LEGISLATIVE COUNCIL

OF

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1859

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But as any Master of a vessel, who would attempt to defraud the Government by wilfully leaving a harbour without payment of the Port-dues, would, if no penalty attached to the attempt, always take his chance of evading the demand, it was further provided that, unless it were shown that departure was caused by stress of weather or other circumstances over which the Master had no control, his departure should be considered to have been wilful, and he would be liable to a penalty in addition to the Port-dues which he attempted to evade.

If this Bill, and the Bill which had just been introduced by the Honorable Member for Bengal, should pass a second reading, he (Mr. Forbes) proposed to communicate with that Honorable Gentleman privately, in the hope that both Bills might be incorporated into one in Select Committee, thus avoiding the inconvenience which would arise from there being before the Council two Bills to amend the same Act.

With these observations he begged to move the first reading of the Bill.

The Bill was read a first time.

PENAL CODE.

Mr. Forbes moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned.

Saturday, June 4, 1859.

PRESENT:

The Hon'ble Barnes Peacock, *Vice-President.*

The Hon. Lieut-Genl. Sir J. Outram,	H. Forbes, Esq., and A. Sconce, Esq.
P. W. LeGeyt, Esq., H. B. Harington, Esq.,	

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws.

Mr. Forbes

Saturday, June 11, 1859.

PRESENT:

The Hon'ble Barnes Peacock, *Vice-President.*

H. B. Harington, Esq., | H. Forbes, Esq., and A. Sconce, Esq.

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws. The Council was therefore adjourned by the Vice-President at half past 11 o'Clock to Saturday, the 18th Instant, at 11 o'Clock.

Saturday, June 18, 1859.

PRESENT:

The Hon'ble Barnes Peacock, *Vice-President,* in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson, and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

THE CLERK presented a Petition from Mr. Robert Bain, of Prince of Wales' Island, praying for the repeal or a modification of Act VI of 1857 for the acquisition of land for public purposes.

MR. PEACOCK moved that the Petition be printed.

Agreed to.

APPEALS.

THE CLERK presented a Petition from Zemindars and others of Bengal and Behar against the Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals."

MR. SCONCE moved that the Petition be printed.

Agreed to.

MALACCA LANDS.

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits

Settlement, re-urging the enactment of a law for declaring the rights of Government over the waste and forest lands at the Province of Malacca.

MR. PEACOCK moved that the communication be printed.

Agreed to.

EMIGRATION TO ST. VINCENT.

THE CLERK reported to the Council that he had received from the Home Department a copy of a Despatch from the Secretary of State for India with enclosures, regarding the proposed emigration of Indian laborers to the Colony of St. Vincent.

MR. PEACOCK moved that these papers be printed.

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON).

THE CLERK reported to the Council that he had received from the Foreign Department copies of papers on the subject of a law for the levy of a Municipal tax and for the appointment of Municipal Commissioners in the Town of Rangoon.

MR. PEACOCK moved that these papers be printed.

Agreed to.

APPEALS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals."

ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. FORBES moved the first reading of a Bill "to explain Act XXX of 1858 (to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic)." He said that, when a short time ago he brought in a Bill to amend Act XXX of 1858, and to meet the exigency which had arisen from the theft of the seals of the late Nabob of the Carnatic, he did not anticipate that he should again have to occupy the time and attention of the Council in any matter connected with a settlement of the late Nabob's affairs. He had, however, been disappointed in the hope he entertained, that, as far as this Council was concerned, the question of the late Nabob's estate was disposed of, and he had again occasion to ask for the attention of Honorable Members while he endeavored to explain to them the circumstances which had rendered further legislation necessary.

The Council was aware that from 1825 to 1842 the late Nabob was a minor, and that his uncle, Prince Azeem Jah, managed his affairs as Naib-i-Mooktar or Regent. On the death of the Nabob, and the decision of the British Government that the title and dignity of the Nabob of the Carnatic had ceased, it was determined that, as the revenues enjoyed by the Nabob in his life-time had lapsed to Government, it would be right that they should undertake the payment of debts which it was reasonable to suppose that his creditors had allowed the Nabob to contract, in full reliance that the dignity would descend, supported by its accustomed revenues. Accordingly Act XXX of 1858 was passed in order to provide for a fair adjudication of all claims preferred against the Nabob for debts contracted on his behalf during his minority, and by himself after he came of age, the Act declaring that the East India Company was willing to pay in full all such debts as should be proved to have been fairly and justly contracted by the Nabob, or on his behalf during his infancy by Azeem Jah as Nabob Regent, and he would beg the particular attention of the Council to these words, "fairly and justly," and "on his behalf," because the present Bill owed its origin to the necessity which had arisen for declaring the meaning which those words conveyed.

In a suit brought against the Government under Act XXX of 1858, for money lent to Azeem Jah during his Regency, the Judges of the Supreme Court at Madras had unanimously ruled that the words "fairly and justly" in the Act meant only what was just and fair as between borrower and lender, that is, between the Regent and the Banker, and that whenever the latter had lent money, and the former had received it, a debt was justly and fairly contracted within the Act, with-

out any reference to the question whether the debt was properly and necessarily contracted as between the Regent and the minor Nabob, or whether it was for the latter's use or not; and they had further ruled that the words "on his behalf" meant merely in his name, and were satisfied by proof that the Regent had pledged the name of the Nabob. The decision on claims which altogether amounted to more than forty lakhs of Rupees, depended on the interpretation to be given to the words he had just referred to, and although he would not so far presume as to take upon himself to say that the interpretation of the words of the Act by the Supreme Court was erroneous, as a Member of the Select Committee which sat upon the Bill, and as a Member of the Council which passed the Act, he must say that the interpretation which had been put upon the Act by the Supreme Court was not that which the Legislature intended that it should bear.

The Government did not offer, and this Council did not intend, to pledge the Government to pay the debts of Prince Azeem Jah, but those of the late Nabob; and throughout the Act repeated mention is made of the debts of the Nabob, and the creditors of the Nabob, pointing out, apparently with some distinctness, what the intention of the Legislature was.

But however that might be, there was no doubt that the Act had been misunderstood; and whether the misunderstanding had arisen from a faulty wording of the Act, or from a misapprehension of its terms, a declaration of its true intention was now clearly necessary.

It was matter for congratulation that, as far as was at present known, the declaration of the meaning of the Act now proposed to be given would not affect any decision already passed, for although the Supreme Court had declared its interpretation of the Act, the claim, in the investigation of which the declaration was made, was decided in favor of the Government and on other grounds than the interpretation to be put on the part of the Act to which he had been referring.

The Bill opened with declaring that as doubts had arisen whether certain debts contracted by Azeem Jah during his Regency were claims within the meaning of Act XXX of 1858, it was expedient to remove such doubts, and then it enacted that no claim should be considered valid unless it should be proved that the debt on which it was founded was incurred necessarily and properly for the use and benefit of the Nabob. At the end of the Section the Government was allowed to dispense with such proof, and the reason for this was that the Nabob, although always repudiating the great mass of the debt which Azeem Jah had incurred during his Regency, did, from good feeling towards, and out of compliment to, his uncle, engage to pay certain debts to the amount of five lakhs of Rupees, and had actually paid about thirty thousand Rupees before his death; and although the Government was not legally bound to take up these debts, there was perhaps some moral obligation to do so, and at all events they had expressed their willingness and their intention to pay such of them as might be proved to have been justly contracted, and it was to enable creditors to bring these debts before the Court for adjudication that this Clause in the Section was inserted.

Then followed two Sections, one to declare that the Court might award costs to Government whenever they deemed it right and proper to do so, and the other to declare that all decisions under the Act were open to appeal to the Privy Council.

The Supreme Court at Madras had more than once expressed a doubt upon these two points, and it had been considered well to resolve them.

The Bill was read a first time.

MR. FORBES said, he had given notice of his intention to move for the suspension of the Standing Orders, in order that this Bill might at once be passed through its several stages. Honorable Members would have seen that this was not a new law, but only a declaration of the meaning and intention of an old law; and he hoped that they would support him in his Motion. He was of opinion that, when those whose duty it was to administer the law had misapprehended its true intent and meaning, the earliest opportunity should be taken to declare what the meaning of the Legislature was.

He therefore begged leave to move that the Standing Orders be suspended.

MR. PEACOCK seconded the Motion.

MR. SCONCE said, he felt some difficulty in discussing the question brought before the Council, not having had the advantage of being connected with the framing of the original enactment.

This, as had just been said, was not a new law. It was a law to explain Act XXX of 1858. It appeared to him that the principle of what was called this explanation so materially affected the principle of the old law, that it would be unfair to the creditors of the late Nabob to hurry the proposed Bill through the Council.

If the matter had been simply one as between Government and the heirs of the late Nabob, there might, or might not be, the same objection to the adoption of the proposed measure. But it was a matter affecting third parties, who might be *bonâ fide* creditors, and it appeared to him very objectionable, on the first announcement of the Bill, to pass it through its several stages.

There was another disadvantage under which he felt he labored, and that was his not being in possession of the decision of the learned Judges of the Supreme Court at Madras, to which allusion had been made, and which has given occasion for this Bill; and he wished to be fully informed of the grounds upon which the Judges had based their decision.

As it was, the words of the Act of 1858, which had been supposed to support the proposition of the present Bill, seemed to fall short of the explanation now proposed to be given to it. The words which had been quoted by the Honorable Member for Madras, and which Her Majesty's Judges had interpreted, were "fairly and justly," that is, "debts fairly and justly contracted by the said Nabob, or, on his behalf, during his infancy, by the said Azeem Jah as Nabob Regent."

This was what it was considered necessary to explain. But he would remark that, in Act XXX of 1858, two borrowers were set forth. There was first the late Nabob himself, and next his Naib-i-Mooktar or Regent. There was no distinction between debts contracted by the one and debts contracted by the other. Nevertheless, in the present Bill, all mention of debts contracted by the Nabob was omitted, and only those contracted by Azeem Jah were referred to. It appeared to him that, in the original Act, the Regent or Naib-i-Mooktar was substantially held forth as the agent or representative of his principal. The Council were not asked to review—they had no grounds set forth for reviewing—any acts done by him as guardian for his ward. What he did he is presumed by Act XXX of 1858 to have done as the Regent, and, in fact, legal agent of the minor Nabob. But to carry the creditor beyond the agency under which the borrower acted, and to oblige him to follow the money he had lent, with the view of seeing that it was not misapplied, involved a principle entirely opposed to the foundations of the law which, in all Courts of justice, was being daily administered.

But, in addition to the words "fairly and justly contracted," he found in Act XXX of 1858 a distinct definition of the debts which were to be paid, that is, "such debts to be estimated in respect of moneys at the amounts which may be proved to have been actually advanced or paid by such creditors." Here the original law left no room for the principle embodied in this Bill. As he understood the original Act, it declared that a *bonâ fide* creditor, who should prove the payment of the money claimed by him, would be held to be a creditor within the scope of the law. On the other hand, this Bill proposed to set aside the recognition of such claims entirely, and to declare that, unless a creditor could satisfy the Court that his debt was a necessary or proper one to be incurred on behalf, or for the use of, the Nabob, his claim could not be entertained. The principle of the Bill was, as he (Mr. Sconce) had already observed, to set aside the declared agency of the Regent, and to require creditors to follow their money and show the purposes for which it was required. The words "on behalf of the Nabob" in the original Act which they were told, the Judges of the Supreme Court at Madras had misinterpreted into "in his name," were such as warrant no presumption of misinterpretation, and he (Mr. Sconce)

thought no law should require Judges to impart to them any other meaning than what they considered those words were, according to the English language, susceptible of.

These were the grounds upon which he begged to oppose the Motion for the suspension of the Standing Orders.

Mr. PEACOCK said, the question now was not whether this Bill should be passed or not, but simply whether the Standing Orders should be suspended with a view to its being proceeded with. It would probably be more correct to postpone any discussion as to the merits of the Bill until the Motion for the second reading. But as the Honorable Member for Bengal had stated his objections to the Bill, he (Mr. Peacock) would now state his views on the subject.

It must be recollected that if, in the ordinary course of legislation, the passing of the Bill were to be delayed for three months, a large number of claims might be brought to a hearing, and probably be determined in the interim.

He apprehended that it would scarcely be right if a decision should be passed by the Court for the Legislature to pass a law upsetting that decision. But if the Court had misunderstood the meaning of the Legislature, the Legislature might well come forward and declare what its intention was when it passed the former Bill. It might be that the former Act was ambiguously worded, and that the Court were warranted in the construction which they had put upon it; or it might be that the words did not express the meaning which the Court had put upon them. It was not necessary to determine that question. If the construction which the Court had put upon the language of the Legislature was not in accordance with their meaning, surely it was competent to them to come forward and declare what their meaning was. Then he thought that, if the Legislature were to declare their meaning, it was far better that they should do so now than three months hence.

The Honorable Member for Bengal, however, had gone into the merits of the case, and had considered whether the Supreme Court at Madras had not decided upon a correct interpretation of the law. He (Mr. Peacock) thought that it would be well for him to go into that matter fully in the present stage of the proceedings, in order that it might be better understood.

After the death of the late Nabob, and after the interest which he had been allowed to enjoy in the revenues of the Carnatic had lapsed to the Government, the Governor in Council of Madras, under instructions from the Honorable Court of Directors, offered upon certain terms to pay the debts of the late Nabob, including such as had been incurred justly and fairly on his behalf, during his minority, by his uncle, Prince Azeem Jah, as Naib-i-Mooktar or Regent.

The question was whether the Court intended, and whether this Council in passing Act XXX of 1858 intended, that the Government should pay all debts whatever which had been contracted by the Regent during the minority of the Nabob, if contracted fairly as between the Regent and the creditors, however unjust it might have been as between the Regent and the Nabob for the former to contract them, and whether they were contracted for the benefit of the Nabob or not. The Court had not, as he understood, actually decided the case against Government—on the contrary they decided the particular case in favor of Government, upon the ground that the debts had not in fact been contracted on behalf of the Nabob, but expressly on behalf of the Prince Azeem Jah as a private debt of his own.

The Court had come to that decision upon the evidence of Prince Azeem Jah, who had been examined as a witness, and who proved that he had borrowed the money on his own account, and that he alone was liable for it.

But the Court, in determining that case, had expressed their opinion as to the proper construction of the words "fairly and justly contracted by the Nabob, or on his behalf, during his infancy, by Azeem Jah as Nabob Regent." The Court held that, if the money was fairly and justly lent by the creditors to the Nabob Regent, and the latter borrowed it in the name of the Nabob, it was a debt "fairly and justly contracted by the Nabob Regent on behalf of the Nabob" within the meaning of the words to which he had already drawn the attention of the Council, notwithstanding it might have

been wholly unnecessary to borrow the money for the use of the Nabob, and notwithstanding it might never have been applied to his use. But it should be remarked that the words "fairly and justly contracted on behalf of the Nabob" were used only in the Preamble of the Act and not in the enacting Clause. The enactment was in Section XIV, by which the Government was bound to pay any such debts as were fairly and justly due from the Nabob or were payable out of his estate. The words in the Preamble might be used to explain the words of the enacting Clause, but they did not themselves amount to an enactment. But even looking at the words of the Preamble alone, it was clear that the words "fairly and justly" had reference to the conduct of the Nabob Regent, and not to the conduct of the creditors—"fairly and justly contracted by the Nabob or on his behalf, during his minority, by Azeem Jah as Nabob Regent." Then the justness or fairness of the conduct of the Regent must have reference to the Nabob and not to the creditors, for if it were fair and just as between the Prince and the Nabob to contract the debts, no unfairness towards the creditors could deprive the latter of their rights. If the debts were fairly due from the Nabob, or binding upon his estate, they were to be paid by Government, otherwise they did not fall within Section XIV of the Act. If the Legislature had not expressed their meaning clearly, they should do so now. He contended that the Prince had no authority to borrow money in the name of the Nabob when it was not required for his use, and that he had no power to bind the Nabob to pay money even though borrowed in his name, if it was not necessary to borrow it for his use, and if it was not applied for the purpose.

Let us see how the case stood. He would read an extract from the letter of the Advocate General of Madras:—

"16. When the late Nabob's father died, the Government in 1826 'recognized' the infant Nabob as his lawful successor; but it *appointed* of its own authority the Prince to conduct the affairs of the Circar during the minority as a Naib-i-Mooktar.

"17. Government, therefore, had the right to impose terms upon, and exact engagements from, the Naib-i-Mooktar, with a view to protect the Nabob's interests, and it did so. It informed him of its own wish and readiness to aid him in freeing the Circar from debt, in order to enable him to keep it so during the minority, and to lay by a fund for the young Nabob's use when he should obtain his majority to meet the expenses of that occasion, for example, his installation, marriage, &c.

"18. Government accordingly lent the Naib-i-Mooktar 13½ lakhs of rupees—4½ lakhs in cash without interest, and 9 lakhs in Company's Paper at 5 per cent. interest. With this liberal aid, and 5 lakhs of Circar funds, the Naib-i-Mooktar paid off 18 lakhs of Circar debts, bearing 24 per cent. of interest, and reported to Government, in 1826, that he had done so, and that the Circar now owed nothing.

"19. Government then exacted a solemn promise from the Naib-i-Mooktar that he would incur no fresh debt without their knowledge. This promise he gave in the most express terms, and repeated in several letters.

"20. Government also ordered him to inform all who had had money dealings with the Circar, that, in future, they must look for payment only to the individuals to whom they might lend money, and that no such debts would be discharged from, or recognized as binding upon, the Nabob's income, and the Naib-i-Mooktar in reply assured Government that he had given this warning accordingly. This was in 1827.

"21. Subsequently, and on several occasions, the Naib-i-Mooktar assured the Government, (which at his request had increased the monthly allowance by Rupees 14,000,) that the Circar was quite free from debt, that there was no occasion whatever for contracting any fresh debt, that the income was not only ample for all necessary expenses, but sufficient to admit of his laying by, from 1833, a sum of one lakh of Rupees annually, to form a fund for the expenses of the young Nabob's majority.

"22. Nay more, from 1833 to 1842, the Naib-i-Mooktar every year reported to Government that he had laid by this one lakh for this purpose; and in August 1842, when the treasury was found to contain but one lakh instead of 9 lakhs, the Naib-i-Mooktar sent in a memorandum, showing that the missing 8 lakhs had been expended, not for the Nabob's use, or in necessary expenses, but chiefly in loans to his, the Naib-i-Mooktar's relations, *viz.* 5 lakhs to the Begum his mother, 60,000 Rupees to Gholam Moortooza Khan, and so on.

"23. When I was stating to the Supreme Court the case for the defence, I opened all these facts, and I said that, with reference thereto, I was prepared to contend that by the words 'debts fairly and justly contracted on behalf of the Nabob, during his infancy, by Azeem Jah,' the Legislature must be taken to have meant, *not* all debts contracted in the Nabob's name, however unlimited in amount, however unnecessarily and improperly contracted, and without reference to whether

they were contracted for the Nabob's use or expended for his benefit; but such only as were contracted necessarily or properly in his name, or, at least, such as were (though perhaps not necessarily) actually contracted for his use, and from which he had had some benefit or advantage. I admitted, in reply to a question from the Court, that, with regard to debts contracted by the Nabob himself, after he had attained his majority, the words 'fairly and justly' must mean such as he, or his authorized Agent, had received fair value for; but that, when he was a minor, unable to act or judge for himself, the words must have a very different meaning, and must mean debts 'properly and necessarily contracted for his use,' and not merely such as had been unnecessarily and without propriety or excuse contracted in his name, and expended without regard to his use or benefit.

"24. The Court however ruled the point against me, refusing to receive any evidence on the points I have above mentioned, and decided that the words 'fairly and justly' meant only what was just and fair as between borrower and lender, that is, between the Naib-i-Mooktar and the Sahookars, and that, therefore, whenever the latter had lent the money, and the former had received it, that was a debt 'justly and fairly' contracted within the meaning of the Act, without any reference to the question whether the debt was necessarily or properly contracted as between the Naib-i-Mooktar and the minor Nabob, or whether it was for the latter's use or not, and that the words 'on his behalf' meant merely 'in his name,' and were satisfied by proving that the Naib-i-Mooktar had pledged the Nabob's name."

He would also read an extract from the Despatch of the Honorable Court of Directors on which Act XXX of 1858 was based:—

"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-Mooktar 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;" and they 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."

It must be remembered that the East India Company were not liable for these debts at all. It was a mere act of grace on their part to undertake to pay any of them. They undertook to pay those debts which were fairly and justly due from the Nabob, those to which he was himself liable, and which the creditors might have had some expectation of receiving if the interest of the Nabob had not lapsed upon his death. But the debts in question were debts which the Nabob himself had from the beginning repudiated, except the Cutcherry bonds which he had from consideration for his uncle taken upon himself to pay, protesting at the same time that he was neither legally nor morally bound to do so. The East India Company could scarcely have been expected to pay any debts which had been repudiated by the Nabob and which were not his debts.

The Honorable Member for Bengal had said that the Act XXX of 1858 clearly defined the debts to be such debts as should be proved to have been fairly and justly contracted by the Nabob, or on his behalf during his infancy by the Regent. Now he (Mr. Peacock) would say that the word "contracted" meant "incurred;" and could it be said that a debt was fairly and justly incurred when there were sufficient assets to pay all the necessary expenses of the Nabob to support his state and dignity, and to leave a surplus of one lakh a year? Section XIV spoke only of debts which were binding on the Nabob himself, and then the Section went on to say, according to the instructions from the Court of Directors, that the amount was to be "estimated in respect of moneys at the amount which shall be proved to have been *actually advanced to or paid for the use of the said Nabob*, and in respect of goods supplied or other matters at the amount which shall be proved to have been the fair and actual value thereof at the time when such debts were incurred, together with such interest, if any, not exceeding the rate of six per centum per annum as shall be awarded by the said Court." The

Mr. Peacock

East India Company had come forward and told the creditors, "We will pay you the money you have actually advanced for the use or benefit of the Nabob. We are coming forward, not because we are legally or morally bound to do so, but as an act of liberality. We will pay you if you choose to bring forward your claims, and will pay you whether the Nabob has left assets or not. If you do not consent to accept our offer, you may institute a suit in the Supreme Court, but in that case you must look only to the assets of the Nabob. But if you come in according to our terms, then bring your suit at once." This liberal offer could not be held to apply to all the debts incurred by Azeem Jah, but only to those debts which had been justly or fairly contracted on behalf or for the use of the Nabob.

It appeared to him (Mr. Peacock) that for these reasons this Bill was a very fair and just one. He would not say that the Supreme Court at Madras had not construed the words of Act XXX of 1858 rightly. But as a Member of the Select Committee on that Bill, he could say that the words in the Preamble "fairly and justly contracted by the said Nabob or on his behalf during his infancy by the said Azeem Jah as Nabob Regent" were not intended to apply to moneys which had been borrowed in the name of the Nabob when there was no necessity to borrow them, and which had never been applied for his use. Upon the letter of the Advocate General at Madras, the Government of India had thought it expedient that a declaratory Law, explaining the meaning of those words, should be brought in and passed under a suspension of the Standing Orders. He therefore felt bound to support the Honorable Member for Madras. If that Honorable Gentleman had not brought in the Bill, he (Mr. Peacock) should have introduced it himself.

The Motion for the suspension of the Standing Orders was put and carried.

MR. FORBES moved that the Bill be read a second time.

MR. SCONCE said that, on grounds not dissimilar to those already expressed by him, he ventured to oppose the further progress of the Bill. He had said before that his main object was to look to the interests of third parties, that is, parties who appeared to stand as *bonâ fide* creditors of the late Nabob. In opposing the Motion for the suspension of the Standing Orders, it seemed to him that he had been very much justified in the view he had taken, by the remarks and the information which had been laid before the Council by the Honorable and learned Vice-President; and he (Mr. Sconce) was persuaded that the information elicited showed the necessity for suspending action on the Bill in the manner proposed.

He had referred to the words "fairly and justly." According to his construction of the original Act, he thought those words could not be held to mean only such debts as had been fairly and justly contracted by the Regent on behalf of the Nabob, because the creditors had nothing to do with the purpose for which a debt was contracted. They were induced to part with their money or their goods under the belief that the Regent was the recognized agent or representative of the Nabob. It, therefore, seemed to him unfair now to turn round upon the creditors and tell them that those debts had not been necessarily or properly incurred, and that they should have looked to the purpose for which they had been contracted, whether on behalf or for the use of the Nabob. He had before alluded merely to the tenor of the Preamble of Act XXX of 1858 in support of the view he had taken. But he had since been referred to Section XIV for the exact bearing of the law. In that Section he found it stated that a creditor was entitled to receive "such amount as shall be ascertained by the Supreme Court to have been justly and fairly due to him from the late Nabob at the time of his death." There was therefore this distinction between Section XIV and the Preamble, that the Preamble spoke of debts contracted by the Nabob personally or by the Regent for him or on his behalf, while Section XIV only made mention of debts contracted by the Nabob himself. But it could not be otherwise. The debts to be paid were the Nabob's debts, not his Agents; and therefore the language of Section XIV was necessarily

restricted to mentioning the name of the Nabob.

He would repeat that he was fully sensible of having derived from the speech of the Honorable and learned Vice-President much information that he did not before possess. But he must say that, on the ground of principle, it would be unconstitutional to press the Bill through all its stages, without giving *bonâ fide* creditors the opportunity of being heard against it.

MR. PEACOCK said, with reference to the address just made by the Honorable Member for Bengal, it appeared to him that the Preamble did not apply to all the debts contracted by Azeem Jah. A debt must be proved to have been fairly and justly contracted on behalf or for the use of the Nabob before it could be held to be a debt under Section XIV. There was no direct or implied recognition of Azeem Jah as a general agent to act in all things for the Nabob. The Act recognized him only as an agent for special duty. There was a great distinction between an agent with general authority and an agent with limited authority. In 1826 the Government had exacted a solemn promise from the Regent that he would not incur any fresh debts without their knowledge; and in 1832 the Regent reported that he would lay by from the following year a lakh of Rupees annually out of the surplus to form a fund for the young Nabob upon his attaining his majority. Was it possible to suppose that the Government would have vested the Nabob Regent with the general authority to contract debts in the name of the Nabob in such a way as to justify creditors lending him money, whether required for the use or benefit of the Nabob or not? Could it be supposed that a Regent or guardian appointed to look after the estate of the infant could have had the power of borrowing money to any extent in the name of the infant, and binding him to pay it, though a farthing of it was never received by him, or expended for his use? If such were the case, the Nabob, upon his coming of age, might have found his whole income absorbed and himself a beggar. It never could have been the intention to give the Regent such a power.

He (Mr. Peacock) thought it was perfectly clear that the debts in question had not been justly incurred for the use or benefit of the Nabob. Indeed, the Nabob had all along repudiated them. If he (Mr. Peacock) had had any doubts in his mind on this point, he should have readily voted with the Honorable Member for Bengal. But as, instead of having any doubts, he was fully convinced that the debts in question had not been contracted for the use or benefit of the Nabob, he should vote in favor of the second reading of the Bill.

MR. HARINGTON said, he thought the Honorable Member for Bengal, in the objections entertained by him to the Bill before the Council, had not sufficiently adverted to the character of Act XXX of 1858, which that Bill was intended to explain. No legal obligation rested upon the Government to pay the debts of the late Nabob of the Carnatic; but the Government had, nevertheless, come forward, and in a spirit of liberality volunteered to discharge all claims against the estate of the late Nabob upon certain conditions. Looking to the circumstances under which the Government took this liability upon itself, he thought there could be no doubt of the right of the Government to impose such conditions as it pleased or considered proper. The conditions prescribed, and which were contained in the Preamble to Act XXX of 1858, were that the debts to be paid by the Government had been fairly and justly contracted by the late Nabob, or on his account by the Nabob Regent. The Government never agreed to pay all debts incurred by the Nabob Regent in the name of the late Nabob, whether fairly and justly contracted, or otherwise. The whole question turned upon the construction to be put upon the words fairly and justly, and as, from information before the Council, it appeared that the Supreme Court at Madras were disposed to give a meaning to those words which it was clearly never intended that they should bear, it became necessary to pass a law to explain what was really intended by the Legislature in the use of them, and he thought, therefore, that the Honorable Member for Madras had done quite right in bringing in the

Mr. Sconce

present Bill. He would only further observe that the question was not one of Principal and Agent.

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

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

Agreed to.

Section I was passed after verbal amendments.

Section II was passed as it stood.

Section III provided as follows:—

"It is hereby declared that it was not the intention of the said Act to exclude from appeal to Her Majesty in Council any awards, orders, or decisions of the said Supreme Court, made upon any investigation under Section XXII as aforesaid."

MR. HARINGTON said, the wording of this Section seemed to him to be scarcely consistent with the opinion which had been expressed by the Select Committee on the Bill relating to the estate of the late Nabob of Surat in the Report which the Council would be presently asked to adopt, and to which he was quite prepared to give his assent. The Section said that it was not the intention of the Act, which this Bill was brought in to explain, to exclude from appeal to Her Majesty in Council any awards, orders, or decisions which might be made in cases disposed of under the Act. This seemed to imply that this Council had the power of taking away the right of appeal to the Privy Council, though in this particular instance they might not have exercised it; but in the Report to which he had referred, the opinion was clearly expressed that this Council had no authority either to give or take away this right. In this opinion he fully concurred. He did not know whether the Section was necessary, but if it was, he thought the wording of it should be altered, so as to remove the objection to which it appeared to him to be now open.

SIR CHARLES JACKSON said, it appeared to him that this Section was not necessary. All final orders made by the Supreme Court, when the property at stake was of greater value than ten thousand Rupees, were appealable as a matter of course. In cases under ten thousand Rupees, application might be made to the Privy Council for special leave to appeal. The right to appeal, when the property was above ten thousand Rupees, had been settled by a rule of the Privy Council framed under the provisions of an Act of Parliament. Still that rule left it open to Her Majesty to receive applications for appeal in cases below that amount, as had been done at Bombay in a case where the property was of very small value, but in which a question of very great importance relating to the Revenue was involved.

MR. PEACOCK said, he agreed in opinion that the Section was not actually necessary. He had no doubt himself that the practice was as had just been described by the Honorable and learned Judge Sir C. Jackson. But the Supreme Court at Madras, it appeared, had more than once entertained doubts on this point, and the Advocate General there had suggested that the law on the subject should be made quite clear. Although the Section was not actually necessary, the object of its insertion was to prevent litigation. He saw no objection to it, nor did he see how it was inconsistent with the opinion expressed in the Report of the Select Committee on the Surat Bill, to which allusion had been made by the Honorable Member (Mr. Harington). If, however, any Member objected to the Section, he (Mr. Peacock) would not press it.

The Section was then put and agreed to.

The Preamble was passed after verbal amendments.

The Title was passed as it stood.

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

MR. FORBES moved that the Bill be read a third time and passed.

MR. SCONCE said, he could only repeat his opposition to the passing of the Bill. It seemed to him that, in considering the terms and the footing on which the original Act was passed, certain conditions had been held out to *bonâ fide* creditors; and it was because those conditions were proposed to be departed from in respect of those creditors, that he objected to proceeding with the Bill, without giving them the opportunity of being heard against it.

In fact, he did not know on what

principle the Bill had been introduced. The Honorable and learned Vice-President had called it a fair and honest Bill. But, looking to Section XIV, he supposed that, as a matter of course, the Supreme Court at Madras had thought that the origin of the debt was not necessarily excluded from consideration. In adjudicating, therefore, it would, no doubt, be the duty of the Court to consider the nature of the circumstances under which the debt was contracted.

Another question for its consideration was, whether the power of the agent was supposed to have been limited or unlimited. As said before, the power of the Regent had been fully recognized. On the other hand, if the power of the agent was limited, there was nothing before the Council to justify them in assuming that it was so.

He had been referred by the Honorable Member (Mr. Harington) to the concession which had been made, not by the Legislature, but by the Government, in offering to pay the fair and just debts of the late Nabob. But it appeared to him (Mr. Sconce), with regard to the claims of persons who should stand before them as third parties, that it was irregular to withdraw from them a boon, if it were a boon, without giving them the opportunity of remonstrating against the proposed withdrawal.

MR. PEACOCK said, he thought that the question now was not as to the terms or conditions upon which Act XXX of 1858 was passed, but simply whether the Court had determined according to the intention of the Legislature. If the Court had put a construction upon the language used by the Legislature different from that which was intended, and if the Legislature desired to use fresh terms and less ambiguous language to declare their intention, he (Mr. Peacock) could not see what necessity there was for asking the creditors to submit their views on that subject. Surely the Council must know what their intention was better than the creditors can inform them.

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

MR. FORBES moved that Mr. Peacock be requested to take the Bill to the Governor General for his assent.

Agreed to.

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON moved the second reading of the Bill "to enable Sessions Judges to pass sentence in certain cases without reference to the Sudder Court."

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

SIGNALS (RIVER HOOGHLY).

MR. SCONCE moved the second reading of the Bill "to enforce signals of the names of vessels passing signal stations established within the River Hooghly and the branches thereof."

MR. HARINGTON said, he fully agreed in the opinion expressed by the Honorable Member for Bengal when he introduced the Bill which they were now asked to read a second time, to the effect that there could be no doubt of the right of the Legislature to pass a law of this nature when the interests of the public rendered it necessary; but he thought it might be fairly enquired, did any such necessity really exist at the present time as to call for legislation in the form of the Bill brought in by the Honorable Member for Bengal, not as regarded a particular section of the Calcutta public, but as regarded the public generally. This question must, he considered, be answered in the negative. He had carefully read the correspondence which had been printed as an annexure to the Bill, but he had failed to discover therein any adequate justification of this measure, or any thing showing its necessity on public grounds, which alone could warrant their giving the sanction of the Legislature to it. No doubt they had before them reports from the Superintendent of Marine and the Master Attendant, both of whom were strongly in favor of the Bill; but while he fully admitted the merits of those Officers, and was quite prepared to allow that, in all matters connected with their respective offices, their opinions were entitled to great respect, he observed that neither of them said that this Bill was required for the purposes of their offices, or that it was essential to the efficient discharge of their duties. They were not told that the Bill was required for the purposes of the Post Office, or

for purposes of Police, or for the public health or safety; nor, looking at the Masters of the vessels who traded with the Port of Calcutta in their capacity of public traders or public carriers in the legal sense of those words, were they told that the shippers of goods by these vessels on their return voyage to Calcutta, or the consignees of those goods, required the Bill for their protection or convenience. The question then arose, for what purpose was the Bill required? Disguise it as they might, he (Mr. Harington) thought that the only answer that could be given to the question was that it was a Bill to protect one class of Opium speculators against another class of speculators in the same drug, who, from being possessed of more capital or greater enterprise, had been enabled to secure for themselves certain advantages, of which this Bill, should it become law, would deprive them; but he could not regard that as a legitimate object of legislation. He believed he was right in saying that no such law existed in England, and that the want of such a law was not felt there. If then the public interests in England, with its numerous shipping, did not require a law of this nature, he (Mr. Harington) could not understand why the public interests required it in Calcutta. It was no answer to the objections which appeared to him to exist to the Bill, to say that the vessels which would be chiefly affected by its provisions were obliged by law to carry mails, by which the information which the owners of these vessels wished to keep to themselves, for a time at least, might be and was conveyed. It was scarcely necessary for him to say that it was not this particular information alone that was conveyed by these mails, but that they carried the letters of the entire public, using that term in its largest sense, commencing with the Government and proceeding downwards. It was, therefore, very right and proper, and for the interests of the public as a public, that the obligation of carrying mails should be enforced by law on all vessels, and that they should be compelled to deliver their mails as speedily as possible. But this was a very different thing from the interests of a small section of the Calcutta community, whose success or failure in the speculations carried on by them in a particular article, often in a spirit of gambling, was a matter of the smallest possible moment, or of no moment at all, to the public at large. The promoters of the Bill had been able to adduce only two instances to show the necessity of its introduction; but it was admitted that one of the cases was not in point. In that case the Master of the vessel wilfully omitted to land his mail where he was bound by law to have landed it, and he was very justly punished for the omission. But the present Bill would not meet a case of this nature, though the Chamber of Commerce had given it as their opinion that the punishment which could be awarded under the existing law on a conviction for the offence of which the Master of the vessel in the case referred to was found guilty was quite inadequate, and they had recommended that the penalty should be greatly enhanced. No attention, however, appeared to have been paid to this recommendation in framing the present Bill, though it certainly seemed to him (Mr. Harington) to be deserving of consideration. In the second case, it was not clear that any proper enquiry had been made with a view to ascertain whether the cause assigned for anchoring the vessel outside was a valid one, or whether it was a mere pretext resorted to for a particular purpose; nor had it been shown that any public inconvenience had been experienced in consequence of the number of the vessel not having been signalled to the nearest telegraphic station, in accordance with the request expressed by the Pilot. It was very possible that it might have been for the convenience or advantage of certain parties, other than the owners of the vessels, to have been informed of her arrival at the same time that the owners probably received their information; but, as he had already intimated, he did not think that they should be called upon to legislate in this matter for the protection of individual or class interests. It had been said that it was as great an offence to withhold information of the arrival of a vessel by not hoisting her number as it was to hoist a wrong number; but he could not concur in that position. When a wrong number was hoisted, it would generally be done with a fraudu-

lent intention, but the case was very different when information was simply withheld, the communication of which was not required for the general good. In the absence then of any information or evidence to show that this Bill was really necessary for the interests of the Government or the public at large, he (Mr. Harington) felt himself unable to give his assent to the second reading of it.

MR. LEGEYT said, he generally assented to what had just fallen from the Honorable Member (Mr. Harington); but he (Mr. LeGeyt) had another objection to the Bill, which, if passed in its present shape, would become wholly inoperative. Section II provided a penalty of a hundred Rupees for a Master of a vessel refusing or neglecting to hoist his number. Now, if the object of not disclosing the name of the vessel was worth a great deal more, probably a hundred times as much, to the parties concerned, the proposed penalty would be quite inadequate; and with regard to imprisonment, he did not think that any Magistrate would send a Commander of a vessel to jail for thirty days for such an offence, or that that would be the best way of enforcing the provisions of a Bill like that now before the Council. If any good ground could still be urged in favor of such a restriction, and if it could be shown, as had been mentioned, that the Bill was intended to provide for the public safety, he thought it would be far preferable that this Bill should be withdrawn, and that, in lieu of it, another Bill be introduced, adopting the suggestion of the Superintendent of Marine, that authority be given to the Pilot of a vessel to enforce the order for showing her number, or, as an alternative, to refuse to continue in the vessel.

MR. PEACOCK said, he entirely agreed with the Honorable Member (Mr. Harington) and the Honorable Member for Bombay. He saw no sufficient case shown for interfering, as this Bill proposed to do, with private enterprise. There was nothing in the papers to bear out the allegation in the Statement of objects and reasons, that "there is reason to apprehend that parties through whom communications with China are kept up are disposed to use the opportunities naturally arising from their position, to the detriment of the mercantile community and to the disadvantage of the public generally." The Honorable Mover had not shown that the Masters or owners of ships had been guilty of any fraud or of any attempt at fraud. There was no more reason for preventing a person, who obtained private information by means of a ship employed by him for that purpose, from using that information, than there was for restricting every other person from using private information which he obtained by other means. There was no great reason for informing the public that Mr. A.'s ship from China was at Kedgeree, and therefore that the owner might possibly have some private information as to the price of opium, than there was for declaring that no person should receive private information as to the state of any particular market by the Electric Telegraph, or that his name should be published. In fact, he did not see how the owner of a vessel which refused to hoist her number could receive information of her arrival before any other person, or any private information from her, unless it were through a private message for which he would be obliged to pay. All he could know (as others would at the same time know) would be that a ship had arrived without showing her number. But even supposing it were made known that the *Lightning* had arrived from China, all that the public would gain would be that they might suspect from that circumstance that the owner might be in possession of private information as to the rate of opium ruling in China, and they would be more cautious in dealing with him. So, if the owner of a China Steamer were found to keep back from the public information of her arrival, and to enter into opium-contracts upon the faith of private information received by her, persons would soon cease to have dealings with him. If the thing were thus left alone, it would soon find its own level and rectify itself. He, therefore, thought that this Bill, which would in some respects interfere with private enterprise, ought not to be passed. But even if it were passed, the object of the promoters might easily be frustrated. There was nothing to prevent a Steamer lying at the Sandheads and sending a private message by a Tug

Steamer to the nearest Telegraph Station. Nor was there any thing to compel a foreign vessel to show her number. If there were any public object for passing such a Bill, it should apply to all vessels, Foreign as well as British. He did not mean to say that he would oppose such a Bill if sufficient public grounds were shown for it. All he meant to contend was that the reasons urged were not sufficient to induce him to vote in support of it, and at present he did not see any.

MR. SCONCE said that, after what had been stated, more especially by the Honorable Member (Mr. Harington), he thought he had been materially relieved from saying much about the propriety of legislating on such matters. At the same time he should be unwilling, on his own account, to magnify the necessity for the proposed measure. He looked upon it as a Bill embracing both material public and material social advantages. He need not attempt to define the circumstances under which the Legislature was justified in interfering with the private acts of private individuals. Each case was determined by its own merits according to the time and circumstances that it occurred.

With regard to this Bill, it seemed to him that allusion had been made as though it applied only to China vessels, whereas it was a general measure. Communications to China were made by vessels which were compelled, not only to carry, but also to deliver mails. He could not help looking upon the communications as one of public interest, and he believed it to be a principle of very general application that men who, for their own advantage, made use of the public, should on occasion be required to serve the public for their advantage. He was not sufficiently informed as to the extent to which each single China vessel depended on the exports and imports of its own owners. He apprehended, however, that, as carriers for the public, all who opened large lines of communication became, in a manner, public servants. He had said that they used the public in so far as they carried their goods, and it seemed to him that it was a fair return to compel them to report their arrival. But they served the public in another way, meaning in a larger sense the commonwealth and not only its individual members. They had the protection of the laws at sea and on shore; they had the advantages of the Port; they benefited by our Postal arrangements; nay, they were indebted to the public for the establishment of the Electric Telegraph, which, while so ready to use on their own account, they practically shut against others.

These were the general grounds upon which he would advocate the second reading of the Bill.

The Honorable Member for Bombay had said that, in one respect, it would be inoperative. But that was a point for consideration in Committee, quite distinct from the principle of the Bill itself.

Again, it had been said that parties who paid for their information should not be deprived of it. On general grounds, however, he maintained that it was nothing but fair that owners of vessels should be obliged to reciprocate the advantages which they enjoyed.

The Motion was then put and negatived.

PORTS AND PORT DUES.

MR. FORBES moved the second reading of the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port dues)."

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

PUBLIC CONVEYANCES.

MR. LEGEYT moved the second reading of the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MR. HARINGTON said, he had carefully considered all that was urged in favor of this Bill by the Honorable Member for Bombay at the time that he introduced it to their notice. He had also read the Bill itself and the Statement of objects and reasons since printed and circulated, together with the petition from certain inhabitants of Calcutta, which was presented to the Council before the Bill was brought in, and the extract from the Report of the Municipal Commissioners for the year 1857, and the letter

from the Governor of the Straits Settlement, which formed the annexures to the Bill; but he must confess that he had been unable to discover in these papers any sufficient ground for their coming to a different conclusion from that arrived at by the late Honorable Member for Bengal, who, with that sound judgment and practical wisdom which exhibited themselves in all that he did, objected to any legislation for the purpose of fixing the fares for carriages let on hire, considering "that the moderate rates of charge and the active competition which kept down those rates, did not indicate any necessity for the action of Government in the very questionable direction of an interference with the natural adjustment of wages and profits." The Honorable Member for Bombay seemed to think that the natural adjustment, so confidently looked forward to by the late Honorable Member for Bengal, was still far in the future and might never be attained, and he had assigned this as one of his reasons for introducing this Bill at the present time; he had also referred to the petition, which, as already stated, was presented to the Council by certain inhabitants of Calcutta before the Bill was brought in; but what did the petitioners ask for—why, their principal request seemed to be that the rate of hire for a whole day for the class of carriages to which their petition related, should be fixed by law at a sum one-third lower than the rate which the Municipal Commissioners in their Report had pronounced to be a fair and reasonable rate, or one with which no fault could be found, and they made this request, notwithstanding that, since the date of the Municipal Commissioners' Report, almost every article of food had nearly doubled itself in price, horses and ponies cost much more, and wages were generally higher. A rate of hire, then, considered by the Municipal Commissioners to be fair and proper, was one of the public grievances from which these Calcutta petitioners prayed to be relieved by legislative enactment. The Honorable Member for Bombay did not say that higher rates were now demanded than at the time when the Municipal Commissioners gave it as their opinion that no fault could be found with the rates charged; and, looking to the increase which, as he had said, had taken place in the price of almost all articles of food and of ponies and horses, and in the rates of wages, he certainly thought they might assume that a maximum rate of hire had been attained, and that, to some extent at least, the expectation expressed by the late Honorable Member for Bengal had been realised. So much then of the ground on which the Honorable Member for Bombay had asked them to pass this Bill was cut away from beneath them.

The Bill brought in by the Honorable Member for Bombay related to three descriptions of hired conveyances, namely, wheeled carriages, boats, and palankeens; but neither in the petition from the inhabitants of Calcutta, nor in the extract from the Report of the Municipal Commissioners, on which stress had been laid by the Honorable Member for Bombay, was any mention made of the last two descriptions of conveyances, and in so far, therefore, as the public voice was concerned, there appeared to be no ground for any legislative interference in respect to them. He believed he was right in saying that a respectable palankeen could, at all times, or nearly always, be obtained in any part of Calcutta at a moderate rate of hire, and that the bearers were generally willing and obliging. Why then, it might be asked, were they to invest the Municipal Commissioners, or the Commissioner of Police, with power to fix the rate of hire at which the owners or bearers of these conveyances were to give their services and the use of their palankeens to the public? Then, as regarded boats, there was already a law which required that all boats let for hire should be registered and numbered. This law had been for some time in force, and he was not aware that any complaints had been made against it. Its provisions corresponded very much with that part of the Bill brought in by the Honorable Member for Bombay which related to the same description of public conveyances; the Honorable Member, however, wished to go farther, and to give the Commissioner of Police power to fix the rate of hire at which boats should be let; but he (Mr. Harington) could see no more reason for the Commissioner of Police having this

power in respect to boats than in respect to palankeens. He thought that any one who had been in the habit of visiting the public ghâts of Calcutta would agree with him that there was no difficulty in hiring any number of boats; the only difficulty was to avoid having to engage all the boats at the ghât, so importunate were the owners, so anxious for a fare—but this, however disagreeable, would not be prevented by the present Bill.

To return to wheeled carriages. In order, he supposed, that the European livery stable-keepers might be excluded from the operation of the Bill, the Honorable Member for Bombay had so framed it that, according to his (Mr Harington's) view, its provisions would reach few, if any, of the numerous hired carriages which traversed the Town of Calcutta at all hours of the day and night, to the great convenience, as he thought, of the citizens and of visitors, but against which the complaint of the Municipal Commissioners and the Calcutta petitioners seemed to be especially directed. If he rightly understood the second Section of the Bill, the Commissioner of Police would have no power to fix the rate of hire of any carriage which did not stand or ply in the streets for hire; nor would any carriage require to be registered and numbered under the Bill which was not let for any time less than a day. Unconvinced by any thing that had been said of the necessity of passing this Bill, he did not consider himself called upon to object to this particular part of it; but would it satisfy those who complained of the present state of things? Looking to their demands, it occurred to him (Mr. Harington) that they would scarcely care to have the Bill in the form in which it was now drawn, and he must confess that it was not of that large and comprehensive character which he, for one, had been led to expect from what the Honorable Member for Bombay had stated at the time of its introduction. Where stands were allotted in the public streets for hired carriages, it might be very right and proper that the owners of the carriages which plied for hire on those stands should be subjected to certain rules; but he was informed that the number of carriages which actually plied for hire in the streets of Calcutta was comparatively small; that the charges made for them were generally moderate, and that the drivers of these carriages were not the persons whose conduct was complained of. In support of what he had just said, he might mention that he had been told by a gentleman who occasionally visited him from Barrackpore, and who generally travelled by rail, that he never experienced any difficulty in getting a hired carriage with a single horse on reaching the ghât on the Calcutta side of the river; that the carriage conveyed him wherever he wished to go during the day, and took him back to the ghât in the evening, and that for the whole day's work he never paid more than two rupees, with which the driver was quite satisfied. Surely there was no cause for complaint, no ground for legislation here. But what the Calcutta petitioners required was that the native livery stable-keepers who, for the most part, kept their carriages and horses under sheds, and who were stated by the Municipal Commissioners, by a strange misapplication of terms, to "carry on a nefarious monopoly," though in what their monopoly consisted he (Mr. Harington) had been unable to discover—should be compelled to let their carriages for such times and at such rates as the petitioners might consider proper. No such demand was made in respect of the European livery stable-keepers, though, if any monopoly existed, they not only shared in it, but they certainly had a monopoly of high prices, as any one must know to his cost, who had been in the habit of hiring carriages from both the European and Native livery stable-keepers.

He (Mr. Harington) should have no objection to a law being passed, which should require that all hired conveyances, of whatever description, and by whomsoever owned, should be licensed, registered, and numbered; and it might also be proper to require that a table of their rates of hire should be stuck up in some conspicuous place, either where the conveyances were kept, or in the conveyances themselves. He thought that a law of this character would be very advantageous and useful to the public; but it was obvious that the Bill brought in by the Honorable Member of Bom-

bay contained no provisions whatever as regarded the great majority of carriages let out for hire in this city, and as while it omitted legislation where it appeared to him (Mr. Harington) it might be usefully, beneficially, and properly had recourse to, it comprised provisions, of the necessity or propriety of which he was not satisfied, he did not feel disposed to vote for the second reading of the Bill. As regarded Bombay, he wished to observe that the changes which would be introduced into that Presidency, in the event of this Bill being substituted for the law now in force there, would not be for the advantage of the Bombay Community, and if they should be consulted on the subject, he thought they would prefer to retain their present law.

MR. LEGEYT said, he did not exactly understand whether the Honorable Member, who had just spoken, opposed the entire principle of the proposed measure, or only the form and framing of this particular Bill. If the latter, then he (Mr. LeGeyt) thought that all that had been brought forward by the Honorable Member would be more fully and far better discussed by the Select Committee, to whom the Bill would be referred, if the Council allowed it to be read a second time and published for general information. But in case his Honorable friend intended to oppose the second reading, he (Mr. LeGeyt) would proceed to answer shortly some of the objections which had been urged.

The Bill did not propose to reduce or fix the rates. He had expressly stated, on introducing the Bill, that this would be better done by the local authorities.

Then it was said that the Bill should apply, or rather that the principle of registration should be extended, to all classes of conveyances. He (Mr. LeGeyt) confessed he saw no good ground for including all classes of conveyances within the provisions of the Bill. This Bill was intended to regulate the conduct of the drivers and the condition of the carriages, which are engaged by the hour or by courses, and which are generally known under the name of Hackney-carriages. This description of conveyance is regulated in all large civilised towns, instead of leaving their employers to the mercy or whims of the drivers or owners of the vehicles, which he believed was found to be a source of great inconvenience in this city. Those who were in the habit of using such conveyances experienced great annoyance and trouble as to the amount of fares to be paid by them. A driver had no right, when he either occupied a public stand or plied along a public street ready to engage a fare, to hesitate or refuse to be hired when the customary fare was offered. He had been informed that it was a common practice with the drivers of these carriages to leave those who had hired and paid for them at shop-doors and other places, and decamp. It was to prevent annoyances of this nature, which this Bill was intended to provide.

With regard to what the Honorable Member had said about Bombay, he (Mr. LeGeyt) would only observe that, if the Bill were allowed to be read a second time, it would be seen how it would be received by the community at Bombay. In his (Mr. LeGeyt's) opinion, it would be an improvement on the existing law; and, at any rate, an alteration of the existing law in Bombay was necessary, as it directed certain things to be done by an Officer whose appointment had, for some time past, ceased to exist. He therefore hoped the Council would allow the Bill to be read a second time.

The question being put, the Council divided—

Ayes 4.	*Noes* 3.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. Harington.
Mr. LeGeyt.	Mr. Peacock.
Sir James Outram.	

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

ESTATE OF THE NABOB OF SURAT.

MR. LEGEYT moved that the Report of the Select Committee on the Bill "to amend Act XVIII of 1848 (for the administration of the estate of the late Nabob of Surat and to continue privileges to his family)" be adopted.

Agreed to.

TRIALS BY SESSION JUDGES.

MR. HARINGTON moved that the Bill "to enable Session Judges to pass

sentence in certain cases without reference to the Sudder Court" be referred to a Select Committee, consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

PORTS AND PORT-DUES.

MR. FORBES moved that the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues)" be referred to a Select Committee, consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

MR. FORBES said, when Act VII of 1858, which provided for the levy of Port dues and fees within the Presidency of Madras, was under consideration, more than one representation was received from the Chamber of Commerce at Cochin of the evils that would result to that Port from an enforcement of that Section of the Act which provided that half the ordinary amount of Port-dues should be collected from vessels which do not even break bulk, or land or take in a passenger.

The Chamber represented that Cochin was the chief place of export for the produce of the Malabar Coast, and that the greater part of the tonnage required by merchants was obtained by means of what were called seeking ships, that is, ships which came into Port to seek for freight without having any actual engagement, and it was urged that, with the choice of Bombay on the one side and Ceylon on the other, no ship would incur the certainty of having to pay Port-dues at Cochin, when it was doubtful whether she would after all obtain freight or not.

The Chamber, in an address presented to the Government of Madras after the Act was passed, showed that it had inflicted on Cochin considerable injury, as the Peninsular and Oriental Company had at once refused to allow their steamers to call at the Port on their passage to and from Bombay and Galle, as they had been accustomed to do, owing to the liability they incurred for Port-dues, however few might be the number of hours they remained in the Port, and whether they derived any benefit from calling at Cochin or not.

This last address was not transmitted to this Council by the Government of Madras, because the original representation of the Chamber of Commerce had been already forwarded, and because the measure against which the Chamber protested had already become law. Their representation, however, having gone home as a part of the proceedings of the Government, had attracted the attention of the Secretary of State, and in a Despatch, dated the 7th of April last, Lord Stanley suggested that it should be sent to the Member of this Council representing the Madras Presidency.

He had looked over all that was recorded in connection with Act VII of 1858, and he must say that he was left under the impression that the mercantile community of Cochin had good ground for the representation they had made. The Section in the Act which makes ships liable to half dues, even though they do not break bulk, or land or take in a passenger, appeared to have been passed with sole reference to the Port of Madras, and in consideration of the great advantage which all vessels, whether breaking bulk or not, unquestionably derived from the admirable Light which is shown at that Port, and this was no doubt a substantial and good ground for taxing vessels coming into Madras. But at Cochin the argument did not apply, the Port had no Light-house, and vessels merely coming in to ask if there be freight for them or not could not, he thought, be said to derive such an advantage from anchorage in an open roadstead as to make it just to put a tax upon them. In fact, the law defeated its own end, for the result was that vessels did not come to Cochin, and what would otherwise be a thriving and a rising place, was depressed by the existence of a law passed with the sole view of providing means for the improvement of a Port which the law itself prevented ships from frequenting.

He had said that the Memorial of the Chamber of Commerce had now been sent to him at the suggestion of the Secretary of State, and as a Bill to amend Act XXII of 1855 had just been read a second time and referred to a Select Committee, he should move that these papers connected with Act VII of 1858, which was a part of, and was to be read with, Act XXII of 1855, be

referred for consideration and report to the same Committee.

Agreed to.

PUBLIC CONVEYANCES.

MR. LEGEYT moved that the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca" be referred to a Select Committee, consisting of Sir Charles Jackson, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

MR. FORBES moved that the Council be adjourned for ten minutes.

Agreed to.

The Council resumed its sitting pursuant to adjournment.

ESTATE OF THE LATE NABOB OF THE CARNATIC.

THE VICE-PRESIDENT announced that the Governor-General had signified his assent to the Bill "to explain Act XXX of 1858 (to provide for the administration of the Estate and for the pyment of the debts of the late Nabob of the Carnatic)."

The Council adjourned.

Saturday, June 25, 1859.

PRESENT:

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

Hon. Lieut.-Genl. Sir James Outram,
Hon. H. B. Harington,
P. W. LeGeyt, Esq.,
H. Forbes, Esq.,
Hon. Sir C. R. M. Jackson,
and
A. Sconce, Esq.

MALABAR OUTRAGES.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

Agreed to.

STAMPS.

MR. SCONCE gave notice that he would, on Saturday next, move the first reading of a Bill to amend the laws relating to Stamps.

SALT DUTIES (MADRAS).

MR. FORBES gave notice that he would, on the same day, move the first reading of a Bill to collect a duty of Excise on Salt manufactured in the Presidency of Fort St. George.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

BOMBAY ABKAREE REVENUE.

MR. LEGEYT gave notice that he would, on Saturday next, move the first reading of a Bill to amend the law for the realization of Revenue from Abkaree in the Island of Bombay.

The Council adjourned.

*** *This leaf to be cancelled on the issue of Part VII.*