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PROCEEDINGS

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LEGISLATIVE COUNCIL OF INDIA,

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of Rupees per annum. This modification would leave it optional with Sir Jamsetjee Jejeebhoy to invest, for the purposes of the Act, either four or five per cent. Notes or both, and in such proportions as might be most convenient to him. But the Bill having been transmitted to England, he (Mr. LeGeyt) apprehended that there might be some difficulty in altering it now.

MR. PEACOCK said, if the Bill was to be amended, the Council should go into Committee and settle it. Perhaps, the better course now would be to amend the Bill, and to send the amended Bill home. The Bill, as it stood, had already been transmitted to England; but there would probably be no objection to the course he proposed. He supposed that the mere fact of having sent the former Bill for sanction would form no objection to this course. The Bill had been settled in Committee of the whole Council, but had not been passed, and the Council therefore had power to amend it.

The motion was carried.

MR. LEGEYT then gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill.

CIVIL PROCEDURE.

MR. PEACOCK gave notice that the consideration of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter" would be proceeded with next Saturday to the end of Chapter IV if possible.

The Council adjourned.

Saturday, September 25, 1858.

PRESENT:

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

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

LUNACY.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor General had assented to the Bill "to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter," the Bill "to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature," and the Bill "relating to Lunatic Asylums."

GUARDIANSHIP OF MINORS (BENGAL).

THE CLERK presented to the Council a Petition of the British Indian Association praying for such a modification of the Clause introduced at the last meeting of the Council into the Bill "for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal," as would extend the age of Minority of Wards to twenty-one years.

MR. CURRIE moved that the above Petition be printed.

Agreed to.

AHMEDABAD MAGISTRACY.

MR. LEGEYT moved the first reading of a Bill "to empower the Governor in Council of Bombay to appoint a Magistrate for certain Districts within the Zillah Ahmedabad." He said, the Rajah of Bhownuggur was a dependent Chief on the Western Coast of the Gulf of Cambay, some of whose estates were included in the Zillah of Ahmedabad, and were subject to the British Laws. Certain of these estates he held independently, being within the Province of Kattywar, in respect to which he was under the control of the Political Agent of that country. The Magisterial and Police duties of these districts in the Ahmedabad Zillah, had, for some time past, been the subject of discussion and difficulty; and some time ago, the Government of Bombay resolved to relieve the Magistrate of Ahmedabad of the charge of the districts, and place them under the Political Agent of Kattywar. A legal difficulty soon presented itself, as the Appellate Courts had no jurisdiction over the Political Agent, and the returns of crime in those districts were no longer furnished to the Sudder Fouzdaree Adawlut by the Magistrate of Ahmedabad. The Sudder

Court at Bombay was required to frame the draft of an enactment empowering the Government of Bombay in Council to appoint the Political Agent of Kattywar, the Magistrate of certain villages in the Bhownuggur estate; and the Bill which he had now the honor to present, had been prepared accordingly, together with a Schedule containing the names of one hundred and seventeen villages, which had hitherto been under the jurisdiction of the Magistrate of Ahmedabad, but which would, under the Bill, be exempt from that jurisdiction in future. The proposed new arrangement was a mere matter of convenience; and as long as it was carried out properly, and a proper appeal was provided, it appeared to him there could be no objection to the measure.

The Bill was read a first time.

BREACHES OF CONTRACT BY ARTIFICERS, &c.

MR. CURRIE moved that the Bill "to provide for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases" be now read a second time.

The motion was carried and the Bill read a second time.

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

MR. FORBES moved that the Bill "to continue certain privileges and immunities to the family and retainers of His late Highness the Nabob of the Carnatic" be now read a third time and passed.

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

GUARDIANSHIP OF MINORS (BENGAL).

On the Order of the Day for the adjourned Committee of the whole Council on the Bill "for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal," being read, the Council resolved itself into a Committee for the further consideration of the Bill.

Section V (the further consideration of which had been reserved) provided as follows:—

"When application shall have been made to the Civil Court either by a person claiming a right to have charge of the property of a Minor, or by any relative or friend of a Minor, or by the Collector, the Court shall inquire summarily into the circumstances, and if it shall appear that the deceased has left a Will, and that the Executor or Executors named therein is or are willing to undertake the trust, or when the deceased has not left a Will or the Executor or Executors named in any Will is or are unwilling to undertake the trust, if any near relative of the Minor shall desire or be willing to administer to the estate, and the Court shall be of opinion that such relative is a fit person to be entrusted with the charge of the property and person of the Minor; the Court shall grant a Certificate to such Executor or Executors, or near relative as the case may be."

MR. CURRIE said, he begged to move the amendment in this Section of which he had given notice last Saturday, and which had since been printed. The objection taken to the Section as it originally stood was that it seemed to require that the person who should have the administration of the estate of a Minor, should also have charge of the person of the Minor. In that respect, the Section was defective; and he had moved that its consideration be postponed, in order that he might frame an amendment. The amendment which he had framed was intended to cure that defect. It corresponded with the previous Sections of the Bill, and also with the subsequent Sections; and he believed that it met the object which was desired. He now begged to move its adoption.

The amendment was as follows:—

"That all the words after the word 'circumstances' in the 8th line of the Section be omitted, and the following be substituted for them:—

'And pass orders in the case.

'If it shall appear that any person is entitled to have charge of the property of a Minor as Executor under a Will, and is willing to undertake the trust, the Court shall grant a Certificate of administration to such Executor. If there is no Will, or the Executor named in any Will is unwilling to undertake the trust, and there is any near relative of the Minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a Certificate to such relative. The Court may also, if it think fit, (unless a Guardian have been appointed by the father) appoint such Executor or such relative, or any other relative or friend of the Minor to be the Guardian of the person of the Minor.'"

MR. PEACOCK said, it appeared to him that the new Clause was also objectionable. He did not thoroughly

understand what was meant by the term "Executor." He did not know whether it was used here in the sense which the English Law gave to it, or whether it was intended to mean a trustee or devisee. There was a great distinction in England between an Executor and a trustee or devisee. The duty of an Executor was to dispose of the property he received according to the terms of the Will—to apply it to the payment of the debts of the deceased, and to hand over the surplus to the devisee. In a case arising under this Section, an Executor would cease to hold the surplus property in trust for the infant, but would hand it over to the person who was intended to be the trustee. It appeared to him, therefore, that the word "devisee" should be substituted in the proposed amendment for the word "Executor." He was not aware whether there was such a term known in the Mofussil; but it struck him that it would be better to substitute it.

But suppose that this amendment should be made, still he did not quite understand what was intended to be the effect of the Clause. We must read it in connexion with Section III. That Section said:—

"Every person who shall claim a right to have charge of property in trust for a Minor under a Will or other Deed, or by reason of nearness of kin, or otherwise, may apply to the Civil Court for a Certificate of administration, and no person shall be competent to institute or defend any suit connected with the estate of which he claims the charge, or to give any legal discharge to the debtors of such estate, until he shall have obtained such certificate."

If a person who did not claim to have such right under the Will, held nevertheless a large property in trust for a Minor, and applied for a Certificate of administration, another person who was the Executor of a small property in trust for that Minor, might come forward, and he, under the proposed amendment, would become manager of the estate, and, as such, would manage the whole of the property, including the property in the hands of the person applying for the Certificate of administration. Because the amendment said:—

"If it shall appear that any person is entitled to have charge of the property of a Minor as Executor under a Will, and is willing to undertake the trust, the Court shall grant a Certificate of administration to such Executor. If there is no Will, or the Executor named in any Will is unwilling to undertake the trust, and there is any near relative of the Minor, and fit to be entrusted with the charge, the Court may grant a Certificate to such relative."

But supposing that the person making the application was not an Executor under a Will, but only a Trustee for the infant by a Deed, was the relative of the infant to supersede him who had been appointed by the donor of the property, and to take all that property out of his hands?

Then, the proposed amendment provided that

"the Court may also, if it think fit, (unless a guardian have been appointed by the father) appoint such Executor or such relative, or any other relative or friend of the Minor to be the guardian of the person of the Minor.

If the Court should appoint an Executor, the Executor would hold the property in trust for the Minor. He (Mr. Peacock) took a distinction between a man appointed an Executor, and a man appointed guardian by the father. The term "Executor" in the proposed amendment clearly meant, not an Executor appointed by the father, or intended by him to be the guardian of the Minor. The amendment supposed first, the case of an Executor, and then the case of a Guardian appointed by the father. If that was so, there seemed to him to be no reason why, because a person who had charge of a Minor's property merely as an Executor, he should also have the guardianship of his person and the control of his education. Why should not a person who held the property in trust, do the same? The question was not, how the property came. By this amendment, the guardianship of a Minor would depend, not upon the fact of a person holding the property of the Minor, but on the question how he had come to hold it, irrespectively of the consideration whether he had or had not been appointed guardian of the Minor by the donor.

Then, with reference to the words "unless a guardian have been appointed by the father"—supposing that the father of a child was living, was the

Executor or anybody else who might have left property to the child, to supersede him, and to assume the guardianship of the child's person and the management of his education? He (Mr. Peacock) apprehended that the father, whilst living, was the lawful guardian of his child during its minority, and that he ought never to be superseded in such guardianship, unless it could be proved that he was unfit to be entrusted with it. The duty was vested in him by law; and except upon proof of some disqualifying cause, it ought to remain with him.

Then, suppose that a Hindoo lady under age, was married to an adult husband who was competent to take care of his own and his wife's property. If any one should happen to be an Executor under a Will, and, as such, should claim to hold property in trust for the wife, he might, under the proposed amendment, claim also to be the guardian of the wife. The husband was the legal guardian of his wife, and the father was the legal guardian of his child; and the power and duty of such guardianship ought not to be taken away from them, unless it could be satisfactorily shown that they were persons in whom the duty could not properly be reposed. The principles of the Hindoo law relating to this subject were thus laid down in Macnaghten's work, Vol. I. Chap. VII.:—

"A father is recognized as the legal guardian of his children, when he exists; and when the father is dead, the mother may assume the guardianship; but where the duties of manager and guardian are united, she is, in the exercise of the former capacity, necessarily subject to the control of her husband's relations: and with respect to the Minor's person likewise, there are some acts to which she is incompetent; such as, the performance of the several initiatory rites, the management of which rests with the paternal kindred. In default of her, an elder brother of a Minor is competent to assume the guardianship of him. In default of such brother, the paternal relations generally are entitled to hold the office of guardian; and failing such relatives, the office devolves on the maternal kinsmen, according to their degree of proximity; but the appointment of guardians universally rests with the ruling power."

The father, therefore, was recognized as the legal guardian of his children while he existed. It might happen that a child might have property left to him while his father was living. An uncle might leave property to him, or he might succeed to property in preference to his father. If he should gain property by virtue of any of these means, the father ought not to be deprived of the guardianship of his person. Then, it was further laid down in Macnaghten's Hindoo Law—

"that the guardianship of a female, whether she be a Minor or adult, until she be disposed of in marriage, rests with her father: if he be dead, with her nearest paternal relations. After her marriage, a woman is subjected to the control of her husband's family. In the first instance, her husband is her guardian: in default of him, her sons, grandsons, and great grandsons are competent to assume the guardianship, and in default of them, her husband's heirs generally, or those who are entitled to inherit his estate after her death, are competent to exercise the duties of guardian over herself and her property. On failure of her husband's heirs, her paternal relations are her guardians; and failing them, her maternal kindred. In point of fact, females are kept in a continual state of pupilage."

He thought, therefore, that the proposed amendment was wrong in being so framed as to admit of an Executor being appointed guardian in supersession of a father or a husband.

Again, it was provided by Section IX that:—

"Whenever the Court shall grant a certificate of administration to the estate of a Minor to the Public Curator or other person as aforesaid, it shall at the same time appoint a guardian to take charge of the person and maintenance of the Minor. The person to whom a certificate of administration has been granted, unless he be the Public Curator, may be appointed guardian. Provided always that the legal heir of a Minor shall not be appointed guardian of his person."

There might be many cases in which a father might be the legal heir of his child, and there might be cases in which a husband might be the legal heir of his wife. For instance, a man might marry a girl who had arrived at the age of puberty, but was still a Minor; she might have a *streedhun*; she might bear no children, and consequently would have no grandson. It was laid down that, in such a case, the husband might inherit the *streedhun*. But by Section IX of this Bill, because he thus was his wife's legal heir, he

was not to have the guardianship of her person.

Then, again, this Bill made no special provision with respect to the guardianship of female Minors, which the Court of Wards Regulation (X. 1793) did. Section XXI of that Regulation said:—

"The rules contained in Section VIII for the election of managers are to be applied also to the choice of guardians: with these differences, that the guardianship shall, in no instance be entrusted to the legal heir or other person interested in outliving the ward."

That would exclude the husband. The Section then proceeded:—"And that female Minors shall have guardians of their own sex." When he found such a provision made in the Court of Wards Regulation, he thought that a similar provision should be made in this Bill.

Then, some provision ought to be made for the education of a Minor. If male, he should be sent to a College; if female, the control of her education should be committed to her husband, provided he was not an improper person. The Court of Wards Regulation made provision for this object. It said:—

"The guardians of female Minors, who, agreeably to Section XXI, are to be of the same sex, are also to take care that their wards, when arrived at the age of tuition, receive an education suitable to their condition."

There was no such provision in this Bill. The Bill provided that Minors ought to be educated, if their estates paid revenue to Government.

Section VI of the Court of Wards Regulation said:—

"The trusts of manager for disqualified landholders, and guardian to them, are to be considered altogether distinct, but, as hereafter specified, they may, in some instances, be vested in the same person; and the rules contained in the following Sections relative to managers and guardians respectively are founded on this distinction."

And then, Section XV provided—

"Agreeably to the distinction laid down in Section VII, the manager is to have the entire care of the estate, real and personal. He will therefore have the exclusive charge of all lands, Malgoozaree or lakhiraj, as well as all houses, tenements, goods, money, and moveables, of whatever nature belonging to the Proprietor whose estate may be committed to his charge, excepting only the house wherein such Proprietor may reside, the moveables wanted for his or her use, and the money allowed for the support of the Proprietor, and his or her family, entitled to a provision, which are to be left to the care of the guardian, where distinct guardians may be appointed. Both managers and guardians, on their receiving charge of any property, are to sign an exact inventory of the same, which is to be deposited in the treasury of the Collectorship."

All these provisions were made by the Court of Wards Regulation. This Bill certainly did not contain them. If the amendment now proposed in Section V were to be adopted, by which the guardianship of a Minor might be given to an Executor, some provision ought to be made that the Executor should not supersede the natural and legal right of a father to be the guardian of his own children;—and again, that the guardianship of a female Minor who was married to an adult husband, should be left to her husband.

In accordance with these views, he should move that the following Proviso be added to Section V:—

"Provided that nothing in this Act shall authorize the appointment of a guardian of the person of a female, whose husband is not a Minor, or the appointment of a guardian of the person of any Minor whose father is living and is not a Minor; and provided also that nothing in this Act shall authorize the appointment of any person other than a female as the guardian of the person of a female."

The object of this Proviso was that the fact of property coming to a Minor or an infant wife, should not deprive the father or the husband of their respective rights of guardianship. In England, if the Court saw that a father was an improper person to have the guardianship of the person of his child, or a husband of the person of his wife, it might remove him from such guardianship. He (Mr. Peacock) did not know what the Law on that subject might be in the Mofussil. If it was intended now to provide a Law in respect either to fathers or to husbands, then there ought to be some distinct Clause to the effect of the Proviso proposed by him. The Proviso only said that an Executor ought not to be appointed in supersession of a father or a husband. He supposed that this Bill was really

intended to provide for the case of orphans—children without fathers; but nevertheless, as its scope was general, and as it would comprehend the case of all Minors, it appeared to him that there ought to be some provision like that contained in the Proviso which he submitted. This Act dealt with every one living out of the jurisdiction of the Supreme Court, except a British subject; and when so dealing, it ought not to deprive fathers and husbands of their natural and legal right to the guardianship of their children and wives.

THE CHAIRMAN said, he wished to say a few words about the term "devisee" before the amendment was put to the vote. Probably the best mode of taking the sense of the Committee on the points raised would be to put the question that the amendment moved by the Honorable Member for Bengal be adopted; and if that were decided in the affirmative, to put the further question that the Proviso moved by the Honorable and learned Member who had spoken last, be added to the Section.

With respect to the proposed change of phraseology in the amendment moved by the Honorable Member for Bengal, he spoke under correction as not familiar with the practice in the Mofussil, but he thought that it would be very inexpedient to introduce such a word as "devisee" or any word which implied a distinction between gifts by will of immoveable property, and gifts by will of moveable property. The wills that would most frequently be the subject of enquiry under this Act were the wills of Hindoos. In nine out of ten of these cases, the word used was "turney" or "attorney." In the Supreme Court, that term was considered as implying a person to whom the whole of the property passed upon the trusts of the Will; and he imagined that the same was the case in the Mofussil. Looking back to the former Section of the Bill to which the Honorable and learned Member had drawn attention, it appeared to him that (though he believed the case would be of very rare occurrence) the Bill did contemplate the right of a trustee appointed by a Deed to have charge of the property of a Minor; and, therefore, he thought it would be better if the Honorable Member for Bengal would alter his amendment so that it should run thus:—

"and pass orders in the case.

"If it shall appear that any person claiming the right to have charge of the property of a Minor is entitled to such right by virtue of a Will or Deed, and is willing to undertake the trust, the Court shall grant a Certificate of administration to such person. If there is no person so entitled, or if such person is unwilling to undertake the trust, and there is any near relative of the Minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a Certificate to such relative. The Court may also, if it think fit, (unless a guardian have been appointed by the father), appoint such person as aforesaid or such relative, or any other relative or friend of the Minor to be the guardian of the person of the Minor."

MR. PEACOCK said, the alteration suggested by the Honorable and learned Chairman would meet both the objections he had taken to the proposed amendment. He thought that the party appointed ought to have the guardianship of the person of the Minor whether his appointment was by Will or by Deed.

THE CHAIRMAN said, he had no objection whatever to make it incumbent on the Court to recognize the natural and legal right of a father to the guardianship of his infant child, or that of a husband to the guardianship of his wife, unless he were personally unfit to be entrusted with the charge; but he should have thought that the words of the amendment which recognized the right of the father to appoint a guardian seemed to imply that he, if living, was the proper person to be appointed guardian, in the rare cases in which the appointment of a guardian in his lifetime might become necessary. The 9th Section, however, as it stood, might prevent such an appointment, inasmuch as the father would often be the presumptive heir of his infant son.

He felt a very strong objection to the provision inserted by the Select Committee in that Section which would, in many cases, exclude persons having a preferential right to guardianship, on the ground that they would also be entitled to property on the death of their wards. A Hindoo father might leave a widow and a son. If the son died during his minority, of course the pro-

perty inherited by him from his father would pass to his mother; but that was no reason why the mother should be deprived of the guardianship of her child while he lived. He had no objection to the amendment proposed, if it were altered as he had suggested; and at the proper stage, he would move that the provision in Section IX to which he had referred, be omitted.

MR. CURRIE said, he was much obliged to the Honorable and learned Chairman for the alteration he had suggested in his amendment. It would certainly make Section V more complete. The only case contemplated by the earlier Regulations of a person holding property in trust for a Minor, was that of an Executor; and it was following these earlier Regulations that he had made mention of an Executor only in this Section.

The amendment was then altered as suggested by the Chairman and agreed to.

MR. PEACOCK, with the leave of the Council, withdrew his Proviso, stating that he should move it as a substantive Section after Section XXII.

Sections VI and VII were passed after verbal alterations rendered necessary by the amendments made in Section V.

THE CHAIRMAN moved that the Proviso in Section IX (which excluded the legal heir of a Minor from the guardianship of his person) be omitted.

The Motion was carried, and the Section then passed.

MR. PEACOCK then moved that the following be inserted as a new Section after Section XXII:—

"Nothing in this Act shall authorize the appointment of a guardian of the person of a female whose husband is not a Minor, or the appointment of a guardian of the person of any Minor whose father is living and is not a Minor; and nothing in this Act shall authorize the appointment of any person other than a female as the guardian of the person of a female. If a guardian of the person of a Minor be appointed during the minority of the father or husband of the Minor, the guardianship shall cease as soon as the father or husband (as the case may be) shall attain the age of majority."

MR. CURRIE said, he had no objection to that part of the proposed Section which referred to married females and to females generally; but he thought it would be better to leave out all mention of the father, because almost the only case in which property would come to a Minor whose father was living, would be the case of adoption. In a case of adoption, the father ceased to have any interest in the child, and probably would not be the most suitable person to be appointed his guardian. Then, the Bill left it entirely in the discretion of the Court to appoint the most suitable person. Unless the child should have left his family altogether by adoption, the father would generally be the most suitable person to be his guardian, and it might be safely left to the Court to appoint him. He (Mr. Currie) did not mean to offer any opposition to the proposed Section, especially as the Bill would be published, and the Section might be further considered hereafter; but he should wish it to be restricted to females.

The Section was put and agreed to.

Section XXIII (the interpretation clause) provided that

"the expression 'Civil Court' as used in this Act shall be held to mean the principal Court of original jurisdiction in the District."

MR. CURRIE moved that after the word "District," the following should be inserted:—

"and shall not include the Supreme Court; and nothing contained in this Act shall be held to affect the powers of the Supreme Court over the person or property of any Minor subject to its jurisdiction."

The Motion was carried, and the Section then passed.

The Council then resumed its sitting, and the Bill was reported.

CIVIL PROCEDURE.

On the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter"—

MR. LEGEYT moved that the consideration of the Bill be postponed until after the consideration of the next Bill.

Agreed to.

SIR JAMSETJEE JEEJEEBHOY'S ESTATE.

MR. LEGEYT moved that the Bill "for settling a sum of Company's Rupees twenty-five lacs, 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" be re-committed to a Committee of the whole Council for the purpose of considering proposed amendments therein.

Agreed to.

MR. LEGEYT said, the Council would have learnt from the paper from the Secretary to the Government of Bombay which had been circulated last week, that a wish had been expressed by Sir Jamsetjee Jeejeebhoy and concurred in by the Government, that a slight modification should be made in the Bill as passed by a Committee of the whole Council and transmitted to Her Majesty for assent. Last Saturday, it was suggested to him that the Bill might be recommitted, and the new provision recommended by the Government of Bombay considered. The provision was contained in the 3rd paragraph of Sir Jamsetjee's letter to the Government of Bombay. Sir Jamsetjee said:—

"I take this opportunity of intimating my wish that the Draft Act which I forwarded to you on the 28th Ultimo, should be slightly modified as follows, namely, instead of specially settling 'twenty-five lacs of Rupees in *four per cent.* Bengal Government Promissory Notes,' I would wish it provided in the Act that such an amount of Government Promissory Notes be settled, as will yield an income of not less than one hundred thousand Rupees per annum.

On going back to the original correspondence in England between the friends of Sir Jamsetjee Jeejeebhoy and the President of the Board of Control, he found that in pursuance of that correspondence, a Bill was drafted, and forwarded to the Legislative Council; and, as the Council was aware, it was passed in that form in Committee of the whole Council. The alteration now proposed was that, in Section III, after the word "Notes" in the sixth line, the following words should be introduced:—"or such amount of Government Promissory Notes as will yield an income of not less than one lac of Rupees per annum." He did not propose to make any specific mention of five per cent. Promissory Notes. He thought it sufficient to say such amount of Government Promissory Notes as would yield an annual income of not less than one lac of Rupees.

MR. PEACOCK said, it was not his intention to oppose the proposed alteration. Sir Jamsetjee Jeejeebhoy said:—

"As the proposed change is in itself trivial, so far as the Act is concerned; as it involves no departure from the spirit or intention of the Act; and as the originally proposed amount of annual income derivable from the settlement will remain unaffected thereby—I feel confident that Government will consider my proposal a very reasonable one."

He (Mr. Peacock) could not say that the income derivable from the settlement would remain unaffected by the change proposed. What Sir Jamsetjee Jeejeebhoy proposed was to substitute twenty lacs of five per cent. Promissory Notes for twenty-five lacs of four per cent. Promissory Notes. The interest of five per cent. had been guaranteed for a certain period only. If after that period it should be reduced to four per cent. the investment now proposed would yield only eighty thousand Rupees a year, or produce only twenty lacs of money in the event of the trustees refusing to a diminution of the rate of interest, so that the income of this Baronetcy might be reduced from one lac to eighty thousand Rupees a year. Therefore, the settlement would be materially affected by the alteration desired. If Sir Jamsetjee Jejeebhoy wished to secure an investment which would yield eighty thousand Rupees a year, he (Mr. Peacock) had no objection to his so doing if it were in conformity with the understanding on which the Baronetcy had been granted. If the modification proposed were adopted, it could not be said that Sir Jamsetjee Jejeebhoy was securing a lac a year for the Baronetcy.

MR. LEGEYT said, there was no denying the force of the objection taken by the Honorable and learned Member;

but did it not equally apply to the four per cent. loan? There was no guarantee that the four per cent. Promissory notes would always yield four per cent. The interest payable upon them might be reduced to three and a half per cent. The nature of the guarantee did not appear to be such as to ensure beyond all possible chance of a change an income of a lac a year for the Baronetry. The income must be subject to certain changes of which no one could now say that they would take place or not.

The motion was then put, and agreed to, and the Section then passed.

The Preamble and Title were next re-considered and amended.

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

CIVIL PROCEDURE.

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

Section 49 of Chapter III provided that in suits for moveable property, when the Defendant is about to leave the jurisdiction "with intent to avoid or delay the Plaintiff," the Plaintiff may apply that security be taken for his appearance.

SIR ARTHUR BULLER moved that the words "or to obstruct or delay the execution of any decree that may be passed against him" be inserted after the words "with intent to avoid or delay the Plaintiff."

Agreed to.

SIR ARTHUR BULLER moved that the words "or that he has disposed of or removed from the jurisdiction of the Court his property or any part thereof" be inserted after the words "is about to leave the jurisdiction of the Court."

The motion was carried, and the Section then passed.

Section 50 prescribed the mode in which the Court should proceed on such application.

SIR ARTHUR BULLER moved that the words "or that he has disposed of or removed from the jurisdiction of the Court, his property or any part thereof with intent to obstruct or delay the execution of any decree" be inserted before the word "it" in the 9th line of the Section.

The motion was carried, and the Section as amended passed.

The postponed Section 53 provided that "if, on trial of the suit, it shall appear to the Court that the arrest of the Defendant was applied for on insufficient grounds, or if the claim of the Plaintiff is disallowed," the Court may award compensation to the Defendant;

"Provided that the amount of compensation awarded under this Section shall not exceed one hundred Rupees if the decree be passed by a Court whose jurisdiction may not exceed the sum of one thousand Rupees, or five hundred Rupees if it be passed by any other Court."

MR. HARINGTON moved that the words "on the trial of the suit" be omitted from the Section.

Agreed to.

MR. PEACOCK moved that the words "and it shall appear to the Court that there was no probable ground for instituting the suit" be inserted after the word "disallowed" in the 5th line of the Section.

Agreed to.

MR. RICKETTS, with the leave of the Council, withdrew the Motion which he had made at the last Meeting for the omission of all the words after the word "arrest" in the 10th line of the Section, observing that the amendment just made entirely met his views.

MR. HARINGTON moved that the words "not exceeding the sum of one thousand Rupees" be inserted after the word "amount" in the 7th line of the Section.

Agreed to.

MR HARINGTON moved that the words "amount of compensation awarded under this Section, shall not exceed one hundred Rupees if the decree be passed by a Court whose jurisdiction may not exceed the sum of one thousand Rupees, or five hundred Rupees if it be passed by any other Court" be left out, and the words "Court shall not award a larger amount of compensation under this Section, than it is competent to such Court to decree in an action for damages" substituted for them.

The motion was carried, and the Section as amended passed.

Sections 54 to 56 were severally passed as they stood.

The consideration of Sections 57 to 59 was postponed.

Sections 60 to 62 were severally passed as they stood.

Section 63 provided as follows:—

"If on the trial of the suit, it shall appear to the Court that the attachment was applied for on insufficient grounds, or if the claim of the plaintiff is disallowed either wholly or in part, the Court may (on the application of the defendant) award against the plaintiff in its decree such amount as it may deem a reasonable compensation to the defendant for the expense or injury occasioned to him by the attachment of his property. An award of compensation under this Section shall bar any suit for damages in respect of such attachment."

MR. HARINGTON moved that the words "on the trial of the suit" after the word "If" in the first line of the Section, be left out.

Agreed to.

MR. PEACOCK moved that the words "or if the claim of the plaintiff is disallowed either wholly or in part" after the word "grounds" in the fifth line of the Section, be left out, and that the words "if the suit of the plaintiff is dismissed, or judgment is given against him by default or otherwise, and it shall appear to the Court that there was no probable ground for instituting the suit" be substituted for them.

Agreed to.

MR. HARINGTON moved that the words "not exceeding the sum of one thousand Rupees" be inserted after the word "amount" in the ninth line of the Section.

Agreed to.

MR. HARINGTON moved that the words "provided that the Court shall not award a larger amount of compensation under this Section, than it is competent to such Court to decree in an action for damages" be inserted after the word "property" in the 12th line of the Section.

The motion was carried, and the Section, as amended, passed.

MR. PEACOCK moved that the Standing Orders be suspended to enable him to move an amendment in Section 53.

Agreed to.

MR. PEACOCK moved that the words "if the claim of the plaintiff is disallowed" after the word "or" in the 4th line of the Section, be left out, and that the words "if the suit of the plaintiff is dismissed, or judgment is given against him by default or otherwise," be substituted for them.

The motion was carried and the Section then agreed to.

Section 64 provided as follows:—

"Attachments before judgment shall not affect the rights of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree. Provided that, in the case of a person holding a decree, he shall satisfy the Court that he has used due diligence in endeavoring to enforce the decree; but any neglect on the part of the person holding the decree shall not prevent the sale of the property in execution, if such person can show that the attachment before judgment was obtained for a fraudulent purpose."

THE CHAIRMAN said the Proviso was a sort of Proviso on a Proviso. The object of the first part of the Section was good; it provided that an attachment obtained before judgment should not over-ride the claim of any creditor holding a decree against the defendant to sell the property in satisfaction of his decree; but the Proviso appeared to him objectionable and likely to cause unnecessary litigation, and he should move that it be omitted.

THE CHAIRMAN moved that the proviso above quoted be omitted.

The motion was carried and the Section then passed.

Section 65 was passed as it stood.

Section 66 provided as follows:—

"Whenever lands paying revenue to Government form the subject of a suit, if the party in possession of such lands shall neglect to pay the Government revenue, and a public sale shall in consequence be ordered to take place, the party not in possession shall, upon payment of the revenue due previously to the sale (and with or without security at the discretion of the Court) be put in immediate possession of the lands, and the Court in its decree *shall* award against the defendant the amount so paid, with interest thereupon at such rate as to the Court may seem fit."

THE CHAIRMAN moved that the word "shall" in the 13th line of the Section be struck out, in order that the word "may" might be substituted for it.

Agreed to.

MR. PEACOCK moved that the words "or may charge the amount so paid, with interest thereupon, at such rate as the Court may order, in any adjustment of accounts which may be directed in the final decree upon the cause" be added to the Section.

The motion was carried, and the Section then passed.

Section 67 provided for the issue of injunctions to stay waste or alienation of property in dispute in any suit, and for the appointment of a receiver or manager if necessary. It further provided that

"if the property be land paying revenue to Government, the Court shall appoint the Collector to be receiver and manager of such land, if the Government by a general order in that behalf shall so direct."

MR. RICKETTS moved the substitution of the words "and it is considered that the interest of those concerned will be promoted by the management of the Collector" for the words "the Court shall" in the 34th line.

Agreed to.

MR. RICKETTS moved the omission of the words "if the Government, by a general order in that behalf shall so direct" at the end of the Section.

MR. PEACOCK said the management of an estate for the prevention of waste was a duty as between private persons. The Government had no interest in it. The Collector received a high salary from Government for the performance of his public duties, and his time ought not to be given to such additional duties as were contemplated by the proposed amendment. In many districts, the Collectors would be also Magistrates; and if the duties were cast upon them, they would be prevented from discharging the legitimate functions of their office. He did not mean to oppose the amendment; but it did appear to him that it had better not be inserted.

MR. RICKETTS motion was then put and carried.

MR. PEACOCK moved the addition of the following words to the Section:—

"unless the Government shall, by any general order, prohibit the appointment of Collectors for such purpose, or shall in any particular case prohibit the appointment of the Collector to be such receiver."

MR. RICKETTS said, he could not say he thought it desirable that these words should be added to the Section. It was not likely that the Government would take advantage of them, but still he would *not* give it so large a power as they would confer. It had been the practice for Collectors to manage lands paying revenue to Government in these cases; the practice had proved to be very much to the advantage of the persons concerned, and he would leave the Section as it now stood. He believed that the discretion of appointing Collectors or not, was much better in the hands of the Court than in those of the Government.

The motion being put—

The Council divided.

Ayes, 5.	*Noes*, 3.
Mr. Forbes.	Mr. Currie.
Mr. Harington.	Mr. LeGeyt.
Sir Arthur Buller.	Mr. Ricketts.
Mr. Peacock.	
The Chairman.	

So the motion was carried and the amended Section passed.

Section 68 was passed as it stood.

THE CHAIRMAN moved that the following new Section be introduced after Section 68 namely—

"The Court may in every case before granting an injunction require such reasonable notice of the application for the same to be given to the opposite party as to it shall seem fit."

Agreed to.

Section 69 was passed after amendments similar to those in Section 63.

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

SIR JAMSETJEE JEJEEBHOY'S ESTATE.

MR. LEGEYT moved that the Bill "for settling a sum of money 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,"

as now amended, be forwarded to the President in Council for transmission to the Secretary of State for India with the request that he will obtain Her Majesty's sanction to the same, but with an intimation that, if any objection should exist to the Bill in its present form, the Council will be prepared to pass the Bill as it was settled on the 28th of August last.

Agreed to.

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

MR. FORBES moved that Mr. Ricketts be requested to take the Bill "to continue certain privileges and immunities to the family and retainers of his late Highness the Nabob of the Carnatic" to the President in Council in order that it may be submitted to the Governor General for his assent.

Agreed to.

STATE OFFENCES.

MR. LEGEYT moved that a communication received by him from the Bombay Government relative to an amendment of Act XI of 1857, regarding State offences, be laid upon the table and referred to the Select Committee on the Indian Penal Code. It would be in the recollection of the Council that, when that Act was passed, the Presidency of Bombay was specially excluded from its provisions. The Government of Bombay now complained that the enactment still in force in that Presidency—Regulation XIV. 1827, did not suit them so well as Act XI of 1857 would do. A Commission Court was held at Ahmednuggur on the 21st of August last for the trial of certain prisoners charged with Treason and Rebellion. The Commissioner, in submitting the Proceedings, stated that, under Section VII of Regulation XIV. 1827, the Court had no alterative but to pass the *only* sentence therein set forth, which was sentence of "Death and confiscation of property." He added—

"The Bombay Code admits of no intermediate punishment between Death and ten years' imprisonment for Treason and Rebellion. The first punishment is in all ordinary cases too severe; the second is frequently inadequate. I think, therefore, it would be expedient to cancel the Proviso in Section I of Act XI of 1857, which renders that Act not applicable to the Regulation Provinces of the Bombay Presidency."

The Government of Bombay fully concurred in this suggestion, and desired a rescission of the Proviso referred to. He Mr. (LeGeyt) felt considerable difficulty in dealing with the subject; but as he understood that the Acts in question would go before the Select Committee on the Penal Code for consideration in connexion with the Chapter relating to State offences, he thought that the best course would be to refer the communication he had received, to that Committee.

THE CHAIRMAN said, he certainly had no recollection that he was responsible for the alterations by which the Presidency of Bombay had been excluded from the provisions of Act XI of 1857 to which the Honorable Member had alluded. But referring the present communication to the Select Committee on the Penal Code would hardly meet the wish of the Government of Bombay, because there was no doubt that that Code would provide a general law relating to the offences against the State for all India. That, however, was not the present object of the Government of Bombay. They wished for the immediate application of a temporary Act to their Presidency. The better plan would be to bring in a short Bill for the purpose.

MR. LEGEYT, with the leave of the Council, withdrew his motion.

BREACHES OF CONTRACT BY ARTIFICERS, &c.

MR. CURRIE moved that the Bill "to provide for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases" be referred to a Select Committee consisting of the Vice-President, Mr. LeGeyt, Mr. Forbes, and Mr. Currie.

Agreed to.

GUARDIANSHIP OF MINORS (BENGAL).

MR. CURRIE moved that the Bill "for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal," as settled in Com-

mittee of the whole Council be published for general information.

Agreed to.

FRAUDS ON INSURERS.

MR. LEGEYT moved that a communication received by him from the Bombay Government relative to a certain class of frauds practised in Guzerat on Insurers, be laid upon the table and referred to the Select Committee on the Indian Penal Code.

Agreed to.

CONSERVANCY OF MILITARY CANTONMENTS (BENGAL).

MR. PEACOCK moved that the Select Committee on the Bill "for the Conservancy of Military Cantonments in the Presidency of Bengal" be discharged.

Agreed to.

CIVIL PROCEDURE.

MR. RICKETTS gave notice that he would propose an amendment in Section 72 Chapter IV of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter" to the effect that no party shall be imprisoned under a decree for less than fifty Rupees for any period exceeding one month, and under a decree for less than five hundred Rupees for any period exceeding six months.

Also an amendment in Section 76 of the same Chapter to the effect that, when a defendant shall have been imprisoned and having delivered up all his property shall have been discharged by the Court, if the amount of the decree under execution shall not exceed five hundred Rupees, it shall be competent to the Court to declare the defendant absolved from all further liability under such decree.

MR. LEGEYT gave notice that he would propose to omit so much of Section 143 Chapter III of the above Bill as requires that depositions of witnesses shall be taken and that the notes by the Judges shall form the record.

The Council adjourned.

Saturday October 2, 1858.

PRESENT:

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

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

THE CLERK presented a Petition of Inhabitants of the 24-Pergunnahs praying, with reference to the Bill "for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal," that the age of majority be not fixed at twenty-one years.

MR CURRIE said, the Petitioners had misunderstood the Bill altogether. The age of majority was fixed at eighteen, as in the Court of Wards Regulation, and not at the age of twenty-one years. As, however, there was a Petition before the Council from the British Indian Association suggesting the extension of the age of majority to the twenty-first year, he would move that the Petition now presented, be printed.

Agreed to.

CIVIL PROCEDURE.

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

Sections 57, 58, and 59 of Chapter III related to the sale of property in execution of decrees.

MR. HARINGTON said, that the consideration of these Sections had been postponed on his motion at the last meeting of the Committee, on the understanding that, in the course of the week, he would print and circulate the amendments in them which appeared to him to be necessary. This he had done, and he should now move the omission of the Sections as they stood, and the substitution for them of the amended Sections prepared by him. A few remarks would suffice to explain