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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858

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1858.

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

The Motion was agreed to.

The Council adjourned.

Saturday, August 7, 1858.

PRESENT:

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

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

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

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

STAMP DUTIES (BENGAL).

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

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

Agreed to.

LITERARY, SCIENTIFIC, AND CHARITABLE INSTITUTIONS.

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

MR. PEACOCK moved that the above Petition be printed.

Agreed to.

ESTATE OF THE LATE NABOB OF THE CARNATIC.

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

Agreed to.

Counsel on behalf of Prince Azeem Jah were heard accordingly.

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

ably contend that the Council was disposed to ignore his rights and interests, seeing that it had just heard a learned and ingenious argument in support of them, addressed to it by his Counsel.

He would not go into the question relating to the Treaties between the East India Company and the Nabobs of the Carnatic, because the Council had stopped the learned Advocates on behalf of the Prince from entering into it. The construction of those Treaties was not a subject for argument here. It had been decided by the Government of Madras in 1856; that decision had been affirmed by the late Governor-General and subsequently confirmed by the Honorable Court of Directors with the sanction of the Board of Control. It was not for this Council to re-open the question, and to discuss whether that decision, so confirmed, was correct or erroneous. In their Despatch of the 19th March 1856, the Honorable Court said :—

"In the opinion both of the Governor-General and of the Madras Government, the dignity of the Nabob of the Carnatic has expired; the Treaties between the British Government and the successive heads of the family of Walajah are at an end; the British Government are under no obligation to recognize any person as successor to the rights hitherto enjoyed under those Treaties; and expediency being wholly against such recognitions, those authorities are unanimously of opinion that it ought not to take place.

"We have carefully examined the past history of the relations of the British Government with this family, and have bestowed on the important question referred to us the earnest deliberation due to all questions which can be supposed to involve considerations of public faith."

As the learned Counsel had been prevented from entering into any discussion as to the effect of the Treaty, he (Mr. Peacock) would not refer to the arguments of the Honorable Court upon the subject. It was sufficient for him to say that the Honorable Court declared "that they fully adopted the opinion of the Governor General and of the Madras Government that the title and dignity of Nabob and all the advantages annexed to it by the Treaty of 1801 were an end."

The Council must, therefore, determine the question affecting the claims of Prince Azeem Jah upon the assumption

Mr. Peacock

that the decision arrived at by the Home Authorities was correct, and that the Nabobship of the Carnatic never did descend to the Prince.

The learned Counsel had said that there was a variance between the Preamble of the Bill and its enacting Clauses. He said that the Preamble of the Bill provided that, after appropriating to the payment of the late Nabob's debts such portion of the property left by him as was liable for them, the surplus assets should be applied towards making provision for his family; but that the Bill itself contained no Clause by which any such surplus assets could be divided among the next of kin or any members of the family. To him (Mr. Peacock), however, it seemed perfectly clear that Section VIII of the Bill did make full provision for that purpose, and he had called the learned Counsel's attention to it whilst he was addressing the Council, in order that he might not be taken by surprise. Section VIII provided as follows :—

"It shall be lawful for any creditor *or person interested in the proper administration of the estate and effects of the said Nabob*, to apply for and obtain in a summary way, in the manner provided by Act VI of 1854, upon a summons to be served upon the said Receiver, an order for the administration of the estate and effects of the said Nabob."

This provision gave to any person interested in the proper administration of the estate, the right to institute an administration suit, not as in an ordinary case against the Administrator or Executor of the estate, because there was none—but against a Receiver to be appointed under the Bill. If the property left by the late Nabob had come within the provisions of the Administrator General's Act, the Administrator General would have taken possession of it for the benefit of all persons interested, and, in the event of any surplus remaining after the payment of the Nabob's debts, he would have divided such surplus amongst the next of kin or heirs, according to their legal rights. As, however, the property did not come within the jurisdiction of the Administrator General, a Receiver was to be appointed to collect and take possession of it. But he was not to take any property out of the possession of

any member of the Nabob's Family, without the permission of the Government of Madras. Act I of 1844 exempted the person and property of the late Nabob from any writ or process of any Court, unless such writ or process were sued forth or prosecuted with the consent of the Government of Madras, and it also provided that the same privilege should extend to the persons belonging to the Family and household of His Highness whose names were contained in lists to be published by that Government from time to time. The last Section of this Bill, accordingly, provided that—

"No property shall be taken by the said Receiver out of the possession of any person mentioned in the list last published in the Government Gazette at Madras of persons entitled to privileges under the provisions of Act I of 1844, without the previous order of the said Governor in Council."

The object of this Section was to prevent the Receiver from interfering unnecessarily with any property that might be in the actual possession of any member of the Family of the late Nabob. The learned Counsel had stated expressly that he did not object to the appointment of a Receiver, but he objected to the Receiver's being authorized to realize or sell the property pending the decision of Parliament upon the appeal which his client had preferred against the ruling of the Home Authorities regarding his claims. The Receiver being appointed, the first question would be, how was the property left by the late Nabob to be got in for the purpose of distribution amongst his creditors? The Bill would enable him to take possession of it as if he were the Administrator or Executor dealing with an ordinary estate, and then any creditor or other person interested in the due administration of the property might proceed by the summary mode indicated in Section VIII to have the property duly distributed by him. In an ordinary case, any creditor or next of kin of a deceased person might apply for an order upon his Executor or Administrator for the administration of his estate and effects, and the Court would either refer it to the Master to take an account of the assets and liabilities, or under Act VI of 1854 the Court might itself investigate and decide upon the claims against the estate. In either case proper notices would be given by the Court and all persons interested either as creditors or next of kin might come in and be heard. In the present case similar proceedings would be taken against the Receiver. He would here refer to the objection taken by the learned Counsel that the Bill did not provide sufficiently for giving notice to his client or to any member of the late Nabob's Family to come in and prove their claims, but only provided for giving such notice to the creditors. But such was not the case. The latter part of Section VIII did make provision for notice to the Family of the late Nabob; for it said the Court "shall also by the said order give such directions as to the notices to be issued to such creditors (many of the creditors holding mortgages) *and otherwise*, and shall direct such enquiries, as to the Court shall seem fit." Under that provision, the Court would issue notice to all persons having claims, whether as creditors or as heirs or next of kin of the late Nabob, to appear before it and establish their claims. The learned Counsel had looked indignant and had said that it struck him with astonishment that the words "private property" were not expressly made use of in the Bill, as if the Legislative Council had some improper object in omitting these words. The learned Counsel acquitted them of any intention of that kind, but still he looked as if he thought it. Well, now, what did the Bill do? By Section V it appointed a Receiver, who, it said—

"shall have full power to collect, take possession of, and get in all property, moveable or immoveable, and whether of the nature of State or public property or *not*, to which the said late Nabob, at the time of his death, was entitled either at law or in equity, or which is liable either at law or in equity to satisfy the debts of the said Nabob."

The learned Counsel admitted that this included the whole of the property left by the Nabob; but it struck him with astonishment, and as most remarkable, that, while the Section mentioned "State or public property" it did not speak of "private property" in express terms. Now, the words "State or public property" were used for a particular purpose. It was

considered that some doubt might arise whether certain property which was in the possession of the late Nabob when the Treaty of 1801 was entered into and which might be considered of the nature of State property, vested in the East India Company on the lapse of the titular sovereignty, or whether it was so far the property of the late Nabob as to be applicable to the payment of his debts in the first instance, and to be the subject of distribution amongst his family on the event of there being a surplus. When the Rajah of Tanjore died, his widow claimed all the private property left by him; she claimed only the private, and not the State property; and a question arose what was private and what was in the nature of State property. In the present case the Government relinquished all claim to any part of the property whether strictly private, or in the nature of State or public property left by the late Nabob, and in order to remove all doubt as to whether property of the nature of State or public property left by the late Nabob could be appropriated to the payment of his debts in the first instance, or would be distributable amongst his heirs in the event of a surplus remaining after payment of his debts, the words "whether of the nature of State or public property or not" were inserted in the Section. All property strictly private clearly came under the words "*or not*," and the learned Counsel had no difficulty whatever in discovering that the whole of the property of the late Nabob was included. Now the Government having relinquished all claim to any part of the Nabob's property, it was necessary to provide some mode by which the legal distribution of it could be enforced. Act I of 1844 enacted that no writ or process should be issued against the person or property of the late Nabob without the consent of the Madras Government. If the exemption from process given by that Act extended to the late Nabob's property after his death, the Courts had no right to seize such property in satisfaction of the demands of a creditor. It was, therefore, considered necessary to provide some means by which the property might be collected and properly distributed amongst the creditors of the Nabob, and the surplus, if any, amongst his heirs according to their respective rights. Accordingly, the Preamble of the Bill recited that

"whereas it is doubtful whether the creditors of the Nabob have, without the consent of the Governor in Council of Fort St. George, any remedy for enforcing their claims against the goods or property which belonged to the said Nabob at the time of his death; and especially whether any part of the property left by the said late Nabob, which was of the nature of State or public property, is liable for the payment of such claims: and whereas the East India Company is willing to give up any right which it has to any part of such property which is in the nature of State or public property, and to allow the whole property, moveable and immoveable, of whatever kind, left by the late Nabob, after appropriating to the payment of his debts such portion thereof as is liable to the payment thereof, to be applied towards making provision for the family and dependents of the late Nabob;"

and then, Section V empowered the Receiver to collect

"all property, moveable or immoveable, and whether of the nature of State property *or not*, to which the said late Nabob, at the time of his death, was entitled either at Law or in Equity, or which was liable either at Law or in Equity to satisfy the debts of the said Nabob."

And Section VIII gave power to any creditor or other person interested in the proper administration of the property to institute a suit in the Supreme Court in the summary mode provided by Act VI of 1854, in ordinary cases, for the due administration of such property. Provision was also made for the payment in full of all creditors who would consent to receive in full discharge of their debts such sums as should be found to be due to them according to certain just and equitable principles laid down by the Honorable Court. This had called forth from the learned Counsel the remark that the only ground upon which he could imagine that the East India Company would have undertaken to pay the late Nabob's debts, was that it knew that the Treaty had not been carried out in the way in which it was believed it would be carried out.

In strictness, the East India Company were not bound to provide either for the family or servants of the late Nabob or for the payment of his debts. But it would have been quite inconsistent with

the liberal principles upon which they have always acted in similar cases to leave the Members of his family or his servants or followers without a suitable provision. Accordingly the Madras Government proposed to make provision for the Members of the Nabob's family, to pay the debts contracted by Prince Azeem Jah as Naib-i-Mooktear or Nabob Regent, during the late Nabob's minority; and also the debts contracted by the late Nabob himself. In sanctioning that proposal, the Honorable Court remarked :—

"We entirely agree in the liberal intentions of the Madras Government in favor of the family. We approve the proposals that 'a handsome allowance should be given to the Prince Azeem Jah Bahadoor,' that the debts incurred by him as Naib-i-Mooktear should be investigated by a commission, and such of them as are deemed legitimate paid by Government, that the same course should be pursued respecting the debts of the late Nabob, his personal property being first appropriated towards their liquidation."

The Honorable Court were aware that many persons had availed themselves of the necessities of the late Nabob, and had probably charged him more than they were fairly entitled to receive, and had contracted for exorbitant rates of interest. They therefore added

"that the salaries of the principal officers of the Nabob's household should be continued for their lives, and that all the servants, attendants, troops, and followers should be discharged, pensions or gratuities being granted to such as may have an equitable claim to such consideration.

"We shall only add that, in the adjustment of debts, the utmost care should be used to exclude fictitious or improper claims, that only sums should be admitted which can be proved to have been advanced; that in regard to articles sold, only the fair market price of the day should be allowed, and that our standing order limiting the interest in such cases to a maximum of six per cent. simple interest must be scrupulously observed."

Now, it having been determined, upon the construction of the Treaty, that the Nabobship did not descend to Prince Azeem Jah, it appeared to him that that was a very fair and liberal arrangement. The learned Counsel was, however, a little inconsistent in his argument. He said, if the Treaty had been carried out in the manner in which it was supposed it would be carried out, then all the creditors of the late Nabob would have been paid out of the one-fifth part of the revenues of the Carnatic which would have been continued to Prince Azeem Jah. How was this consistent with that part of his argument in which he contended that the late Nabob had merely a life-estate in his property, and that all his property, including the one-fifth of the revenues secured to him by the Treaty, was entailed upon his heirs and was not liable to the payment of his debts. The learned Counsel said—"Act upon the principles of Justice. Let right be done to every man to whom right is due." He (Mr. Peacock) contended that this was precisely what the Bill did. It provided that the late Nabob's property should be appropriated to the payment of his debts. The learned Counsel, however, thought that that was not right: he ignored the creditors altogether and contended that his client Prince Azeem Jah ought to take all the property of the late Nabob whether public or private as an entailed estate, and should not be bound to pay the debts. He argued that the late Nabob had only a life-interest in his property, and that that life-interest was all that the creditors looked to at the time when their debts were contracted, and all that they had a right to look to now; and as an illustration, he had referred to the case of the late Duke of Buckingham and the Marquis of Chandos, arguing that Prince Azeem Jah, whom he represented as in the position of the Marquis of Chandos, was not bound to surrender the property of the deceased Nabob, whom he compared to the Duke of Buckingham, for the payment of his debts. The learned Counsel's reasoning might have been perfectly correct as to the State or public property, though probably not as to the private property, if he had shewn that Prince Azeem Jah had become Nabob of the Carnatic. But, he was not allowed to argue upon that assumption. The learned Counsel had said that the Government of this Empire had passed from the East India Company which issued the order, to the Crown. Whether this assertion were correct or not he could not say; but he would remark that the learned Counsel had not adverted to the fact that the Despatch of the Honorable

Court could not have been written without reference to the advisers of the Crown. Probably, the learned Counsel was not aware that the Honorable Court's Despatches, before they were sent out to this country, were submitted to the Board of Control, and received the sanction of the President of that Board.

The learned Counsel proposed that this Bill should be modified and that the property should be retained in the hands of the Receiver until Parliament should have decided upon the Petition of his client. But the decision of the Court of Directors was passed on the 19th of March 1856. Two years and more had elapsed, and, according to the learned Counsel himself, the Petition to Parliament had only recently been forwarded. [Mr. Money—it was forwarded in the latter part of June.] Having been forwarded in the latter part of June, it would not arrive in time for Parliament to deal with it this Session, and therefore it would be nearly three years after the decision of the Honorable Court was passed before Prince Azeem Jah's Petition to Parliament could be presented. Prince Azeem Jah had allowed more than two years to elapse without presenting any Petition to Parliament. He had taken no steps with reference to the Petition until long after this Bill had been published. He (Mr. Peacock) did not think that the Council would do him any injustice by allowing the late Nabob's property to be sold for payment of his debts without waiting to ascertain what might be the result of the Petition. What property was it that was to be taken possession of by the Receiver, and of which the sale according to the argument would cause an irreparable injury to the Prince if Parliament should recognize his claims? The learned Counsel had talked about emblems of ancestorial dignity, and time-honored elements of pride and greatness; but the greater part of the property left by the late Nabob consisted of houses which he himself had purchased out of the allowance which he received from Government. There was one Palace, the Chepauk Palace, which he believed was the property of his ancestors in 1801 when the Treaty was entered into; but he (Mr. Peacock) knew of no other emblem of ancestorial dignity that the

Nabob had left behind him. The learned Counsel had not specified any particular property which he wished to remain unsold in the hands of the Receivor. He insisted that the whole property should await the decision of Parliament on his client's appeal, and that it should not be sold and distributed amongst the creditors of the late Nabob, until it should be known that the decision of Parliament was unfavorable to his client, and he proposed that the East India Company should, in the mean time, pay the Nabob's debts. He (Mr. Peacock) saw no reason for coming to such a decision. Even as regarded the Chepauk Palace, he believed there was a question whether it was in the nature of State property, or whether it was merely private property. The Honorable the Court of Directors said in their Despatch :—

> "We perceive that in the contemplations of the Madras Government the Palace at Chepauk will at once be at the disposal of the State as public property. Sir Henry Montgomery says that it was mortaged, which might imply that it was considered to be private property. You will institute further enquiries upon this point, but whatever may be the correct view of the subject, we do not wish to see the ladies of the Nabob's immediate family deprived, against their inclination, of the privilege of residing in that edifice, and the most liberal consideration should be given to any claims they may prefer to portions of the personal property contained in the building."

A provision was originally inserted in the Bill that the Government of Madras should have power to purchase the Palace in order that the ladies of the late Nabob's family might be permitted to reside in it. He was at that time under the impression that the ladies continued to reside in the Palace after the death of the Nabob; but it appeared that they did not reside there, and he believed they never did; and therefore there was no occasion to purchase it for the purpose of carrying out the considerate and liberal intentions of the Honorable Court. If, however, there were any particular articles in the possession of the ladies or of any other member of the family which they desired to retain, he had no wish that they should be sold. The Bill provided that the Receiver should take no property out of the possession of the Nabob's family

without the consent of the Government of Madras, and if there was any particular article of property which any member of the family desired to retain, he had no doubt that, on a proper representation being made, the Government of Madras would be most anxious to attend to their wishes. He thought that every protection that could fairly be claimed in this respect consistently with the rights of the creditors, was thrown around the family by the Bill.

The learned Counsel had objected to Section V as requiring the Receiver to realize the property with all convenient speed immediately after the passing of this Act. The Receiver would have power to realize the property, but he must act under the direction of the Supreme Court. Section I enacted that

"the Governor in Council of Fort St. George shall, immediately after the passing of this Act, appoint such person as he may think fit to act, *under the orders* of the Supreme Court of Judicature at Madras, in the administration of the property of whatever nature left by the said late Nabob."

Thus, the Receiver was not to proceed immediately to sell all the property he collected, moveable and immoveable, at his discretion; but he was to be subject, like any other Receiver, to the control of the Supreme Court. He (Mr. Peacock) did not think that the words "and realize," in Section V, coming after the words "he shall proceed to collect, take possession of," necessarily meant that the Receiver was to be bound to sell all the property he collected; but to avoid all possible doubt on the point, he had no objection to recommit the Bill for the purpose of striking out the words "and realize." That would still make it obligatory on the Receiver to collect the property with all convenient speed immediately after the passing of the Act, and would leave him with power to sell it subject to the orders of the Supreme Court.

The learned Counsel had also remarked upon Sections XXIV, XXV, and XXVI. There had been some difficulty in providing a tribunal for ascertaining the amount due to such of the creditors as should come in to have their claims adjusted in the manner prescribed by the Court of Directors. The Bill would not prevent any creditor from getting his full pound of flesh; but all who should insist upon their strict rights, must look to the assets of the estate, and to those assets alone. If they should be insufficient to pay the debts in full, the creditors who insisted upon their strict rights would recover only so much as a rateable division of the assets among the general body of creditors would provide for their shares. But to those who were willing to come in and have their claims estimated on the fair and equitable principle which the Despatch laid down—namely, in the case of loans, at the sums actually advanced, and in the case of goods sold, at the fair marketable value thereof at the time of sale with interest at six per cent., the Government offered to guarantee payment in full, and the assenting creditors would be paid immediately, without waiting for the termination of the administration suit. Then arose the question, by what tribunal the claims of such creditors could be best adjusted. It was at first suggested that they should be adjusted by Commissioners, and the Madras Government actually appointed Commissioners for the purpose; but that Government afterwards considered that the decisions of Commissioners appointed by Government would not be so satisfactory as the decision of the Supreme Court, and in order that there might be no room for dissatisfaction or for any suspicion of partiality, provision was made in this Bill that the Supreme Court should be the tribunal to investigate the claims, and adjust them on the principle he had just stated.

On the Bill being published, some of the creditors petitioned the Council representing that the principle laid down of allowing six per cent. interest might be held by the Court to require that the interest was to be calculated at that rate from the day on which the loans had been advanced or the goods delivered, and that a decision to that effect would not be fair to the creditors, since its effect would be, in cases where a higher rate of interest than six per cent. had been specifically paid, to cut down the principal by the excess of interest received over that rate, whereas the intention of the East India Company was to pay in full all such debts as should be proved to have been fairly

and justly contracted. The Select Committee, acquiescing in the objection, amended the Bill providing that the calculation of interest at the rate of six per cent. should be made from the last specific payment of interest, at whatever rate, made on the Nabob's account. But, under Section XIV, the principal must be adjusted in the manner he had mentioned already. In all probability, the amount of claims adjusted in that manner, would be much less than the amount which would appear due according to the actual contracts, for the creditors, aware of the circumstances of the Nabob, and of the exemption from process provided by Act I of 1844, might have stipulated for interest at thirty per cent. or for double the fair market value of goods supplied. In an ordinary estate every creditor would have a right to appear before the Master; in this case, every creditor who consented to have his debt estimated according to the principle laid down, would have a right to go before the Court itself. The learned Counsel had said that, as Section XXV of the Bill stood, Prince Azeem Jah or any other Member of the late Nabob's Family would have no right to appear at this investigation before the Court, and contest the claims of the creditors; and that the finding of the Court as to the amount due would be conclusive against the estate, although the Family of the Nabob, who were interested in the estate, might have been able to shew that the claims should not be admitted. But that was not the case as he (Mr. Peacock) understood Section XXV; the finding of the Court on the summary investigation, although it would fix the amount which the creditor was entitled to be paid by the East India Company, would only be *primâ facie* evidence of the amount chargeable against the assets of the late Nabob in the administration suit. If the assets in the hands of the Receiver were sufficient, the amount found to be due on the summary investigation would be paid at once; if they were not sufficient, the creditor, having come in and established his claim on the principle of the Bill, was not to wait until the end of the regular administration suit, but was to be paid immediately out of the General Treasury. In the event of any

amount paid under this provision out of the assets of the estate being larger than the amount chargeable against the assets in the regular administration suit, Section XXVI provided that the excess should be made good to the estate by the East India Company. It was possible, however, that some doubts might arise upon the wording of the Sections as they stood; and as the learned Counsel had taken exception to them, he (Mr. Peacock) was willing to insert amendments in them which would place their real meaning beyond all dispute.

Section XXIV provided as follows:—

"Upon every investigation under Section XXII of this Act (that was to say upon every summary investigation of a claim) the East India Company may appear and be heard by Counsel; and any creditor may appear in person or by Counsel or, if the Court shall think fit to allow the same, by Attorney or any other agent."

The learned Counsel proposed that the Section should be so altered as to enable Prince Azeem Jah and other members of the Family to appear at these investigations to contest claims. But the Section was only intended to enable the creditor whose claim was to be investigated, to appear either by Counsel or by Attorney or by other agent. Originally, it provided that the claimant might appear and be heard by Counsel. Some of the creditors presented a Petition praying that they might have the option of appearing to prove their claims either in person, or by Counsel or by Attorney or Vakeel of the Sudder Court, and the Select Committee had altered the Section; but he did not think that, if a creditor said—"I claim 500£ against the estate, and apply to have the amount of my claim summarily investigated by the Court"—all the creditors and other persons interested in the administration of the estate should have a right to appear at that investigation and be heard against the claim. They would have a right to appear and be heard in the regular administration suit, and might show if they could that the debt had been estimated at too high an amount, and that consequently the assets of the estate could not be debited with the full amount. That would be the proper time for hearing the creditors or heirs of the deceased upon the subject.

On the whole, then, he could not agree that injustice would be done by this Bill to any person whatever. He thought that the arrangement which it provided was a very fair and liberal one; and though he did not consider that any very great doubts could arise as to the meaning of Sections XXIV, XXV, and XXVI, yet, as objections had been taken, he should conclude by moving that the Bill be recommitted, in order that he might move amendments in them, to remove any doubts which might exist.

THE VICE-PRESIDENT, in proposing the question, remarked that he would say a few words, and but very few words—since, after the long and able speech of the Honorable and learned Member who had just spoken, but very few words seemed necessary upon the inculpation of the justice of this Bill. With the introduction of this measure, he had had nothing to do. When the Bill had been read a second time, he had made some observations upon certain of its Clauses which seemed to press hardly on mortgagees. He had then been asked to be one of the Members of the Select Committee to which the Bill was to be referred, and having consented to that, and acted on the Committee, he was no doubt responsible for presenting the Bill to the Council in its present shape. In considering the justice of this measure, we must consider the question with regard to the circumstances in which the Bill had been introduced. A resolution to which the Council had come had shut the mouths of the learned Counsel who had been heard against the Bill, upon the construction of the Treaties entered into between the East India Company and the Nabobs of the Carnatic. But it had always appeared to him that the mouths of this Council were also shut upon that question. When this Bill was introduced, it had already been determined by an authority which nothing short of the authority of Parliament could over-ride, that, on the death of the late Nabob of the Carnatic, the dignity should cease. With the merits of the question, he (the Vice-President) had nothing to do. The Government of Madras and the late Governor-General had decided it two years before this Bill came before the Council; the Court of Directors, with the sanction of the Board of Control, had approved and confirmed the decision; and, therefore, the rejection of the claims set up by the present Petitioner to the title of Nabob of the Carnatic—to a share in the revenues of the Carnatic—and, consequently, to that portion of the property left by the late Nabob which was of the nature of State property, or incidental to the dignity of Nabob—was, so far as this Council was concerned, "*un fait accompli.*" He freely allowed that it would be more consistent with the general law and usage to deal with the private estate of the late Nabob in an ordinary administration suit; but then, the Council found that certain members of His Highness's Family, including all his nearest heirs, certainly including the present Petitioner, were exempted from the jurisdiction of the Courts of Justice. The Council had to-day heard that this exemption was considered in the light of a hardship by the Petitioner; but the Council had certainly also heard, at the time when the Supreme Court at Madras ruled that the exemption had expired with the late Nabob, that a considerable sense of hardship was felt by the persons who had enjoyed the privilege, when it was thus suddenly taken away from them. The Council would recollect that, either at the instance of those persons, or because the Government of Madras had deemed that, for political reasons, the privilege should be continued, the Council had been called upon to pass an Act allowing the period of one year to those whom the decision of the Supreme Court affected, for the purpose of appealing to the Privy Council against it. No appeal was instituted within the time given for that purpose; and a Bill was then introduced into the Council in May last absolutely continuing the privilege to the Family and retainers of the late Nabob. If the privilege was considered a hardship by the family, it was certainly remarkable that no objection had come up to the Council from any of them against either Bill. In the absence of any such objection, he must take leave to believe that they were with their own assent exempted from the jurisdiction of the Supreme Court at Madras, which was, he believed, the only Court that could entertain a suit

for the administration of the estate of the late Nabob.

The learned Counsel for the Petitioner, however, whilst he repudiated the exemption given by Act I of 1844, seemed to think that his client could support a claim to freedom from the jurisdiction of the Courts upon some pretext founded on the Law of Nations. He (the Vice-President) must confess that to him this seemed a wild and untenable proposition. It was notorious that, in what related to private claims, the very Princes of Europe had been held subject to the jurisdiction of the Municipal Courts of England. Therefore, there was no pretence for saying that anything in the Law of Nations gave the Petitioner exemption from the jurisdiction of the Courts at Madras. Such a proposition could not be supported for one moment, and had certainly never once been put forward when the question whether the privilege did not expire with the late Nabob, was argued in the Supreme Court.

Then, at the time when this Bill was introduced, the Council had these two facts before it—first, that it had been determined by an authority which the Council was bound to respect, that the payment of the fifth part of the revenues of the Carnatic which had theretofore been paid to the Nabob of the Carnatic, should not be continued to the Petitioner; and that he should not inherit the title of Nabob, or the State property that passed with that dignity;—and secondly, that he and the other members of the Family who, subject to the payment of his just debts, were entitled as heirs to the private property of the late Nabob, were exempt from the jurisdiction of the Supreme Court. That circumstance did not prevent them from placing themselves voluntarily under the jurisdiction if they wished; but so long as they did not so place themselves, the creditors of the late Nabob were remediless, unless some such Act as this were passed.

The Honorable and learned Member who had preceded him, had so well answered the objection taken as to the absence of the words "private property" from the Bill, that he (the Vice-President) considered it unnecessary to say more on the point than merely this—that it had struck him, whilst the learned Counsel was speaking, that he might as well quarrel with a man for calling him an Advocate of the Supreme Court, because he did not also call him Barrister-at-Law, as with this Bill, which mentioned everything of which "private property" could consist, because it did not speak of "private property" in so many words. The Bill dealt with property in the nature of State property—with the property which would have passed to the new Nabob, if there had been one, as Nabob; and which, therefore, in existing circumstances, passed to the East India Company. This the East India Company was willing to give up for the purposes of this Act. It also dealt with the private property of the late Nabob, but only, as he read the Bill, with that part of it which was liable to be applied in payment of his debts. If, as was suggested by the learned Counsel, there was property of a third class—property which was not State property, property which, being private property, was not subject to the payment of debts, but by some special custom of descent passed, on the death of one Nabob, to his heirs, unfettered by the obligation to pay his debts—if there was indeed property of this anomalous character—there was nothing in this Bill to prevent the Petitioner from establishing a title to it by proof of the alleged custom of descent.

Such property, if it existed, must be either in the possession of the Petitioner or out of it. If it were in his possession, what would be the consequence? The Receiver who was to be appointed under the Bill, would have no power to take any property out of the possession of any member of the Family without the consent of the Government of Madras. He would have no higher powers than a Receiver generally had; and if his title were resisted, he would have to enforce it by suit. If, then, he should seek to obtain possession of this property whilst in the hands of the Petitioner, he could not institute a suit for that purpose without the consent of the Government of Madras; and even if he did obtain the consent of the Government of Madras to institute such a suit, he could not prevent the Petitioner, as heir, from raising the question of his right to it by virtue of the custom alleged, if he chose to raise it. Again, suppos-

ing that the property eventually found its way into the hands of the Receiver, then, under the general power to institute an administration suit, the Petitioner, waiving his exemption, might come in and contest the right of the Receiver to apply the particular property to the payment of debts. Clearly, then, it seemed to him, with respect to the State property—with respect to that property which was supposed to be of a public nature—that the Bill could not be said to interfere in any degree with the rights of Prince Azeem Jah, because it had been determined by an authority which this Council was bound to respect—and the decision must be taken to be final until it was reversed by Parliament—that he had no title to it. And in the private property which was subject to the debts of the late Nabob, his rights as heir must be subject to the paramount rights of the creditors, and there must be some means for administering it. The Bill before the Council provided those means, and did so in almost the only mode which, in the peculiar circumstances in which the Family was placed, was feasible. Beyond getting in and distributing the property which was subject to the payment of the debts of the late Nabob, this Council had no desire to interfere with the rights of the heir; and to the introduction into the Bill of any words which would make that clear, he had no objection. The Honorable and learned Member who had charge of the Bill proposed to recommit the Bill now for the purpose of inserting amendments in it with that view. It was entirely for his consideration whether he would do so now, or let the Bill go back to the Select Committee for a week, in order that they might frame the amendments with a little more deliberation. If the Honorable and learned Member proposed to recommit it to day, he (the Vice-President) was ready to go into Committee at once.

MR. PEACOCK moved that the Bill be recommitted, in order that certain proposed amendments might be considered.

Agreed to.

The amendments proposed by Mr. Peacock were adopted, and, the Council having resumed its sitting, the Bill was reported.

GUARDIANSHIP OF MINORS; AND COURT OF WARDS.

MR. CURRIE presented the Report of the Select Committee on the Bill "for making better provision for the care of the persons and property of Minors, Lunatics, and other disqualified persons in the Presidency of Fort William in Bengal" and the Bill "to explain and amend Regulation X of 1793 and Regulation LII of 1803."

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

MR. CURRIE also 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."

RYOTWAR ARREARS (MADRAS).

MR. FORBES moved the first reading of a Bill "for the better recovery of arrears of Revenue under Ryotwar settlements in the Madras Presidency." He said, when the Regulations of 1802, which provided for the collection of the Government revenue and for the realization of arrears, were passed in the Presidency of Madras, it was done under the impression that the permanent settlement, then in course of introduction, would be introduced throughout the Presidency. It was, however, soon decided to abandon a proceeding which would have revolutionized the tenure under which land had been held in Southern India for ages, and it was determined to maintain the ryots in the enjoyment of the rights and privileges the origin of which is far too remote to be traced.

The Regulations of 1802, therefore, passed to suit the permanent settlement, were never very well adapted to the Ryotwar system of revenue administration. Regulation XXV was enacted to define the rights conferred by the permanent settlement. Regulation XXVI regulated the sale and sub-division of estates. Regulation XXVII prescribed the mode of recovering arrears of public revenue from actual proprietors or farmers of land paying the assessment on their estates direct to Government; and Regulation XXVIII was passed to

enable proprietors to collect their rents from their tenants.

Regulation XXVII declares in its 6th Section that the land shall be responsible for the revenue, and that it shall only be at the option of the defaulter that his personal property shall be first distrained for arrears; but the difficulty under which this law placed the revenue officers was avoided by their always having recourse to Regulation XXVIII, the 38th Section of which declared that its provisions, which allowed of the prior sale of personalty, were to be considered applicable to all cases in which a Khas collection was made on account of Government. This expression was, for very many years, understood to refer to Ryotwar collections; but the Sudder Court of Adawlut having decided that this interpretation was erroneous, and that Collectors could legally proceed only under Regulation XXVII which, as I have already said, renders the prior sale of land imperative unless the defaulter voluntarily surrenders his personalty, the greatest embarrassment resulted, and the revenue remained heavily in arrear.

To remedy the evil, Act XXIII of 1856 was brought in, but it had failed of effecting the desired end in consequence of having been worded so as to declare that the collection of the Government revenue, due on lands under settlement direct with the ryots, should be deemed Khas collection within the meaning of Section XXXVIII Regulation XXVIII, and the consequence of this had been as follows:

The Section of Regulation XXVIII which was then made applicable to the collection of Ryotwar arrears, declared that all Khas collections should be made under the rules laid down in the preceding Sections, and one of those Rules was that land should not be sold until after the end of the Revenue year, and then only through the intervention of the Zillah Court.

The Act which was intended to free the Revenue Officers from inconvenience, in effect had served only to substitute one inconvenience for another, and whereas before its enactment it was imperative first to sell land, by its enactment it has become no less imperative first to sell personalty, and should such sale not liquidate the arrear, the sale

Mr. Forbes

of land could be effected only through the intervention of the Court, and then only after the revenue year had closed.

It was from these embarrassments that it was proposed by the present Bill to free the Revenue Officers, and to give them that option to sell either land or personalty at their discretion, which, under similar circumstances, the Collectors in Bengal have had ever since 1799; and when they elected to sell land, to give them authority to do so as soon as an arrear had accrued.

The Bill was mainly based on Regulation XXVIII. 1802; and it was proposed to re-enact its provisions rather than to refer to them partly because some only are retained while others have become obsolete or were inexpedient, and partly in deference to the Despatch from the Honorable Court of Directors lately communicated to this Council by the Government of India, in which such a course was recommended.

The Bill was read a first time.

CANTONMENT JOINT MAGISTRATES.

Mr. HARINGTON moved that the Bill "for conferring Civil jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those Officers Registers of Deeds within the limits of their respective jurisdictions" be now read a second time.

Mr. LEGEYT rose merely to ask a question or two relative to the intended effect of part of Section I of the proposed Bill. He wished to know if it was the intention of the Honorable Mover of the Bill, that the jurisdiction of Cantonment Joint Magistrates should extend to all residents within a Cantonment not of the classes specified in the existing laws, and also to Europeans who might be so resident? He wished to know this because, in the Military Cantonments in the Presidency of Bombay, the present Superintendent of Bazars who exercises a limited jurisdiction in civil claims, did not take cognizance of claims for small debts against persons who were not strictly Military or registered followers of the Camp. This Bill, therefore, if adopted in the Presidency of Bombay, would materially alter the law as at present administered under Regulation XXII. 1827 of the Bombay Code as interpreted by the Sudder Dewanny Adawlut.

He had no objection whatever to offer to this change if it were intended. He approved of the principle of the Bill in Military Cantonments and hoped it would be generally adopted; but he thought it would be desirable that all its objects should be perfectly understood in places in which it would be published for general information previous to its being passed into law.

Mr. HARINGTON, in reply to the first question of the Honorable Member for Bombay, begged to observe that the Bill, as drawn, would include all residents within the limits of Military Cantonments, Bazaars, or Stations, whether belonging to the Army or not, who were not amenable to the Articles of War for the Queen's and Company's troops serving in India; and in reply to the second question, that the Bill would extend to European residents of Cantonments, Bazaars, and Stations not amenable to the Articles of War mentioned in the answer to the first question.

The question was put and agreed to.

The Bill was read a second time accordingly.

ESTATE OF THE LATE NABOB OF THE CARNATIC.

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

SETTLEMENT OF ALLUVIAL LANDS (BENGAL).

Mr. CURRIE postponed the motion (which stood in the Orders of the Day) for the third reading of the Bill "to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal."

LUNATIC ASYLUMS.

Mr. CURRIE postponed the motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "relating to Lunatic Asylums."

PROCEEDINGS IN LUNACY (SUPREME COURTS.)

Mr. CURRIE postponed the motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature."

FORT OF TANJORE.

Mr. FORBES moved that the Council resolve itself into a Committee on the Bill "for bringing the Fort of Tanjore and the adjacent territory under the Laws of the Presidency of Fort Saint George;" 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.

CANTONMENT JOINT MAGISTRATES.

Mr. HARINGTON moved that the Bill "for conferring Civil jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those Officers Registers of Deeds within the limits of their respective jurisdictions" be referred to a Select Committee consisting of Mr. Peacock, Mr. LeGeyt, Mr. Forbes, and Mr. Harington.

Agreed to.

The Council adjourned.

Saturday, August 14, 1858.

PRESENT:

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

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

The Clerk presented to the Council a Petition signed by Damoodur Mohapattro on behalf of certain principal Sabaiths or Ministers of the Temple of Juggernath praying for a construction of Section I Clause 3, Regulation XXVII. 1814, of the Bengal Code, with reference to an order passed in appeal