

Saturday, August 28, 1858

**LEGISLATIVE COUNCIL  
OF  
INDIA**

**VOL. 4**

**JAN. - DEC.**

**1858**

**P . L .**

PROCEEDINGS OF

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

Published by the authority of the Council.

A. SAVINELLE, CALCUTTA PRINTING AND PUBLISHING COMPANY (LIMITED),  
NO. 1, WESTON'S LANE, COSSITOLLAH.

1858.

Indian Navy); and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

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

#### RYOTWAR SETTLEMENTS (MADRAS PRESIDENCY).

MR. FORBES moved that the Bill "for the better recovery of arrears of Revenue under Ryotwar Settlements in the Madras Presidency" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Currie, Mr. Harington, and the Mover.

Agreed to.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the above Committee.

Agreed to.

The Council adjourned.

*Saturday, August 28, 1858.*

#### PRESENT :

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

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

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

MR. CURRIE presented the Report of the Select Committee on the Bill "to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature."

#### MUNICIPAL ASSESSMENT (SCINDE).

MR. LEGEYT moved the first reading of a Bill "for enabling improvements to be made in certain districts and towns in the Province of Scinde."

He said, the object of this Bill was to enable the Chief Commissioner in Scinde to carry out certain Municipal

and other improvements in that province, and to provide by taxation the necessary funds for those improvements. Its provisions, it would be seen, went far beyond the mere Municipal provisions of Act XXVI of 1850 which, it was found after trial, did not, in that Province at least, answer the purpose for which it was passed. Perhaps in no part of the British dominions in India had that Act received a fairer trial than in the Province of Scinde. Perhaps also there was a feeling among the inhabitants of that Province to promote local improvements and to foster institutions which were recognized in all civilized countries to be beneficial to the community. Though they, in common with all other Asiatics, were very averse to devise any scheme of self-taxation, they were yet willing (as would be found from the correspondence which would form the annexure to the Bill) to pay taxes, provided they were told what benefit they would derive therefrom.

Mr. Frere, with his accustomed philanthropy and zeal, had for some years laboured very much to introduce Municipal and local improvements into the towns of the Province subject to his control, and his success had been very great, particularly in Kurrachee. But the inhabitants of the smaller towns objected that, while the inhabitants of towns had to pay for improvements, the inhabitants of districts were not taxed. The object of this Bill was to extend taxation to the districts.

Mr. Frere had gone farther even than Act XXVI of 1850 provided. He (Mr. LeGeyt) had before him the fifth annual Report of the Proceedings of the Kurrachee Municipality for 1857-58, which contained a full account of what was now going on at Kurrachee. Besides the ordinary improvements of towns, the Municipality had been able to create a Charitable Dispensary which afforded great relief to the poorer portion of the population. Acting upon this, Mr Frere proposed to extend the operation of the Bill to Hospitals, Asylums, and Infirmarys for persons unable from mental or bodily ailments to provide for themselves, schools, district roads, and bridges.

He had printed in the annexure to this Bill a correspondence between the Government of Bombay and the Government of India. From this correspond-

ence it would be seen that Mr. Frere had thus described the effect of Act "XXVI of 1850 after several years' experience of its working :

"I am compelled to admit that, as applied to Scinde, any claim to the character of a voluntary system of Municipal taxation and management would be, with a few exceptions, in such communities as Kurrachee, a gigantic imposture."

He therefore applied to the Bombay Government to know whether he could not, within the limits of Scinde, so modify Act XXVI of 1850 as to embrace all the purposes which, in his opinion, were required there. The Bombay Government referred the matter for the consideration of the Government of India, enquiring whether any system of taxation for Municipal purposes, analogous to that proposed by the Commissioner of Scinde, had yet been introduced into any of the non-Regulation districts administered by the Supreme Government, and requesting an expression of opinion as to the expediency of permitting any such modification of the provisions of Act XXVI of 1850. In reply, the Government of India observed that no such scheme had been introduced into any of the non-Regulation districts under their direct administration. They also stated their opinion that the proposed law had no resemblance to the Municipal law, and that, as the general Regulations had not been extended to Scinde, Act XXVI of 1850 could not be applied in the manner proposed. The Government of India, however, saw no objection to the proposal of a local Municipal law applicable to the special circumstances of Scinde.

Accordingly, the Bill which he (Mr. LeGeyt) now had the honor to present to the Council, was prepared. He had had it in hand some little time, and he confessed he had felt some difficulty in bringing it forward, being aware that its principle was so much opposed to the sentiments enunciated by the Council in 1855 when a somewhat similar measure was introduced by the late Honorable Member for Bengal. However, after reading all that had been said on the subject, he did not see that there was any thing in the Bill which might not be conceded, if it were admitted that local improvements were desirable. The Bombay Government had

certainly been able to introduce Act XXVI of 1850 into many of the towns and villages of that Presidency. But from the remarks of the Bombay Government which were contained in the papers which he had received, he found reason to believe that the working of the Act had not been more successful in the Regulation Provinces of that Presidency than Mr. Frere had found it to be in Scinde.

The funds which Mr. Frere proposed to raise for the purposes of this Act were—

1st. The application of an additional cess not exceeding 5 per cent. of the land-tax, to be levied in the same manner as the land-tax.

2nd. A tax on shops or stalls.

3rd. A tax on houses.

4th. A tax on Imports and Exports<sup>1</sup> or such other town duties as might be considered advisable.

5th. Tolls or taxes on carriages or beasts of burden.

6th. Such items of public Revenue as might be granted to the Municipality by Government for the purposes of this Act.

The last he supposed would be ferry tolls and the like.

The objects for which he proposed to provide were—

1st. The construction and repair of streets and roads, with bridges, drains, and all necessary appurtenances within the town or district.

2nd. The cleansing, watering, and lighting of streets and roads.

3rd. The construction of wells, tanks, and other works, for ensuring a proper supply of water.

4th. The erection and maintenance of schools and other educational expenditure.

5th. The erection and maintenance of Asylums for the support of those who were mentally and physically incapacitated from supporting themselves.

6th. The erection and maintenance of Hospitals, Infirmarys, and Dispensaries.

7th. The maintenance of a Municipal police.

This he (Mr. LeGeyt) understood to be a Village Police. In Scinde there was a very inefficient Village Police, for the abuses committed by which this Bill was intended to provide a remedy,

8th. The prevention of nuisances.

9th. The erection of market-places and any other works of public utility, or calculated to promote the public health, comfort, or convenience, which might be sanctioned by the Chief Commissioner.

These were the improvements which Mr. Frere hoped to introduce into Scinde by means of this Bill. He mentioned in his letter to the Bombay Government that the system now advocated was not new or experimental, and that the principle at least had been in force in the districts resumed from Meer Ali Moorad in 1851. He stated that, instead of abolishing the local taxes then levied, as had been done elsewhere on the introduction of our rule, the collection of them was placed in the hands of local Committees, which still exist to the great benefit of the country. He stated also that there was an attempt made by the tax-payers to get rid of them altogether as in our older districts. But by a little persuasion and by calling attention to the fact that the funds were faithfully expended for their improvement, the people became reconciled to the imposition and had since cheerfully submitted to it. There could be no doubt that, if Mr. Frere were enabled to carry out the improvements contemplated by this Bill, when the community for whose benefit they were intended were willing to be taxed to provide the necessary means for the purpose, a great and incalculable boon would be conferred.

The Council were aware that, after the discussion in 1855, a Committee was appointed to consider the subject of Municipalities in the Mofussil. The labors of that Committee, however, had been totally without any result, either in the shape of information or schemes for the attainment of the object in view. In some of the few places in Bengal, where Act XXVI of 1850 had been introduced, he believed it had been given up; and in Scinde, as Mr. Frere observed, experience had showed that the people of that Province were not, and could not be for several generations to come, fit to be entrusted with their own Municipal Government. He (Mr. LeGeyt) had no doubt that, if such an Act as was now proposed by Mr. Frere were extended to India generally, it would be

of great benefit. He believed that, if local improvements of a Municipal or a more extended nature were postponed till the native community came forward on the voluntary principle and asked to be allowed to pay a tax for them, such improvements would not be introduced in India for the next hundred years. A man of Mr. Frere's ability and circumspection would recommend no Bill, if he were not tolerably sure of being able to carry out its provisions without offending any public prejudice. He had proposed a scheme which seemed practicable in itself and most promising in its effects. Even as an experiment, therefore, it could not be in better hands than his.

In conclusion, Mr. LeGeyt called serious attention to Mr. Frere's letter, and trusted that the Bill would receive a liberal consideration from the Council on its second reading.

The Bill was read a first time.

#### SIR JAMSETJEE JEEJEEBHoy'S ESTATE.

MR. LEGEYT moved the second reading of the Bill "for settling a sum of Company's Rupees Twenty-five Lacs, Bengal Government four per centum Promissory Notes, and a Mansion-house and hereditaments called Mazagon Castle in the Island of Bombay, the property of Sir Jamsetjee Jeejeebhoy, Baronet, so as to accompany and support the title and Dignity of a Baronet lately conferred on him by Her present Majesty, Queen Victoria, and for other purposes connected therewith."

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

#### INDIAN NAVY.

MR. PEACOCK moved that the Bill "to amend Act XII of 1844 (for better securing the observance of an exact discipline in the Indian Navy)" be read a third time and passed.

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

#### STAMP DUTIES (BENGAL).

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill "to amend Regulation X. 1829 of the Bengal Code" (for the col-

lection of Stamp Duties); and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I was passed as it stood.

Section II provided as follows:—

"Every deed, instrument, or document specified in the said Schedule (that is Schedule A. Regulation X. 1829) which is or shall be contained in more than one sheet or piece of paper, or other material, shall be deemed to be sufficiently stamped if any one or more of such sheets or pieces of paper or other material shall bear the requisite stamp or stamps of equal value, whether the signatures or seals of the parties and witnesses shall or shall not be upon such sheet or sheets," &c.

Mr. PEACOCK said that his attention had been called by the Honorable and learned Chairman to the words "of equal value" in the 10th line. Possibly some doubt might arise as to the true construction of those words. The meaning was that stamps equal in value to the requisite stamp would be sufficient. To prevent all doubt, therefore, he begged to move the substitution for those words of the words "equal in value to the requisite stamp."

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

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

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

#### PROCEEDINGS IN LUNACY (SUPREME COURTS).

Mr. CURRIE moved that the Council resolve itself into a Committee on the Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature"; and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

In making this motion, he remarked that the Select Committee had not thought it necessary to present a formal Report; the amendments proposed being in conformity with what seemed to be the opinion of the Council when the Bill was under discussion. An enquiry before the Court or a Judge had been

substituted for the enquiry before a Judge or Master. Also when the alleged Lunatic was not within the local limits of the jurisdiction, the Court was empowered to direct an inquiry before a Mofussil Court instead of the enquiry by Commissioners.

The Motion was agreed to.

The Bill passed through Committee after some verbal amendments; and, the Council having resumed its sitting, was reported.

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

Mr. CURRIE moved that the Council resolve itself into a Committee on the Bill "to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I and II were passed as they stood.

Section III provided that application for enquiry into an alleged lunacy might be made "by any relative of the alleged Lunatic or by any Public Curator appointed under Act XX of 1841," &c.

Mr. CURRIE moved that the figures "XIX" be substituted for the figures "XX."

Agreed to.

Mr. HARRINGTON moved that the words "or by the Government Pleader" be inserted after the figures "1841" and before the word "or" in the 5th line of the Section. He said that his reason for making this motion was that, if no part of the property of an alleged Lunatic consisted of land or of any interest in land, it would not be competent to any Public Officer, as the Section was now framed, to make the application contemplated therein unless a Public Curator should have been appointed, under the provisions of Act XIX of 1841, to the district in which the property was situate. No such Officer had as yet been appointed in the North-Western Provinces or he believed elsewhere, and he did not anticipate that the appointment would ever become general, from the difficulty

which existed in regard to the remuneration of the persons who might be appointed without encroaching upon the Revenues of the State, to which the Government was not likely to agree, and he did not think that it could be expected to do so. The Section certainly allowed any relative of an alleged Lunatic to make the application mentioned in Section I, but there was nothing in the Bill to render the making of such application obligatory upon any person, however nearly related he might be to the supposed Lunatic; and it would not unfrequently happen that the relatives of the alleged Lunatic, from interested motives, would rather that the Civil Court should not interfere, in which case the object of the Bill, which was "to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of Her Majesty's Courts of Judicature," would not be attained. According to the Bill for regulating proceedings in Lunacy in the Courts of Judicature established by Royal Charter, which had just passed through a Committee of the whole Council, the Advocate General was empowered to make the application for enquiry contemplated in that Bill; and his motion, if carried, would give the same power to the Government Pleaders in the Mofussil Courts as the Bill just referred to conferred upon the Advocate General in the Queen's Courts.

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

Sections IV to XXIII, with the Preamble and Title, were passed as they stood.

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

#### LUNATIC ASYLUMS.

Mr. CURRIE moved that the Council resolve itself into a Committee on the Bill "relating to Lunatic Asylums"; and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Section I was passed as it stood.

Section II provided, among other things, that "the executive Government shall appoint for every Asylum not less than three visitors, one of whom at least shall be a Medical Officer."

Mr. PEACOCK said, the local Government had no power to create a new office without the sanction of the Governor General in Council. He therefore moved that the words "with the sanction of the Governor General of India in Council" be inserted after the word "Government" and before the word "shall" in this Section.

Mr. CURRIE said, it was not contemplated that the visitors should be paid officers.

Mr. PEACOCK observed that the Charter Act mentioned new offices as well as paid officers; and he referred to Section LIX of the Act (3 and 4 Wm. IV c. 85) which provided

"that no Governor or Governor in Council shall have the power of creating any *new office*, or granting any salary, gratuity, or allowance, without the previous sanction of the Governor General of India in Council."

Mr. CURRIE said, it seemed to him that a more complete and effective sanction could not be given than by an Act of this Council. Other offices had been created by Acts of the Legislature without the provision for which his learned friend contended.

Mr. PEACOCK said that, for the purpose of making a law, the present Council was the proper Council, but in executive matters it had no power. It appeared to him that what was proposed was an executive act. The question was whether it was legislative or executive.

Mr. CURRIE said, that the clause in the Charter Act just quoted, restricted the powers of the local Governments, but did not affect the powers of this Council.

Mr. PEACOCK said he apprehended that this Council was not competent to confer any power contrary to the Charter Act.

The CHAIRMAN said, that the argument resembled that which would arise upon another Bill respecting the Royal Prerogative. No doubt, the Governor General in Council in his executive capacity might authorize the creation of a new office. But he (the Chairman) would be sorry to admit the principle that the Legislature had not also that power. Might not the Legislature do the same thing by force of its legislative power, which the Govern-

ment in its executive capacity could do? Referring to the words of the Section under consideration, he noticed that it provided that "the executive Government *shall* appoint," &c. If the law directed this, it would be obligatory on, and not discretionary with, the Government to appoint. The Statute restricted the powers of the local Governments, but not of this Council. Had the words been "may appoint," he should have had no doubt of the propriety of introducing the word proposed.

Mr. PEACOCK said, he did not think that any question could arise as to the legality of any acts of the visitors, and, therefore, he would not press his motion.

The Motion was accordingly by leave withdrawn.

Section III was passed as it stood.

Section IV provided for wandering and dangerous Lunatics being sent to the Magistrate, who was empowered, after personal examination with the assistance of a Medical Officer, to order such Lunatics being detained in a Lunatic Asylum—

"Provided that, if any friend or relative of any such Lunatic shall undertake in writing to the satisfaction of the Magistrate that such Lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, the Magistrate, instead of sending him to an Asylum, may make him over to the care of such friend or relative," &c.

Mr. CURRIE said, this Section provided for two classes of Lunatics, namely, "Lunatics wandering at large," and "dangerous Lunatics." As the proviso had reference to the latter only, he proposed two amendments by which the words "Lunatic who is believed to be dangerous" were substituted for the words "such Lunatic."

The motions were severally carried.

Sections V and VI were passed as they stood.

Section VII provided as follows:—

"Except as otherwise hereinbefore provided, no person shall be received into a Lunatic Asylum in any Presidency town or in any Station of the Straits Settlement without an order under the hand of some person in the form B in the schedule to this Act, together with such statement of particulars as is contained in the said form B, nor without the Medical Certificate containing the particulars in form A in the schedule to this Act," &c.

*The Chairman*

THE CHAIRMAN said, the form B in the Schedule contemplated that the Lunatic to be received into the Asylum might have been found Lunatic by inquisition or by enquiry directed by the Court. It occurred to him that it would hardly be necessary in such cases to require a further Medical Certificate, which might be attended with some expense. He therefore moved the insertion of the words, "unless such person has been found Lunatic by inquisition or under an enquiry directed by an order of one of the Courts of Judicature established by Royal Charter" between the word "nor" and the word "without."

Agreed to.

The Section was passed with a verbal amendment in a subsequent part, which was rendered necessary by the foregoing amendment.

Section VIII Clause 1 provided by whom application should be made in the Mofussil for an order for the reception of a Lunatic in an Asylum when the "Lunatic is *possessed of property* and a guardian for such Lunatic has been appointed by order of the Court of Wards or of the Civil Court."

Mr. PEACOCK wished to ask the Honorable Member for Bengal whether he intended to allow Lunatics in the Mofussil to be received into a Lunatic Asylum without an order or a certificate of a Medical man. It appeared to him that this Bill, as it stood, did not contain any provision to prevent a man from being confined as a Lunatic without such an order or certificate except in a Presidency Town, or where a guardian was appointed for a Lunatic possessed of property; but suppose he had no property, and some one wished to put him into a Lunatic Asylum without an order or a certificate of a Medical man. The object of the certificate was to provide against an improper confinement. A Medical certificate might not always be obtainable in the Mofussil, otherwise Section VII might well extend to all cases.

Mr. CURRIE said, it would be found on a careful perusal of the whole Section, that the object of preventing improper confinement was more effectually secured in the Mofussil than in the Presidency Towns where any person, by signing an order and getting a certi-

cate, might cause a person to be confined. It was not thought proper to give such a power in the Mofussil.

Clause 1, to which the learned Member referred, provided for the case of a person who had been found Lunatic by judicial enquiry. In all other cases, by Clause 2, on application being made to the Court, a like enquiry was to be instituted, and the Judge might then, if the Lunacy were established, make an order for the Lunatic's admission into an Asylum.

MR. PEACOCK said, Clause 2 authorized a relative to make an application to a Judge. But it did not contain any negative words or make it illegal for the keeper of a Lunatic Asylum to confine such a person without the order of a Judge; he proposed to add some words to this Clause to the effect that a Lunatic should not be confined without an order. As the Clause stood, it only authorized a relative to make an application; but suppose he did not apply, there were no negative words to the effect that without an order no person should be admitted into an Asylum.

MR. CURRIE said, it would be more convenient to introduce a new Section for this purpose towards the end of the Bill.

MR. PEACOCK said, he was quite willing that the amendment he proposed should be made by a separate Section, and he would make a motion to that effect in a subsequent part of the Bill.

MR. CURRIE then said, that the words "appointed by order of the Court of Wards or of the Civil Court" in Clause 1, were not quite correct. The order was usually made not by the Court of Wards, but by the Collector; and the Court of Wards afterwards confirmed it. He therefore moved the substitution for those words of the words "appointed by the Court of Wards, or the Collector, or by the Civil Court."

The Motion was carried, and the Section was passed after a similar amendment in Clause 2.

Sections IX to XIV were passed as they stood.

Section XV provided that

"the Magistrate or Commissioner of Police by whom any Lunatic has been sent to a Lunatic Asylum, if it appear to such Magistrate or Commissioner that such Lunatic has an estate applicable to his maintenance and more than

sufficient to maintain his family, or that any person is legally bound to maintain and has the means of maintaining such Lunatic, may apply to the Chief Court of Civil Judicature within the local jurisdiction of which the said Asylum may be," &c.

MR. CURRIE said, the proper Court, it seemed to him, would be that within whose jurisdiction the property might be situate or where the person bound to maintain the Lunatic resided. He therefore moved the substitution for the words in italics of the words,—

"Civil Court of original jurisdiction within the local jurisdiction of which the estate of the Lunatic may be situate or the person legally bound to maintain him may reside."

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

Section XVI was passed as it stood.

MR. PEACOCK moved that the following new Section be introduced after Section XVI:—

"No person shall be received into a Lunatic Asylum in any place not within a Presidency Town except under an order of a Judge or Magistrate made in pursuance of this Act."

Agreed to.

Section XVII provided as follows:—

"Nothing contained in this Act shall affect the provisions of Act IV of 1840, entitled 'An Act for the safe custody of Criminal Lunatics.'"

MR. PEACOCK said that, at the request of Sir Arthur Buller, he moved that the words, "be taken to interfere with the power of any of the Courts of Judicature established by Royal Charter over any person found to be Lunatic by inquisition or under the provisions of Act of 1838, or with the rights of any Committee of the person or estate of such Lunatic or to" be inserted between the word "shall" and the word "affect."

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

Section XVIII, Forms A and B, and the Preamble and Title were passed as they stood.

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

SIR JAMSETJEE JEEJEEBHROY'S  
ESTATE.

MR. LEGEYT moved (in pursuance of notice) that the Standing Orders be

suspended to enable him to proceed with the Bill "for settling a sum of Company's Rupees Twenty-five lacs, Bengal Government Four per Centum Promissory Notes, and a Mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, the property of Sir Jamsetjee Jejeebhoy, Baronet, so as to accompany and support the Title and Dignity of a Baronet lately conferred on him by Her present Majesty, Queen Victoria, and for other purposes connected therewith."

In doing so, he said that this Bill was peculiarly of a private nature, and had been framed in accordance with the wishes of the parties who were immediately concerned, and who, as he had stated last Saturday, were very anxious that it should be passed without delay.

SIR JAMES O'UTRAM seconded the motion.

MR. PEACOCK said, he did not object to the suspension of the Standing Orders for the purpose of going into Committee on the Bill; but he thought it would be better not to read the Bill a third time until it had been sent home for Her Majesty's sanction.

It was stated by Sir Richard Bethell and Mr. Leith in their opinion:—

"Further, as an Act creating a Corporation may be considered to affect the Prerogative of the Crown, we advise an application to be made, under Section XXVI of Statute 16 and 17 Victoria c. 95, for the previous sanction of the Crown to such intended Act. The required sanction must be signified under the sign manual of Her Majesty, countersigned by the President of the Board of Commissioners for the affairs of India for the time being."

His own opinion was that the Council was fully competent to pass an Act like this. The Council also had an opinion expressed some time ago by the Law Officers of the Crown, which had been referred to, that it had the power to create a corporation. But inasmuch as a later opinion had been given that the Council had no power to pass an Act for granting exclusive privileges to Inventors and the Council had been directed to repeal that Act because it affected the royal prerogative, and as the present question appeared to him to stand upon the same principle, he thought that it would be safer that the Bill should be sent home for sanction.

What was the meaning of the words

"affect the prerogative of the Crown?" Was it meant that the Legislature could not do that which the Crown by its prerogative might do, or that it could do nothing which affected or took away the prerogative? He thought that, if there was any doubt, such a Bill as this ought not to be left subject to it. He made these observations now, because he wished not to be understood as assenting to the third reading of the Bill, if it should be moved before the sanction of the Crown should be obtained.

MR. CURRIE thought that the Council had repeatedly exercised the power of creating bodies corporate. The Assam Company's Act of Incorporation had been lately passed; and more recently the Council had created Municipal bodies corporate.

THE VICE-PRESIDENT said, he thought that Sir Jamsetjee Jejeebhoy would add one more to his many public services if he procured an authoritative solution of this question. Notwithstanding the high authority of those who determined that the Patents Act was beyond the powers of the Council, he confessed that he continued to be of a contrary opinion. He agreed with his Honorable and learned friend (Mr. Peacock) that, according to the true construction of the restriction on its powers, the Legislative Council was competent to pass Acts which merely did, by the exercise of Legislative power, that which the Crown, by the exercise of its prerogative, could also do. Such an act was the creation of a corporation. The Legislative Council had undoubtedly exercised this power in the case of the Bank of Bengal, of the Assam Company, and in other instances. This power was, he believed, supported by the opinions of very eminent lawyers which had been taken at home. Doubt was now thrown upon it by the very eminent lawyers under whose advice the Patents Act had been disallowed. The question was a very grave one. He thought it would be better that the Act should be sent home with such a representation as would lead to some final and authoritative decision, so that the Council might no longer be in the dark respecting its power in this respect.

With respect to the principle of the Bill, he desired to say a few words. If the

*Mr. Le Geyt*

Bill were simply intended to carry into effect Sir Jamsetjee Jejeebhoy's wishes and create a perpetual entail of his property, he (the Vice-President) should have felt some difficulty in acceding to the wishes even of one who had established such claims on the public gratitude. He made this observation to guard against the supposition that a precedent had been established for passing such Bills on the application of private individuals. He supported this Bill on the ground which had been stated in the Preamble, namely, that it was an arrangement between the Crown which conferred the title and the recipient of the title, that some such provision as this should be made for its support. This, he thought, justified the creation of what was known to the Continental Jurists as a "*majorat*."

MR. LUGREY'S motion was put and carried.

MR. LUGREY then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Sections I to XI were passed as they stood.

The Preamble having been read from the Chair—

MR. PEACOCK said, as this was in the nature of a private Bill with respect to which Sir Jamsetjee Jejeebhoy had obtained legal advice, he thought it would hardly be right, if any doubt existed, to depart from the course which had been recommended by his legal advisers, and which, it appeared, Sir Jamsetjee Jejeebhoy had desired should be followed. In the Bill prepared by Sir Richard Bethell and Mr. Leith, the following words occurred:—

"And whereas such Act hath received the previous sanction of the Crown signified under the royal sign manual of Her Majesty, countersigned by the President of the Board of Commissioners for the affairs of India for the time being, under the Statute 16 and 17 Vic. c. 95. s. 26."

This showed that it was intended that Her Majesty's sanction should be obtained.

If the Council were not competent to pass the Bill, the settlement of the twenty-five lacs would be invalid, and he could scarcely think that even Sir Jamsetjee Jejeebhoy would desire to act in opposition to the opinion of his

own legal advisers. The words, as they stood, would not quite suit the present altered circumstances, as probably there was now no President of the Board of Commissioners; but he proposed to insert words to the like effect which were taken from Act XVIII of 1855 "to remove doubts relating to the power to grant Pardons and Reprieves and Remissions of Punishments in India." He accordingly moved that the words

"The sanction of Her Majesty to the passing of this Act having been previously obtained and signified in pursuance of an Act passed in the 17th year of the reign of Her said Majesty entitled 'An Act to provide for the Government of India,'"

be added to the Preamble.

MR. LUGREY said, after what had fallen from the Honorable and learned Member, he should be endangering the Bill if he insisted in carrying it through in its present state. He would not therefore oppose the motion. But he mentioned that he believed the sanction of the Crown had been applied for; and if it meanwhile should arrive, he wished to know whether the Bill, having been sent home, could be proceeded with?

MR. PEACOCK said that, if the Bill were exactly as it stood before, the sanction would apply to it; but the Bill had been, in some respects, altered. He thought that probably some general sanction would be given.

MR. LUGREY said, he had been given to understand that the application had been made, though the sanction had not yet been received. But it was expected and, he believed, was now on its way to Bombay. When it arrived, it would be a great disappointment to those concerned to find that the Bill could not be passed into law merely because it had been sent home for the royal sanction which had since been received in a slightly different form.

THE CHAIRMAN said, he conceived that the sanction would, in all probability, be a sanction to pass a Bill. It was only one particular provision that required this sanction. Perhaps it might be in terms a sanction to create a corporation.

MR. LUGREY thought it would be better to send the Bill home without the proposed alteration and to get the

Queen's sanction to it in that form. On receipt of the sanction, words similar to those now proposed might be inserted hereafter if necessary.

MR. PEACOCK said he was not sure that the Council would be justified in altering the Bill after Her Majesty had given her sanction to it.

THE CHAIRMAN said that, when the facts were more correctly known, the Council would be able more clearly to see what course should be pursued. It was in every respect desirable that there should be no doubt as to the power of the Council to pass the Bill. The question might hereafter be raised in a Court of Law by one of the descendants of Sir Jamsetjee Jeejeebhoy and decided adversely to the entail.

MR. PEACOCK said, the better plan would be to put the Bill in a proper form for going home, so that, if sanctioned by Her Majesty, it might be passed at once in that form. The Council pledged itself, he thought, to pass it in the form in which it was submitted for sanction. If a sanction should be sent out before the Bill should arrive at home, there would be no objection to the Honorable Member moving the third reading, and on that Motion it might be also re-committed. There could be no objection to the introduction of the words proposed by him.

THE CHAIRMAN said, if the sanction should be different, though it might vary somewhat in form from the terms of the Bill, the Bill might be re-committed and its provisions made to correspond to the sanction sent.

MR. PEACOCK'S motion was carried.

The Bill passed through Committee after a further verbal amendment in the Preamble, and a similar amendment in Section III and the Title.

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

MR. LEGEYT moved that Mr. Peacock be requested to take the Bill to the President in Council in order that it might be transmitted to England for the sanction of Her Majesty.

Agreed to.

#### INDIAN NAVY.

MR. PEACOCK moved that Sir James Outram be requested to take the

Mr. LeGeyt

Bill "to amend Act XII of 1844 (for better securing the observance of an exact discipline in the Indian Navy)" to the President in Council in order that it might be submitted to the Governor General for his assent.

Agreed to.

The Council adjourned.

Saturday, September 4, 1858.

#### PRESENT:

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

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

#### ESTATE OF THE LATE NABOB OF THE CARNATIC—SETTLEMENT OF AL- LUVIAL LANDS (BENGAL)—AND FORT OF TANJORE.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor General had assented to 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 Bill "to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal;" and the Bill "for bringing the Fort of Tanjore and the adjacent territory under the Laws of the Presidency of Fort Saint George."

#### PENSIONS.

THE CLERK reported to the Council that he had received from the Home Department a copy of a communication from the Secretary to the Government of India with the Governor General on the policy of applying the provisions of the Government Order of 1st December 1857, which affect Military pensioners, to pensioners in the Civil Department, and to the holders of rent-free lands.

#### CIVIL PROCEDURE.

MR. PEACOCK had the honor to present a Joint Report from the Select Committees on the Bills for simplifying the Procedure of the Courts of Civil Judicature of the East India Company.