appeal would not lie. The judgment was delivered by the Lord Justice Knight Bruce. His Lordship said:—

"The Governor of Bombay, in execution of the power or duty, or both, thus conferred upon him, has exercised that power or duty in a manner unsatisfactory to members of the family of the Nabob, and, in consequence, the present Petitioners seek to have the case reheard, or the distribution, thought right by the Governor of Bombay in Council, brought under the review of the Judicial Committee, as a matter of right, and in the exercise of its ordinary jurisdiction; and the question before their Lordships is whether that is a course authorized by the Statutes under which they, as members of the Privy Council, exercising the particular functions of the Judicial Committee, are now sitting.

"The question is not whether this may hereafter be a case which their Lordships may have to hear, if it shall so seem fit to Her Majesty, under the 4th Section of the Statute, 3 and 4 Will. IV., c. 41, to refer it to them. The question is entirely confined to the 3rd Section of that Statute. Their Lordships desire that nothing which is said on the present occasion shall be understood as referring, directly or indirectly, to anything that may be thought right to be done under the 4th Section. That is, in point of fact, a matter with which they have nothing to do. The 4th Section provides 'That it shall be lawful for His Majesty to refer to the said Judicial Committee, for hearing or consideration, any such other matters whatsoever, as His Majesty shall think fit; and such Committee shall thereupon hear and consider the same.' If, therefore, it shall hereafter be the pleasure of Her Majesty to refer the present petition, or any similar petition to their Lordships, their Lordships will of course hear it, and report to Her Majesty upon it. At present no such case is before us. The only question is whether, without a reference, and as a matter of right, a petition complaining of what has been done by the Governor of Bombay in Council, under the particular power that I have mentioned, shall be brought here in ordinary course; and that depends upon the question whether, within the true meaning of the 3rd Section of the Statute 3 and 4 Will. IV., c. 41, establishing the Judicial Committee, the act of which complaint is now made, is the act of a judge or judicial officer; the language of the 3rd Section being 'that all appeals, or complaints in the nature of appeals whatever, which, either by virtue of this Act, or any Law, Statute, or custom may be brought before His Majesty or His Majesty in Council, from or in respect of the determination sentence, rule, or order of any Court, Judge, or judicial officer, and all such appeals as are now pending,' shall be heard in the way that is there mentioned.

"Now, the 2nd Section of the Indian Act of 1848 I have already read; and it will be requisite, in considering it more particularly, to look at the two portions of it separately. The first is that 'the Governor of Bombay in Council is empowered to act in the administration of the property, of whatever nature, left by the late Nabob of Surat, in regard of the settlement and payment of the debts and claims standing against the estate of the late Nabob at the time of his death, and to make distribution of the remaining property among his family.' Now, whether, if the Section had stopped there, the discretion of the Governor in Council was one which could have been regulated or interfered with judicially, or was absolute, their Lordships do not mean to intimate any opinion. Let it be assumed for a moment that it was not absolute, but that it was a discretion bound to be exercised, according to some law, some custom, some state of rights. The mode of complaining of that must have been to the ordinary Courts of the country, either in one branch of the local jurisdiction or in another, from which it might have been brought in regular course of appeal before Her Majesty in Council. No such course has taken place in the present instance, nor could it, for the obvious reason that I am about to mention. It is plain, therefore, that the Petitioners would not be right here, upon the supposition that the enactment that I am reading had ended at the point to which I have read. But the Section proceeds—

"'And no Act of the said Governor of Bombay in Council, in respect to the administration to and distribution of such property, from the date of the death of the said late Nabob, shall be liable to be questioned in any Court of Law or Equity.' It is perfectly plain, therefore, that no local Court could have entered into the question of the propriety of the administration or distribution of that right by the Governor of Bombay in the exercise of this power. But the argument is that, though the ordinary Courts are excluded from interference, the Queen in Council is not; and perhaps (though their Lordships do not mean to pronounce any opinion upon it) the argument may well be founded, that if the Governor in Council was here constituted a Court, it might have exceeded the limits of the Indian Legislature—the limits of their power—to exclude the judicial functions (if I may use the expression) of Her Majesty in Council. Their

Lordships are of opinion, however, that the intention of this Act was not to create a Court; that the intention of the Act was to delegate, either arbitrarily, or subject to certain limitations of discretion, the administration and distribution of the Nabob's property, but in such a way that the administration and distribution should not be judicially questioned. The expression, it will be observed, is not, 'shall be liable to be questioned in any other Court of Law or Equity,' but, 'shall be liable to be questioned in any Court of Law or Equity.' * * * * * * * * * * *

"Their Lordships, therefore, consider that, in the ordinary exercise of their functions, they are without jurisdiction to interfere. They are of opinion that the proceeding of the Governor of Bombay in Council has not been an act of a Court, Judge, or judicial officer, within the meaning of the 3rd Section of the Statute 3 and 4 Will. IV., c. 41, but has been the act of a person or body not in any sense judicial; delegated and authorized to perform a particular function as to the responsibility for the exercise of which, or as to any appeal from that exercise, they were exempted by the Legislature which created them. * * * * * * * * * *

"The petitioners, therefore, will take such course as they may be advised, with reference to an application to the Crown, through the Board of Control, or otherwise. By possibility, in consequence of such application, if made, the matter may come here again; and their Lordships will readily do their duty in hearing it. At present they consider it not to be within their ordinary functions to do so."

What Meer Jafur Alee Khan now wished this Council to do was to repeal so much of Act XVIII of 1848 as provided that no act of the Governor of Bombay in respect to the administration to, and distribution of, property of whatever nature left by the late Nabob, from the date of his death, should be liable to be questioned in any Court of Law. If the Council were to repeal that part of the Act, the question would still remain whether, under the first part of the Section, the decision in question was a judicial decision. The Act provided that no act of the Governor of Bombay in Council in relation to the property left by the Nabob should be liable to be questioned in any Court of Law. If the decision at which the Government of Bombay had arrived with respect to the estate was a judicial decision, it was, he considered, out of the power of the Indian Legislature to take away the right of appeal to the Privy Council;—it was out of its power to affect any prerogative of the Crown. He considered it was equally out of the power of the Legislative Council to give a right of appeal to the Privy Council, where it did not exist. So far as he could judge, the decision to which the Agent of the Governor of Bombay in Council had come, and which the Governor of Bombay in Council had confirmed, after a full investigation of the claims preferred, was a very fair one. Supposing that this Council had the power to give a right of appeal to the Privy Council, and that it exercised that power, he thought it very probable that the case would have to be remitted for further evidence before it could be finally decided by the Judicial Committee. It appeared to him that there was one question which, on appeal, the Privy Council might have to determine,—namely whether the wife of Meer Jafur Alee Khan was the legitimate daughter of the late Nabob. That question had been brought before the Governor of Bombay in Council in a Petition dated 19th December 1853, from the Padsha Begum. The Governor of Bombay, in a Minute dated 11th April 1854, remarked on the Petition as follows:—

"The Petition of the Padsha Begum asserts the illegitimacy of Bukhtiar Ool Nissa Begum on the ground that her mother, Ameer Ool Nissa Begum, was neither the wife nor the slave, but the concubine of the late Nabob. Throughout the investigation of the various claims to the disputed property, it has been assumed—and the fact appears to be almost conceded by Meer Jafur Alee—that the marriage of Ameer Ool Nissa Begum, and consequently the legitimacy of Bukhtiar Ool Nissa Begum, could not be proved according to the strict provisions of the Mahomedan Law; but it was one of the few facts clearly established in this difficult case, that the late Nabob, to the day of his death, always recognised Ameer Ool Nissa Begum as his legal wife, and her daughter, Bukhtiar Ool Nissa Begum, as his legitimate child. His will on this subject was unequivocally expressed by a series of acts, and operating within his palace as the Supreme Law, it legitimated his daughter. It is not therefore material to the question at issue relative to Meer Jafur Alee's claims, whether his mother-in law's marriage received all the sanctions of Mahomedan Law. Those claims rest upon different grounds, and are sustained by distinct, but sufficient, authority."

In a dissent recorded on the 12th November 1856, by Mr. Willoughby, then one of the Directors of the East India Company, and concurred in by Mr. Smith and Mr. Astell, Mr. Willoughby said:—

"In the event, moreover, of the Court being forced by further proceedings in Parliament into a Court of Law, I feel the strongest conviction that, however much others might be benefited, Jafur Allee and his daughters would not only take nothing, but would lose the handsome provision which has been assigned to them. Reserve now would be misplaced. In such an event the matter must be judged by the strict rules and principles of Courts of Justice; and hence, the question, which has never yet been fairly raised, of the legitimacy of the party through whom Jafur Allee claims, must and will be raised. The Select Committee of the House of Commons have expressly stated that it is their intention, and that it is only right and proper, that it should be investigated. It is only owing to the false delicacy of the Bombay Government, in originally waiving this question out of consideration to the Nabob's family, that an opportunity has been afforded to attack with plausibility the Court's decisions in this matter. Now, however, as was formerly remarked by Sir George Clerk when he filled the high office of Governor of Bombay, 'In the discussion of the late Nawab's affairs, the question of the legitimacy of the daughter through whom the Memorialist (Jafur Allee) claims was very properly though generously waived. The case, however, now assumes a different aspect when the Memorialist appears in the character of an aggrieved person. The Honorable Court should therefore, I am of opinion, be referred to the 65th to 85th paragraphs of the Honorable Sir G. Arthur's elaborate Minute, dated the 28th April 1843, on the demise of the late Nabob, in which the point is slightly touched upon, and more particularly to Sir G. Arthur's Minute dated the 19th March 1844, in the 3rd and 5th paragraphs of which the question of her legitimacy was specially touched upon. On the supposition that the daughters who were married to the sons of Meer Surafraz Allee were legitimate, the connexion thus formed would have been regarded as far below the Nabob's rank and family, since the Meer, I am told, is of no family or note whatever, having been the architect of his own fortune; and I am told by the Political Secretary that this want of respectable ancestry frustrated the Meer's endeavors to obtain for his two sons, wives from a family at Baroda, which, though of high rank, is, in point of wealth, far inferior to that of the late Nabob of Surat. The Memorialist, therefore, speculated in matrimony, and, notwithstanding his present complaint, may be considered fortunate. I am of opinion that he has been most liberally dealt with, and that the settlements made by the late Government ought not to be disturbed.'

"When this question is investigated, I can scarcely entertain any doubt but that the result will be adverse to the promoters of the Bill in Parliament. For the evidence in regard to the origin and birth of Ame r-ool-Nissa, the mother of Buktiyar-ool-Nissa, the wife of Jafur Allee, and daughter of the late Nabob, does not depend upon any interested party, but was obtained from her own lips by Mr. Elliot, the Governor's Agent, as follows. After having given some particulars derived from less trustworthy sources, Mr. Elliot reports:

"'With her sanction, I repaired to the Palace; and with every deference demanded by her retired habits and peculiar circumstances, I obtained from her own lips the following history of her early life.

"'She belonged to the Rajpoot caste, and resided at Bhownuggur. When about the age of twelve or thirteen, a stranger came there and purchased her, for what sum she knows not. He conveyed her to the town of Randier, and afterwards to the residence of the old Nabob, father of his late Excellency. The latter informed his mother that a young girl had been brought to the Palace, whom he wished to live with him. His proposals having been acceded to by his parents, she was given into his keeping. She recollects having heard that the person who brought her, in consideration of the purchase, received two hundred Rupees and a pair of shawls. Three children were the offspring of this connexion, of whom one alone, Buktiyar-ool-Nissa survives (that is, Jafur Alee's wife). After the bismillar of this child, four years, four months, and four days subsequent to its birth, she was married to the Nabob, who passed to her a deed of emancipation.'"

If an appeal were given from the decision of the Government of Bombay to the Privy Council, it must be borne in mind that the question of the legitimacy of Meer Jafur Alee Khan's wife might be raised by the other heirs general of the late Nabob for the purpose of depriving his two grand-daughters of the 8-16ths. adjudged to them.

The Judicial Committee might possibly hold that the recognition by the late Nabob of Ameer-ool-Nissa as his lawful wife and of Buktiar-ool-Nissa as his legitimate child did not necessarily legitimate the daughter. If so, it might be necessary to remit the case for further evidence upon that point. That would cause considerable delay in the distribution of the estate. The Nabob having died in 1842, he thought it was not advisable in 1858 to pass any Act which would delay the distribution of the estate, which was still in the hands of Government. If that part of Act XVIII of 1848, which declared that no act of the Governor of Bombay in Council in respect to the distribution of the property of the Nabob should be liable to be questioned in any Court of Law or Equity, were repealed, the Council would deprive the Bombay Government of that protection which it was intended to afford to them. That, he thought, was out of the question.

Mr. Peacock

He thought that it was not competent to this Council to pass an Act to give jurisdiction to the Judicial Committee of the Privy Council. The only alternative, as it appeared to him, was either to give an appeal to the Supreme Court of Judicature from the decision of the Governor in Council of Bombay, or to vest the Supreme Court with original jurisdiction to determine how the property should be administered; in either of which cases, an appeal would lie to the Privy Council without any express enactment on the subject. Either of these courses would necessarily cause great delay, and he thought that it would be very inexpedient to pass any Law of the kind. He thought it would be better to leave the Petitioner to renew his application to the Privy Council or to Parliament, if he should be advised to do so. Parliament had the power, which he thought this Council had not, to give an appeal to Her Majesty in Council from the decision of the Government of Bombay, although it had been decided not to be a judicial decision. He doubted very much whether the Judicial Committee would give any effect to an enactment of this Council authorizing them to determine upon appeal a case in which, without such enactment, they considered that they had no jurisdiction. The application to this Council was an after-thought.

On the 7th July 1857, Meer Jafur Alee wrote to the Honorable Court of Directors a letter in the following terms:—

"In compliance with the intimation made to me by the Right Honorable the President of the Board of Control, I have the honor to request that the distribution of the property of the late Nabob of Surat may be suspended for a year from this time, as I am in great hopes, that, by personal conference at Surat with the parties interested against me, I shall be able to effect a voluntary settlement of this harassing litigation."

"If I should not succeed in this endeavor of mine, I shall return to England, and prosecute my appeal to the Privy Council or to Parliament."

He (Mr. Peacock) understood from this letter that Meer Jafur Alee, in the event of his being unable to effect an amicable settlement, intended to apply to Her Majesty to refer the question to the Judicial Committee under the 4th Section of the 3 and 4 Wm. IV c. 41, to which the Lord Justice Knight Bruce had referred in his Judgment, and that if he found he was not entitled to relief under that Section, it was his intention to apply to Parliament. He never intimated to the Honorable Court of Directors that he intended to apply to this Council to repeal any portion of Act XVIII of 1848, or to amend that Act. The Secretary to the Court of Directors wrote in reply as follows:—

"I am commanded by the Court of Directors of the East India Company to acknowledge the receipt of your letter of the 7th Ultimo; and I am instructed to inform you in reply, that the Court, with due consideration for the rights of others, are unable to comply with your request for the suspension, for one year from the present time, of the distribution of the private property of the late Nabob of Surat."

When that letter was laid before the Board of Control, it was altered, and sent back, in order that it might be forwarded as altered. In its altered form, the letter ran thus:—

"I am commanded by the Court of Directors of the East India Company to acknowledge the receipt of your letter of the 7th Ultimo, and I am instructed to inform you in reply that the Court will comply with your request for the suspension, for one year from the present time, of the distribution of the private property of the late Nabob of Surat."

The Honorable Court of Directors, in consequence of the alteration made by the Board of Control, caused their Secretary to write to the Secretary to that Board the following letter:—

"With reference to the alterations made by the Board of Commissioners for the Affairs of India in the draft of a letter to Meer Jafur Ali Khan, I am commanded by the Court of Directors of the East India Company to observe that, whilst these alterations entirely reverse the decision of the Court, the Board have furnished no reasons for the same.

"2. I am commanded further to observe that the distribution of the private property of the late Nabob of Surat under the decree of a Court of competent jurisdiction has already been suspended for nearly five years; and that they have reason to believe that many of the members of the family are, consequently, in distressed circumstances. The Court, therefore, entertain the strongest conviction that they cannot without great injustice to these

persons, consent to any further delay at the request of Meer Jafur Ali, whose apparent object in making that request is to enable *himself to return to India*, and there to induce *the other members of the family to waive in his favor a portion of their just right*, as decreed to them by a competent authority.

"3. For these reasons, the Court earnestly deprecate the alterations of the Board, and request that they may be permitted to revert to the decision contained in the original draft of their letter."

To that letter the following reply was sent:—

"I am desired by the Commissioners for the Affairs of India to acknowledge the receipt of your letter of the 20th Instant, conveying the representation of the Court of Directors of the East India Company against the alteration made by the Board, in the letter which the Court proposed to address to Meer Jafur Ali Khan, as to the distribution of the property of the late Nabob of Surat.

"2. The Board regret that the reason for making the alteration was not communicated to the Court on the 7th Instant: but it is simply this; the Board do not see that injury will be done to any individual interested in the property, if the distribution, which has already been postponed for a long time, be delayed for a short time longer; and therefore they are not unwilling to grant the request made by Meer Jafur Ali."

On the 27th of the same month, Meer Jafur Alee was informed that the Court would comply with his request.

"I am commanded by the Court of Directors of the East India Company, to acknowledge the receipt of your letter of the 7th Ultimo; and I am instructed to inform you in reply that the Court will comply with your request for the suspension for one year from the present time of the distribution of the private property of the late Nabob of Surat."

It appeared, therefore, that the Board of Control were not unwilling to grant the request of Meer Jafur Alee Khan for a year's delay to enable him, if he could, to effect an amicable settlement; but it did not appear that they intended to give him a year to enable him to get Act XVIII of 1848 amended, and to obtain a right of appeal to the Privy Council, which might possibly occupy three or four years before it was finally decided, thus occasioning a delay which must be injurious to the rights of the other claimants. He (Mr. Peacock) did not think that it was the intention either of the Court of Directors or of the Board of Control to give Meer Jafur Alee more than one year's further delay, and that was in consequence of his request for the express purpose of enabling him to effect an amicable settlement—certainly not for the purpose of enabling him to obtain the means of protracting litigation. On the 14th April 1858, the Court of Directors, with the sanction of course of the Board of Control, wrote to the Government of Bombay as follows:—

"You have received an intimation that Meer Jafur Alee is engaged in taking steps for obtaining a repeal of Act No. XVIII of 1848 with the view of prosecuting his appeal against the decision of Mr. Frere in respect to the decision of the private property left by the late Nabob; and you solicit our instructions as to the course to be followed in the matter.

"You will subsequently have received our letter of 23rd September (No. 31) 1857, informing you that we had, at the request of Meer Jafur Alee, agreed to suspend the distribution of the private property for one year from the 27th August 1857. At the expiration of that year, should the amicable adjustment which Meer Jafur Alee professed to have in view, not have been effected, the distribution must, in justice to the other parties interested, take place without further delay."

He thought, therefore, that the Government of Bombay had no power to suspend the distribution of the property beyond the term allowed. The President in Council considered himself bound by the order of the Home Authorities, and had refused to extend the term for the distribution of the estate. If, therefore, the Draft Act proposed by Meer Jafur Alee were now to be read a first time in this Council, and to be passed subsequently, it would not stop the distribution of the property, but would only give Meer Jafur Alee a right to restitution even should his appeal to the Privy Council be successful. This would involve very extensive litigation. Issues might arise of such a nature that it was impossible to say when they would be determined. Now, the question was—should the Legislative Council, sixteen years after the Nabob's death, and ten years after the passing of the Act XVIII of 1848, alter the Law so as to enable the Petitioner to commence such litigation. It appeared to him that it should not, and that it should refuse his Petition. It should be borne in mind that the Petitioner's daughters, according to the decision of the Bombay Government, were entitled to one-half of the property,

and the widows and the other heirs of the Nabob, according to the Mahomedan Law of inheritance, to the other half in certain specified shares. These persons, who had so long been kept out of the shares awarded to them, were, he believed, in distressed circumstances, and were unable to bear the expense of litigation. He therefore thought that, at the expiration of the year during which, according to the direction of the Home Authorities, the distribution had been suspended, the property ought to be distributed according to the decision of the Bombay Government, if in the mean time Meer Jafur Alee should be unable to effect an amicable settlement with the other claimants, and that Meer Jafur Alee should be left to take the course which, in his letter of the 7th July 1857, he stated it was his intention to adopt;—namely, "to prosecute his appeal to the Privy Council or to Parliament."

The Motion was agreed to.

The Council adjourned.

Saturday, August 7, 1858.

PRESENT:

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

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

MADRAS MARINE POLICE: AND INSTITUTION OF SUITS AND APPEALS (N. W. PROVINCES).

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor General had assented to the Bill "for the maintenance of a Police Force for the Port of Madras," and the Bill "for the relief of persons who, in consequence of the recent disturbances, have been prevented from instituting or prosecuting suits or appeals in the Civil Courts of the North-Western Provinces within the time allowed by law."

STAMP DUTIES (BENGAL).

THE CLERK presented to the Council a Petition of the Rajah of Burdwan concerning the Bill "to amend Regulation X. 1829 of the Bengal Code" (relating to the collection of Stamp Duties.)

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

Agreed to.

LITERARY, SCIENTIFIC, AND CHARITABLE INSTITUTIONS.

THE CLERK also presented a Petition of the British Indian Association praying for the passing of an Act for the incorporation of Literary, Scientific, and Charitable Institutions comformably with the recommendation of the Select Committee on the Bill "for the incorporation and Regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the Members thereof."

MR. PEACOCK moved that the above Petition be printed.

Agreed to.

ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. PEACOCK moved that Counsel be now heard upon the subject of the Bill "to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic."

Agreed to.

Counsel on behalf of Prince Azeem Jah were heard accordingly.

MR. PEACOCK said, he was very glad that Counsel had been heard on this Bill. A good deal had been said in the course of their argument upon the subject of private Bills and of Estate Bills: but he apprehended that the material point was not whether this Bill was a public Bill or private Bill, but whether it was a fair and just Bill. If it did injustice to any person, the Council ought not to pass it; for the Council had no more right to do injustice by means of a public Bill than by means of a private or of an Estate Bill. It must be clear, he thought, that Prince Azeem Jah could not reason-