LEGISLATIVE COUNCIL

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merly by the Governor-General in Council sitting in the Legislative Department; and he (Mr. Grant) was sure that no public officer, high or low, would refuse to give this Council any such information when called upon. If he did refuse, he (Mr. Grant) did not think that any necessary orders could be passed by this Council, any more than formerly such orders could have been properly passed in the Legislative Department. But were such a most improbable case to arise, he had no doubt that the Governor-General in Council, sitting in the Executive Department, would pass proper orders. If therefore the question must now be decided, he should vote in favor of the motion. He would suggest, however, that in a matter of such importance the whole question might advantageously be referred to a Select Committee with a view to its being thoroughly discussed and definitively settled as to whether or not this Council had the power in question. But if the Honorable Member on his left pressed his motion, he (Mr. Grant) would vote for it.

MR. PEACOCK said, it was not his intention to oppose the motion. He did not see any objection to the call now proposed being made; he had no doubt the Lieutenant-Governor would comply with it. But as doubts were entertained on the general subject, the suggestion of the President seemed to him a very proper one and worthy of adoption.

MR. CURRIE said, that the question, or at least one very like it, had been for more than two years before a Select Committee, on the motion of the Honorable Member for Bombay.

MR. RICKETTS wished the question to be put to the vote.

The Motion was put and carried.

RECOVERY OF RENT (BENGAL).

MR. CURRIE gave notice that he would, on Saturday, the 9th Instant, move for a Committee of the whole Council on the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

The Council adjourned at noon on the Motion of Sir James Outram.

Mr. Grant

Saturday, April 9, 1859.

PRESENT:

The Hon'ble J. P. Grant, Senior Member of the Council of the Govr.-Genl., Presiding.

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

EMIGRATION.

MR. PEACOCK moved the first reading of a Bill "to amend the law relating to the Emigration of Native Inhabitants of India."

He said the Mauritius Government had lately proposed alterations in the law relating to the emigration of coolies. One proposal was to authorize contracts to be made in India for service at the Mauritius. According to the present law no contract to serve could be entered into by the coolie until forty-eight hours after his arrival in that Island. This was by virtue of an order of the Queen in Council, which had the force of law there. When a law was passed in India authorizing Emigration to the Mauritius, this was one of the terms contemplated by the Act of the Legislative Council. The working of this condition had, however, been found injurious not only to the Mauritius Planter, but also to the Emigrants. In a letter, dated June 30, 1858, the Governor pointed out the evils attendant upon that system. He wrote:—

"The allusions made in the correspondence now under reply, and in the report of Sir Frederick Rogers, to the Ordinances No. 15 of 1854 and No. 12 of 1855, induce me to take the present opportunity of entering more at large into the subject of the much vexed question that has been anxiously agitated here. With reference to the introduction of the 6th Clause of No. 12 of 1855, which gives the Immigrant, on his arrival in this country, the full and free selection of his own employer, notwithstanding he may have been expressly engaged in India, for the services of a particular Planter, by whom the whole expense of his introduction has been fully defrayed."

That Ordinance authorized the Immigrant, though conveyed to the Mauritius at the expense of one Planter, to

select his own master within forty-eight hours after his arrival at the depôt, the Planter with whom he engaged being bound to repay the expenses of the introduction of the coolie. But this caused great difficulties, because the Planter who had indented for and who expected the coolies found that by means of bribery on the part of other Planters, and by the employment of Crimps, the coolies were induced to engage with others. The Governor said:—

"And I shall do so, with reference to a communication I have received from the Chamber of Agriculture, and another which I have since received from its sister society, the Chamber of Commerce, of both of which, as well as of my replies to these communications, I have the honor to enclose copies, to which I shall presently more particularly refer."

Both these Chambers applied to the Government for an alteration of the law on these grounds. The Governor then went on to speak of the distribution of the coolies. He said:—

"Upon the former, namely the distribution and first employment of new Immigrants, I fear I shall find the existing difficulties likely to last as long as there remains so great a disparity between the supply and the demand of labor, and as long as the delusion lasts that the new Immigrants are wholly left to their own free selection, when the contrary fact unquestionably is, that they are subjugated to the designs and arrangements of the Crimps and Sirdars, who profit by their national peculiarities or credulities."

In another part he said:—

"But I have found here so many obstacles to any such arrangements, superinduced on the one hand by the demand for labor, which has led to every stratagem and expedient for procuring it through irregular and improper channels, and on the other hand by the capricious determination of the Immigrant to follow the selection that is made for him by the Sirdar, in preference to the more advantageous one recommended by the Government, that it has been quite impossible to carry out that fair distribution of Immigrants which, under other circumstances, would be the best and most equitable mode of rateably adjusting the supply to the demand."

He went on to show that Sirdars employed by Planters induced the coolies to refuse to fulfil their contracts. He also pointed out that it was no advantage to the coolie, since he could not possibly in forty-eight hours know the characters of particular Planters. The Governor of Mauritius, therefore, proposed to alter the law, and to allow contracts to be made in this country with emigrants, before they proceeded to Mauritius, to serve particular individuals, and if not to serve individuals, then to serve such Planters as the Mauritius Government should allot them to. The Court of Directors, after communication with the authorities at home, wrote:—

"You will observe that we have expressed our willingness to sanction the alteration in this respect proposed by the Government of the Mauritius, as finally approved by Her Majesty's Secretary of State for the Colonies; and we leave it to you to prescribe, in communication with the Government of the Mauritius, the precise terms and conditions on which the proposed scheme shall be carried out."

Since this Despatch the Mauritius Government had sent here an Ordinance and some Regulations made pursuant to it. It appeared to him that these were certainly calculated to benefit the Immigrants, and to enable them to enter into contracts quite as beneficial as if they had contracted after their arrival at Mauritius.

First, it was proposed to fix annually the average rate of wages, being a fair rate at Mauritius. A copy of this document was to be sent here and hung up in the Office of the Emigration Agent. Any person desiring to engage Coolies was to deposit with the Protector of Emigrants in Mauritius a requisition specifying the number of Immigrants required by him—in what district in Mauritius and for what kind of service or labor they were required—the Presidency of India from which he wished them to be sent, and whether he was willing to give wages and allowances on the Government scale for the time being, or any other and what wages and allowances.

There was a check on the Planter, for if he was an unfit person, the Protector at Mauritius and the Emigration Agent here would decline to comply with this requisition.

It then provided for allowing Special Agents licensed by the Protector of Immigrants at Mauritius and here, to

recruit in India for the Mauritius Planters, but the laborers thus recruited were not to be allowed to leave this country without passing through the Emigration Agent's Office, and receiving the advice of the agent in the same way as if recruited by him or his agents as at present:—

"Every Principal shall be responsible for the wrongs and breaches of Regulations committed by his agent, in so far as that the Government may refuse to accept future nominations of agents by employers whose agents shall have more than once wilfully committed any such wrongs or breaches.

"When Special Agents have been employed and licensed, no recruiting by any Government Recruiting Agent, or any of his Subordinates, shall be expected or relied on by the employers; but that portion of the service shall rest entirely with the licensed Special Agent, and those employed by him subject to the control of the Government Emigration Agent at the Presidency.

"In case, however, the Special Agent shall die, or withdraw from his agency, or in case license shall be refused to such agent, the Emigration Agent may and shall allow the Government Recruiting Agents to act in regard to the requisition of the Principal of such agent in the same way as if no Special Agent had been appointed.

"When Special Agents are employed, the engagement of Immigrants for agricultural labor may be either at the rate of wages and allowances in the Government Scale for the time being, or at any other rate which shall be at least equivalent thereto; and which shall be set forth in the requisition."

So that the agent could not engage for a private coolie at a lower rate than the Government rate, or a sum equivalent to it.

"When Special Agents are not employed, the engagement of ordinary agricultural laborers shall be at the wages and allowances in the said Government scales."

The coolies had the Protector at Mauritius, and the Emigration Agent and Protector here to see that they were not imposed upon:—

"The Emigration Agent at each dependency shall, before any contract shall be completed, explain the same fully to the Immigrant, with the aid (if necessary) of a duly qualified Interpreter, and shall take all proper precautions to prevent the Immigrant from being induced to contract by any fraud, falsehood, or unfair means or representations.

"If the Emigration Agent shall be satisfied that the contract is fully understood by the Immigrant, and, if not upon the Government scale, that it is fair and reasonable, he shall, as soon as possible have the same signed in his presence by the Immigrant and by the Special Agent (if any) of the employer, with their names and marks, or he shall certify the same by a docket signed by himself.

"If the Special Agent for the employer shall not be present at the time, the Emigration Agent may sign the contract in his absence, and the contract shall, in that case, be equally valid and binding as if signed also by the Special Agent; and no contract bearing to be so signed shall be challengeable on the ground that the Special Agent not subscribing was present at the time."

The contract thus made might be enforced at Mauritius.

It appeared to him, therefore, that every thing possible was here provided for. It provided that the Special Agents should be under the direction and control of the Emigration Agent here. What he proposed by the present Bill was to authorize contracts to be made here, provided they were made in the presence of certain officers. It was perhaps doubtful whether Act XIV of 1839 was or was not in force as to emigration to Mauritius. He did not feel confident that it was so, and he therefore proposed to repeal so much of that Act as subjects to fine persons making contracts with natives of India for labor to be performed in Mauritius, or knowingly abetting or aiding any native of India in emigrating to that Colony. He believed it was intended to repeal that Act by the Mauritius Act XV of 1842, but the repealing Section was not precisely in the words used in the Act authorizing Emigration to the West Indies, and the Act lately passed for St. Lucia and Grenada, for in those Acts it was quite clear that contracts might be entered into here with native laborers for service in the West Indies. [Mr. Peacock here read the main provisions of the Bill.]

He also proposed to repeal Acts XXI of 1843, VIII of 1847, and IV of 1852, so far as they required a certificate to the effect that the emigrant has been engaged "on the part of Government;" for now if contracts were to be made by private individuals this certificate would not be applicable. He also proposed that the Governor-General in Council should be invested with authority to extend the provisions of the Act.

Application had been made on behalf of British Guiana that it might be at liberty to contract in the same way. But this had not yet been sanctioned by the Governor-General, though, if it should be sanctioned, this Act might be declared to apply to such Emigration also.

The Government, after a careful consideration of the Mauritius Ordinance, had consented to laborers being allowed to leave India on the principle laid down in that law. In cases where the coolie was not employed by a particular individual, the Emigration Agent here would engage him on the part of Government, and the Mauritius Government would allot him to such master as it thought fit, at wages not less than the certified rate. The coolie, if he chose, might enter into a contract for three years. If he fully understood the terms, there was no reason why he should not be bound by the contract made here as he would be bound by a contract made at the depôt at Mauritius. It would be the interest of the Mauritius Government to take care that the coolies were not maltreated by the Planters. It appeared to him, therefore, that the law would protect the natives of this country emigrating to Mauritius from injustice and oppression, and gave them the protection of Government instead of (as at present) the protection of Crimps.

The Bill was read a first time.

RAILWAY CONTRACTORS AND WORKMEN.

MR. LEGEYT moved the first reading of a Bill "to empower Magistrates to decide disputes between contractors and workmen engaged in railway and other public works."

He said, he had been requested by the Government of Bombay to bring forward a Bill to the above effect. The Council were aware that on the other side of Bombay very extensive and important railway works were now in progress, and a large number of laborers was now employed thereon. These men were employed in a part of the country far away from any large town, or from any resident Magistrates. The laborers were for the most part men of the wildest and most uncivilized habits —Wuddias, Bildars, Maugs, and the like, who had been collected from the hills, and from all parts of the country. The two first were vagrant tribes, who were generally employed as stonecutters and in the excavation of tanks. These men had contracted for service with Sub-contractors. For some time past there had been much dissatisfaction and many heartburnings on the part of the laborers, and on the 20th of January last things came to a crisis. The men attacked their employers, and one of the European contractors was killed, but whether by the workmen, or by an accidental shot from his own party, or from his own fire-arms, had not yet been clearly ascertained. However the man was killed, and the progress of the works was put to great jeopardy. Since this occurrence the Government of Bombay had appointed an Assistant Magistrate for the line of railway, so as to keep the peace among these wild unruly persons.

Enquiries into the cause of this violent conduct were set on foot, and the result was, that it appeared that for months past the workmen had not been paid their full wages, and that some of them had been kept in arrears for three or four months, and some for more. It is probable this arose from a fear that if these laborers were not kept in arrears they would desert. It became advisable to devise some measures to remedy this state of things. The Bhore Ghaut was situate partly in the Poona and partly in the Northern Concan.

The Bombay Government had come to the opinion that an Officer should be invested with special and summary jurisdiction to decide all disputes of a pecuniary nature between such workmen and their employers, and that this power should be vested in a Magistrate or Assistant Magistrate. They had requested him to frame a Bill for this purpose, and accordingly this Bill had been prepared, empowering a Magistrate to decide such disputes. The Bill defined a summary procedure, and provided for the execution and enforcement of decrees. As the class of cases proposed to be tried under the Act would be of the most simple description, he proposed to make the decisions of the Magistrate final. He had also thought it advisable to make the Bill general,

with a proviso leaving it to the local Government of any Presidency or place to put it in force as occasion might require. He did not know that he had anything further to add. The annexures to the Bill would fully disclose the state of things which had given rise to such a measure.

The Bill was read a first time.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. CURRIE moved the second reading of 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)."

MR. LEGEYT said, he regretted that this Bill contained no provision for regulating the fares of hackney carriages and palankeens. It had been brought to his notice that it would be very desirable to make such a provision. He believed that the same complaint had been made at Madras, where he believed, prior to the passing of the Police Act XIII of 1856, there was a law on the subject. He thought it would be a good instruction to the Select Committee to enquire into the necessity of some such regulation. By Act IV of 1841, such matters were regulated in Bombay, perhaps not in the most perfect form, but still to the convenience of the public and protection of the owners of such conveyances.

MR. CURRIE said, he had looked through all the communications which had been received on the subject of the Police Act, and all the amendments suggested in those communications which he had thought it desirable to adopt had been inserted in the Bill. Of course, if when the Bill was published any further suggestions were made, they would be considered by the Select Committee, who would adopt or reject them as it might think proper.

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

RECOVERY OF RENTS (BENGAL).

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to XI were passed as they stood.

Section XII was passed with the insertion of "two hundred" in the blank before the word "Rupees," as the maximum of damages to be recovered for extorting payment of rent by duress.

Sections XIII to XVI were passed as they stood.

Section XVII was passed after verbal amendments.

MR. RICKETTS proposed to move the introduction here of the new Section of which he had given notice, and which had reference to Clause 2, Section XVII. He thought there would be insuperable or nearly insuperable difficulties in carrying out the provisions of the Clause. It said that the rent would not be liable to enhancement, unless the rate paid was below that prevailing in adjacent places "for land of a similar description." It was most difficult to ascertain the description of land. As his Honorable friend the Member for Bombay knew, they had been trying for a long time in that Presidency to lay down the different descriptions of land with, he believed, but incomplete success. The varieties in the descriptions of land were so many, and the causes of the differences so difficult to be ascertained, that to define correctly the description of land was next to an impossibility.

Some idea of the difficulty might be formed from the Bombay classification of land. He found 9 sorts described—

1st sort.—A mixture of minute fragments, or nodules of limestone.

2nd sort.—Same as above, only that the nodules are larger.

Now imagine the difficulty of deciding an issue as to the size of the nodules of limestone!

3rd sort.—Sloping surface.

4th sort.—Mixture of sand.

5th sort.—Want of cohesion among the constituent particles of the soil arising from the presence of fine sand.

6th sort.—Liable to be swept over by running water.

7th sort.—Excess of mixture from surface springs.

8th sort.—Clayey soil, when dry, turns very hard, and once wetted does not dry soon. Here again might be a very pretty issue, how long a clayey soil took to dry!

Parties to suits would soon find out how to present puzzling issues of this sort, which would make the adjudication of such suits extremely tedious and difficult.

Again the Clause spoke of land "with similar advantages." Upon this point there might be a dozen issues. Advantages and disadvantages might depend on markets, canals, railroads, irrigation, absence or presence of mahajuns and indigo planters, wild elephants, deer, hogs, grasshoppers, caterpillars. All these things and fifty others might have to be considered in considering the advantages and disadvantages of a tenure compared with adjacent lands.

The object of the proposed amendment was to remedy these difficulties, and to enable the Collector to dispose of a case in a manner likely to be acceptable to the parties, and capable of easy proof. The Collector was required to ascertain the market value of the average gross produce of the land, and to declare two-fifths of the ascertained value to be the rent payable for such land. And there was a proviso empowering the Court to declare a less sum than two-fifths to be the rental payable, if, owing to special circumstances, the cultivation must be attended with more than ordinary expense.

It had been suggested to him that, if there was to be such a proviso in favor of ryots, there should be a similar proviso in favor of zemindars. He did not think that was necessary. He had lately been told that in Batavia, where such matters were exceedingly well managed by the Dutch, a ryot was always entitled to a receipt in full for his year's rent if he made over one-fourth of his crop to his zemindar. He (Mr. Ricketts) did not wish to go so far as that, but he believed that the method of adjustment he proposed would in practice be acceptable to all parties not having any documents to guide the Court to a decision.

With these remarks he moved that the following new Section be introduced after Section XVII:—

"If in a suit for enhancement or for diminution of a ryot's rent the evidence produced by the parties shall fail to show what rate of rent is equitably assessable on the land in the ryot's possession, in such case the Collector shall proceed to ascertain the market value of the average gross produce of the land, and shall declare two-fifths of the ascertained value to be the rent payable for such land. Provided always that it shall be competent to the Court to declare a sum less than two-fifths of the value of the gross produce to be the rental payable, if there are any special circumstances owing to which the cultivation of the land must necessarily be attended with more than ordinary expense. When the rent of a ryot's holding has been ascertained as above provided, it shall not, unless on special grounds, be again liable to question for a period of twelve years."

MR. CURRIE said, he regretted that he felt it to be his duty to oppose the introduction of the Section. The Honorable Member had brought it forward in Select Committee, and the Select Committee had determined not to adopt it. According to the Section the Collector was to "ascertain the market value of the average gross produce of the land." In the case of rice land on which the same crop was grown year after year, there might be little difficulty in doing this. But where there was a rotation of crops, the crops varying greatly in value, and perhaps not following in any regular succession, he did not see how the Collector was to ascertain the value of the produce. In order to this it would be necessary to find the average value of the different crops, and the materials for this would not be easily obtainable. But the Section went on to prescribe a condition which would certainly be attended with much greater difficulties than any which it was intended to remedy. It provided that the Court should fix the rent at less than the usual proportion of the produce, "if there were any special circumstances owing to which the cultivation of the land must necessarily be attended with more than ordinary expense." Now it appeared to him that an enquiry into these special circumstances must involve elements of much greater doubt and difficulty than would be found in an enquiry as to the prevailing

rate paid for land of a similar description and with similar advantages. He understood the Honorable Member to object to the terms "similar description." The Honorable Member had referred to the Bombay system of classifying soils, and seemed to think that classification would confuse rather than assist in determining rates of rent. But such was not the case. In most parts of the country there were known descriptions of soils, according to which the lands of a village were classified, and this was one though of course not the only condition according to which the rate of rent was fixed.

It was also proposed that the Collector should "declare two-fifths of the ascertained value to be the rent payable for the land." He did not know upon what ground the Honorable Member had assumed this proportion. It was quite true that, when rents were paid in kind, it was the practice for the Zemindar and the ryot to take half and half—grain rents obtained generally where for want of the means of irrigation or other causes the crop was uncertain—and if the Zemindar shared the produce he also shared the risk. But when it came to the commutation of a proportion of the produce into a money rent to be paid under all circumstances, he apprehended that two-fifths would be found greatly too high. In the Institutes of Akbar it was prescribed that the share of the Sirkar, that was the proportion to be paid by the ryot, should in no case exceed one-fourth; and the Honorable Gentleman had told them that one-fourth was the prescribed proportion in Batavia. But he apprehended that even one-fourth would be found to be very high for a money rent. On the whole, he (Mr. Currie) thought that they would run very great risk in assuming any arbitrary proportion, and he felt confident that the rule prescribed in Section XVII was much safer and more free from difficulty.

MR. HARINGTON said, he concurred generally in what had fallen from the Honorable Member for Bengal. The Section, moreover, which the Honorable Member of Council wished to introduce, appeared to him to be at variance with the general and, as he thought, sound principle that the responsibility of establishing a claim ordinarily lay upon the party making the claim. Upon this principle, if a landlord sued to enhance the rent paid by a ryot, it was for him to show on what ground he claimed the right of enhancement, and to adduce proof that he was entitled to receive rent at the rate demanded, failing which he (Mr. Harington) apprehended that the proper duty of the Court was to dismiss the suit as brought. In like manner, if a ryot claimed an abatement of rent, the responsibility of showing what was the proper rent, as well as the grounds on which the claim was based, rested upon him, and if his proofs were considered insufficient, he (Mr. Harington) supposed that his claim would also be dismissed. Furthermore, the proviso contained in the Section seemed to him to destroy, to a great extent, the effect of the rule laid down in the first part of the Section, and to leave it very much to the Collector to determine what rent should be paid in every case, which was what was proposed in the Bill as it now stood. It must be obvious that the special circumstances, which under the proviso were to be taken into account, might embrace all the circumstances mentioned by the Honorable Member of Council, including the vicinity of wild hogs or wild elephants, whose depredations, like many other things, might have the effect of rendering the cultivation of the land more than ordinarily expensive. For these reasons he should oppose the introduction of the Section.

MR. PEACOCK said, he objected to lay down any specific rule for the decision of a matter of fact, like the reasonable value of land at a certain time. But if any rule was to be laid down, was the proposed one correct? The number of years for which the average was to be taken was not stated; this objection might easily be removed, but then there would remain the difficulty of ascertaining the gross produce and average value. And after this had been fixed, would it remain fixed for (say) 12 years? That it would be unfair in parts of the North-Western Provinces for instance, the value, now that large numbers of troops were there assembled, was higher than it would be hereafter. He preferred leaving the whole matter to the decision of a competent Court,

who would pronounce in each case what was reasonable or not.

MR. RICKETTS said, he quite agreed that there might be some difficulties in ascertaining the market value of the average gross produce, but insignificant difficulties compared with ascertainment of description and advantages. He admitted the force of the objection brought forward by his Honorable and learned friend opposite (Mr. Peacock): he should have mentioned for what number of years the average should be calculated; the omission could be easily supplied. Though the Council were against him, he was not convinced that the plan proposed by him (Mr. Ricketts) was not a great improvement. The Honorable Member for Bengal had said that adjacent lands should be assessed at a common rent, but it often happened that lands of the same description, and lying close to each other, paid at different rates. He could recollect a case in which some rice land on a small plain paid three Rupees in the middle of the plain and eight annas only at the edges, the cause being that wild animals injured the crops on the edges, but never got as far as the middle of the plain; they had satisfied themselves or were driven away before they got so far.

With regard to the objection against declaring two-fifths of the ascertained value to be the rental payable, he was under the impression that he had proposed a portion less rather than more than that usually taken when rent was paid in kind. In laying down an arbitrary share which could not in all cases be exactly suitable, he desired to err on the side of the ryot. He left the question to the Council.

The Motion was then put and negatived.

Sections XVIII to XXII were passed as they stood.

Section XXIII provided as follows:—

1. "All suits for the delivery of pottahs or kuboolyuts, or for the determination of the rates of rent at which such pottahs or kuboolyuts are to be delivered;

2. "All suits for damages on account of the illegal exaction of rent, or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion or rent by confinement or other duress;

3. "All complaints of excessive demand of rent, and all claims to abatement of rent;

4. "All suits for arrears of rent due on account of land either kherajee or lakhiraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like;

5. "All suits to eject any ryot, or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment, or a lease may be liable to be cancelled;

6. "All suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same;

7. "All suits arising out of the exercise of the power of distraint conferred on zemindars and others by Sections CXII and CXIV of this Act, or out of any acts done under color of the exercise of the said power as hereinafter particularly provided.

"Shall be cognizable by the Collectors of land revenue, and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court, or by any other Officer, or in any other manner."

MR. PEACOCK said, he objected to this Section which took away the jurisdiction of the Civil Court. Some of the suits mentioned in it could now be tried by Revenue Officers as summary suits; others could not, but must be tried by the regular Courts. The suits mentioned in Clause 1 were now tried by the regular Courts. The Bill proposed to omit this jurisdiction, and to transfer them to the Revenue Officers for decision.

The suits mentioned in Clause 2 were now tried summarily by the Revenue Courts, but the Civil Courts also had jurisdiction in such cases.

He was not quite sure whether the cases specified in Clause 3 were the subject of summary suits. In the Lower Provinces they appeared to be tried by regular suits, but in the North-Western Provinces he believed it was otherwise. Regulation VII. 1822 was the law in Bengal. That Regulation applied only to the Ceded and Conquered Provinces, but had not been extended to the Lower Provinces.

MR. CURRIE said, that Regulation IX. 1825 extended that law to the Lower Provinces.

MR. PEACOCK said, that Regulation IX. 1825 only empowered the Government to extend that Regulation; but it had not, as he understood, been extended.

Suits of the kind referred to in Clause 4, which might be very complicated, were now to be tried by the Collector. Summary suits for arrears were, by the laws now in force, confined to arrears of current rent. This Clause gave jurisdiction to the Revenue Courts for arrears of rent to any amount.

The suits mentioned in the first part of Clause 5 might now be tried summarily under Regulation VIII. 1819; but "breach of condition" could only be the subject of a regular suit.

MR. HARINGTON referred to "Directions to Revenue Officers," in which suits of ouster from holding for non-payment of rent were mentioned as summary.

MR. PEACOCK.—But were suits for breach of conditions of the same nature?

The suits mentioned in Clause 6 were now the subjects of regular suit—why transfer them to the Collector?

He had shown that some of the suits referred to might now be tried by regular, and others by summary suit. But this Section took away the regular suit, and made all these classes of cases cognizable only by the Collector. This might be unobjectionable (although he did not think it was so) if the jurisdiction was given only to the Collector; but by a subsequent Section (CL) it was provided that—

> "All the powers vested in the Collector by the preceding Sections of this Act may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases without such reference by any Deputy Collector having local jurisdiction in any Sub-division of a District, &c."

That involved another important question, namely, should the powers given to Collectors be vested in Deputy Collectors having a local jurisdiction? He did not know how many Deputy Collectors had been so invested, but unless they were very numerous, the suitors would have to resort to the distant Court of the Collector instead of the neighboring Moonsiff's Court. But suppose all Deputy Collectors to have this jurisdiction within their Sub-divisions of three or four thannahs. In that case the jurisdiction of the Civil Court would be taken away and transferred to incompetent Judges. He said incompetent, because there was no guarantee for their competency as there was for the competency of Judges of the Civil Courts, who had to undergo an examination. If these gentlemen were to have jurisdiction, and if the Civil Courts should be deprived of it, the people would be compelled to resort to officers for whose competency there was no guarantee. But there was a still stronger objection. These Deputy Collectors would also be Deputy Magistrates. He did not know how it might be hereafter, but now they would have the control of the Police of their Districts. If that duty were taken away, the case would be different; but they could not act efficiently as Judges while they had executive Police functions. If a dacoity or murder was committed, were these Judges to stay and hold their cutcherry instead of looking after the criminals?

The Bill contained a provision for summoning the defendant. The summons was to fix a day "with reference to the state of the file and distance that the defendant may be, or be supposed to be, at the time, from the place where the court is held, &c." If the plaintiff did not attend, or if the defendant did not attend, due provision was made; but there was no provision for the event of the Judge being engaged as Deputy Magistrate in performing other duties. Was the ryot to be dragged up under arrest when no one could tell where the Judge was, perhaps in pursuit of dacoits, or investigating the conduct of a darogah? There should be some guarantee that the Judge was qualified, and his Court should be stationary, so that the people might know where it was held.

Under the proposed plan, if the officer neglected his Deputy Magistrate's duties, he would be subject to the Magistrate's censure; if he neglected his Judge's duties, to the Collector's. Whether it was intended to invite those officers hereafter, he did not know (he was himself opposed to the union); but at present the offices were distinct, so that he would be subject to two masters. It seemed to him that either this new officer's duties as Judge or as Magistrate must be neglected.

When the Bill was read a second time, he had referred to a Petition of the British Indian Association, and had read a

passage therefrom. [See printed proceedings of the Council for 1857, columns 473-4.] He quite agreed with the sentiments expressed by the British Indian Association upon this subject. In performance of his Police duties the officer might excite enmity and distrust, and however pure his intentions, he would not in his judicial capacity have the confidence of the people. It might be said that the Civil Courts could not decide these cases without much delay. It seemed to him that the appeals given by the Bill to the Collector in some cases, to the Judge in others, to the Commissioners in others, rendered it uncertain whether there would be greater expedition in the Revenue Court. Even if these special tribunals were created, the Civil Court's jurisdiction should not be taken away. Have the Moonsiffs not acted impartially in the decisions of such suits?

The object of the Regulation (VIII. 1831) appeared to be to encourage regular suits rather than summary, for it provided—

"With a view to give additional encouragement to parties having claims to arrears of rent to prefer regular suits on account of the same, it is hereby declared that the plaint in all such regular suits, if under the existing Regulations they would have been cognizable as summary suits, may be written on paper bearing a stamp of 1-4th the prescribed value."

It was by the same Regulation declared competent to a Collector to reject a summary suit, and to refer the party to a regular suit; and judicial authorities were authorized to receive such petition as a petition of plaint, in like manner as if the claim had been originally preferred to them in the form of a regular suit. The proper course seemed to him to be that, if the Collector found a suit an intricate and difficult one, such as a suit concerning a right of fishery, he would send the parties to try it by regular suit in the Civil Court. What was the reason alleged for taking away the Civil Courts' jurisdiction? Why should Civil Courts be provided if, for the decision of a large class of suits involving complicated questions, other tribunals were to be created?

MR. CURRIE said, he understood his Honorable and learned friend opposite (Mr. Peacock) to object, *first*, that the Section under consideration took away from the Civil Courts jurisdiction in several classes of cases, and gave it to the Revenue authorities; and, *secondly*, that the Revenue officers by whom this new jurisdiction was to be exercised were officers for whose competency there was no guarantee.

Now, with regard to the first point, he had to observe that Revenue Officers had from the first had more or less cognizance of cases of this description. He would detain the Council for a short time by going over the course of legislation which had been followed on the subject.

Previously to the enactment of the Code of 1793, the trial of suits between landlord and tenant was vested in the Mal Adawlut or Revenue Court. After the constitution of the present Civil Courts, it was provided (by Section 13 Regulation VIII. 1794) that in suits concerning rent or revenue, the Courts should refer cases of disputed accounts to the Collector for report. After a while, in 1795, a summary procedure was provided for the determination of claims to arrears of rent: this was superseded by Regulation VII. 1799, which formed the basis of the present summary suit law, and by it the Judge might "refer the case to the Collector of the District for adjustment and report, as he was authorized to do in all "causes of rent and other matters previously cognizable in the Courts of Mal Adawlut." Then by Regulation V. 1812 a summary procedure was forwarded for cases of replevin. Before, if a ryot were aggrieved by any proceedings of the zemindar in distraint for rent, his remedy was by instituting a regular suit. *All* these cases were ordered to be referred to the Collector for report. Next, by Regulation XIV. 1824 Revenue officers were invested with the power of trying and determining by a summary process, and subject to a regular suit in the Civil Court, all suits, claims, and demands of rent, arrears or exactions of rent, between landholders or farmers and their under-tenants, or between any other persons concerned in the receipt and payment of land rents, which were referred to them for the purpose by the Judges of the Zillah and City Courts. And, lastly, a few years afterwards, by Regulation VIII. 1831 the reception of

plaints by the Judge was discontinued, and the whole cognizance of summary suits relating to demands or exactions of rent was given to the Collector.

It was very true that, as stated by the Honorable and learned Member (Mr. Peacock), there was mention made in the Regulations of encouragement being given to the institution of regular suits in these cases. But he would remark that, when a regular suit was instituted in a case of this kind, the Court had the power to refer it to the Collector for adjustment and report, and he believed that by an order of the Government North-Western Provinces all such suits were as a rule referred to the Collector for report. Well then, if when the procedure was summary the suit was to be received and tried by the Collector, and if the Collector was to have the power of making the primary investigation in the case of regular suits, was it not far better that the disposal of these cases should be made over to the Collector altogether? This was the course proposed in the Bill, and in order to its being carried out effectively, rules of procedure were laid down for the guidance of Collectors very similar to those prescribed by the new Code of Civil Procedure. The jurisdiction of the Civil Courts was not abolished, for in all suits, except small money cases, an appeal lay from the Collector to the Zillah Judge. It appeared to him that this was a very great improvement on the present system. The idea was taken from the Chapter on Revenue Suits in Messrs. Mills' and Harington's Code; and the practice was the same in the Madras and Bombay Presidencies. In Madras the Revenue Officers had the power of trying all rent suits, and from their decisions there was an appeal to the Zillah Court. In Bombay, also, the Collector had cognizance summarily of all such suits, and from his decision there was an appeal only to the Sudder Court.

With regard to what had been said on the subject of appeals, it appeared to him that the Honorable and learned Member opposite (Mr. Peacock) had not well got up this part of the Bill. The plan of the Bill was to give the original jurisdiction to the Collector and his Deputies, with an appeal to the Zillah Court in all cases except claims to money within a certain amount, when such claims were tried by the Collector.

It was thought well not to give the same finality to the decisions of Deputy Collectors, and therefore it was provided that when cases, in which if tried by the Collector the decision of the Collector was final, were tried by a Deputy Collector, an appeal from his decision should lie to the Collector. In all other cases, whether tried by the Collector or by a Deputy Collector, there was an appeal to the Zillah Court.

The scheme was simple enough. The Bill gave the Commissioners a general control over the Collectors and Deputy Collectors; but there was an express provision restricting them from interference with the orders of Collectors and Deputy Collectors, relating to the trial of suits or the execution of decrees.

He had explained the present state of the law and the change made by the Bill. He did not know what was to be the practical effect of the Honorable and learned Member's objections, or what substitute he proposed for the scheme of the Bill. But if it went the length of withdrawing from the Revenue Officers the jurisdiction which they now exercised, the change would be so pernicious, especially with regard to the North-Western Provinces, that sooner than consent to it he would rather abandon the Bill altogether.

With regard to the second point, namely, the agency by which the Bill was to be worked, it had been asked, who were the Deputy Collectors that would be entrusted with the determination of these suits? He answered that, in the first place, there were a number of old Deputy Collectors, some seventy perhaps, who had for years past been exercising the summary jurisdiction which the law gave to the Revenue Officers. There were also Deputy Magistrates of Subdivisions who were for the most part gentlemen of general intelligence, and who, in the discharge of their duty as Magistrates, must have acquired some knowledge of the habits of the people and the condition of the rural population. For the last two years at least these officers had been also Deputy Collectors, and engaged in the trial of summary suits. Therefore, as regarded them, there could

Mr. Currie

be no objection on the score of inexperience.

Then there were other Deputy Magistrates newly appointed to complete the proposed number of Sub-divisions, whom the Honorable and learned Member had pronounced to be manifestly incompetent. He (Mr. Currie) did not know what grounds he had for saying so. He was informed that these officers, whether Europeans or Natives, were carefully selected, that they went through a course of instruction and training at the Sudder Station of the district,and were required to pass an examination, and that no newly appointed Deputy Magistrate was appointed to a Sub-division, until, in the judgment of the Commissioner, he was considered fit for the charge. He believed that this was sufficient, and he was of opinion that the necessary approval of the Commissioner was a surer guarantee of competency than the examination passed by Moonsiffs. The Honorable and learned Member had spoken of their having a guarantee of the competency of the Moonsiffs, but none for that of the Deputy Collectors. But the law did not require that Moonsiffs should pass an examination any more than Deputy Collectors. The Executive Government had indeed prescribed an examination for Moonsiffs, but it had also required that Deputy Collectors should pass an examination ; and it appeared to him that in that respect there was no greater guarantee for competency in the one case than there was in the other.

Then the Honorable and learned Member objected to these officers having jurisdiction under the Bill, because they were invested with Police functions, and obliged to be continually moving about their districts in the discharge of those functions. Now when Sub-divisions were constituted, they were generally of very small extent, probably not exceeding three thannahs. If that were so, there could be no necessity for the officer to be ever absent for any length of time from his station. If a dacoity or affray, or other serious offence, occurred, he could go and return before evening; at any rate his absence need never exceed twenty-four hours. It might of course happen that a Deputy Collector and Deputy Magistrate might be engaged in some other duty at the time fixed for the trial of a suit. But it might also happen that a Civil Court might in like manner be engaged upon another case, or the Judge might have a severe bilious headache, and be unable to attend his Court. For all practical purposes the Court of the Deputy Magistrate and Deputy Collector would be a stationary Court as much as that of any Civil Judge.

It had been said, if you have a local Civil Court, why not make use of it? Why exclude any class of cases from its cognizance ? He (Mr. Currie) was not one who thought that instances of corruption were common in the Moonsiffs' Courts; he believed that cases of downright venality were extremely rare: but he also thought that the present Moonsiffs were taken from a class little qualified to resist the influence of wealth and power. Take the case of a young man appointed a Moonsiff, and placed in the midst of the estate of a powerful and wealthy Zemindar; then considering the class from which these young men were taken, and the manifold means of annoyance possessed by the Zemindar, could they confidently rely upon his not being influenced by the circumstances in which he found himself placed ? This would ordinarily not apply to Deputy Collectors, many of whom were Europeans, who, when Natives, were appointed from a class of men of higher social standing, and who were considerably better paid.

There was another reason against making over the trial of these suits to the Moonsiffs, a reason connected with the measures in contemplation for the improvement of the constitution of the Courts. It was thought that the establishment of the proposed Small Cause Courts might lead to the gradual reduction, and, perhaps, the eventual abolition of the Moonsiffs' Courts, which were generally considered the weakest point in our judicial system. But if the Moonsiffs were to have the trial of all these cases, it would be impossible to reduce their number, and the reform contemplated in that respect would be unattainable.

He had spoken particularly with reference to the Lower Provinces. As regarded the North-Western Provinces, the case was much stronger. There the Revenue Officers were brought into

immediate communication with the landed proprietors and the cultivating classes, and with regard to those Provinces, at least, there could not be the slightest doubt that all disputes between landlord and tenant would be best decided by the Revenue Officers.

He would not detain the Council longer than would suffice to point out the practical effect of the proposed change with respect to the several classes of suits enumerated in Section XXIII.

With regard to Clause 1 (suits for pottahs and kuboolyuts, and for determining rates of rent), his Honorable and learned friend had properly observed, that according to the existing law these suits were cognizable only by the Civil Courts. And the same was the case with the suits referred to in Clause 2 (suits for damages on account of exaction or extortion of rent, &c.) In both these classes of cases the law of 1793 had endeavored to provide redress for the ryot for wrongs sustained at the hands of the landholder; but the remedy was altogether ineffective, because in a regular suit in the Civil Court, with its expenses and delay, the ryot could have no chance with the landholder. But if he were allowed to go to the Collector or Deputy Collector, with whom he was brought into frequent communication, the case would be different. Practically this took nothing away from the Civil Courts, because no suits of the kind were ever instituted in them; but he hoped that it would give a real jurisdiction to the Collector.

Then as to Clause 3 (complaints of excessive demand of rent and claims to abatement), there was no provision in the present law for redress in such cases. If any such complaint or claims were preferred, it could be only by suit in the Civil Court; but in practice, he believed, such suits were unknown.

As to Clause 4 (suits for arrears of rent), at present the Collector had jurisdiction in respect of recent arrears only, and the Civil Courts in respect of arrears of longer standing. But why should there be one tribunal for arrears of this year, and another for arrears of the past year?

Suits, under Clause 5 (for ejectment and cancelment of lease), might certainly be brought in the Civil Courts. But under the existing law, when in a suit before the Collector an arrear was adjudged to be due by a ryot at the end of the year, or by a farmer, the ryot might be ejected, or the lease might be cancelled without the necessity for further proceeding.

Clause 6 (suits for the recovery of occupancy). In these cases also suit might be brought in the Civil Courts. But according to a Construction of the Sudder Court, a ryot illegally ejected might recover possession by application to the Collector. The Clause merely gave a formal sanction to, and provided means for, the formal exercise of a power already vested in the Collector.

In respect of suits under Clause 7 (suits arising out of the exercise by landholders of the power of distraint), the Collector had already complete jurisdiction.

He would only observe, in conclusion, that the only reason which he had ever heard for giving the trial of rent suits to the Moonsiffs rather than to the Collectors, was the hardship of obliging suitors to attend at the Sudder Stations, and this would be completely obviated by the plan of placing Deputy Collectors in charge of Sub-divisions.

MR. GRANT said, there were two large points in this important matter, touching which he should feel much obliged if the Honorable Member for Bengal would favor him with his reasons. First, on what grounds did he support his proposal for taking away from the Civil Courts all jurisdiction, even a co-ordinate jurisdiction, in these cases? If a man did not choose to take advantage of the summary or exceptional jurisdiction provided for him, he might well be allowed to take his case, if he pleased, to a regular Court. Many reasons might induce him to prefer doing so, particularly when in the Revenue Court his case might be decided by the very Officer with whom he might be thrown in conflict every week in the year. He might well say he would rather wait for a more tardy decision than have his case decided by the local thief-catcher, for that was the name by which he might call the official in question, though the Honorable Member would give him a different name. Why should the party be wholly debarred, in such cases, from the ordi-

nary Courts? If in all other cases he was to go there, why might he not, if he pleased, go there in these cases also? He wished to hear the reasons. The law he believed might be found to work well if a co-ordinate jurisdiction was created. Such jurisdictions usually worked well; a sort of rivalry was created, and each Court endeavored to make itself as useful as it could. Instead of friction and inconvenience, that was the general result. This co-ordinate jurisdiction was the present system too; and he wished to know on what grounds the Honorable Member proposed to alter it.

The second question was this: was the Honorable Member quite sure that, worded as the Bill now was, it would apply only to those classes of cases to which he (Mr. Grant) presumed it was the Honorable Members' design to restrict it? He (Mr. Grant) felt uncertain as to this. He had not had time to study the Bill with that attention which it so thoroughly deserved; but it appeared to him that many cases might be brought within its scope, which might not be within the Honorable framer's intention. A person who erected a house, or a manufactory, first obtained a pottah for the land from the zemindar; he was only a pottahdar, though he might expend many lakhs of rupees upon it. If he quarrelled with his zemindar about his holding, was his case to be tried by the Deputy Collector? Or suppose a case of ejectment concerning a large Indigo Factory, or a Silk Filature Establishment—most valuable property might be held under a pottah—why throw such cases into these Courts? Was this intended? If so, he wished to know on what grounds?

If this Bill were to be restricted only to cases where true rent was in question, that is, the money paid by the actual cultivator of the soil, such doubts as he (Mr. Grant) felt upon the Bill would be dissipated. But it seemed to him that very different and very much larger cases were unnecessarily included within it. Under the terms of Clause 6 all tenures of every description seemed to be included. A case between the Rajah of Burdwan and a putneedar might therefore be tried in the Revenue Courts. Was this intended? If not, why not make it plain that such cases were not within this law?

MR. CURRIE, in answer to the Chairman's first question, said that the reason for not continuing the jurisdiction of the regular Courts was one to which he had already referred. He had stated that the law had intended to give protection to the cultivating classes, but it had failed in its object, because the remedy provided was by suit in the regular Courts; and it was to give those classes greater facilities, and because the present law had been found inoperative, that the present scheme was proposed. He saw no reason why a zemindar should have the right of taking a ryot to a Moonsiff's Court. If they could establish a more independent Court, why should not all go there?

In reply to the second question, he said that the present law applied to all cases connected with the payment of rent by whatsoever class of persons it might be payable. The Bill did not meddle with any questions of right between parties possessing or claiming co-ordinate interests, but it took cognizance of all cases arising between landlord and tenant. If an Indigo Planter took land of a zemindar, and did not pay the stipulated rent, he might be sued under this Bill. He (Mr. Currie) saw no reason for restricting its operation to the case of actual cultivators, and such restriction would entirely change its character. With regard to putnee tenures, there was a special law. If a putneedar of Burdwan did not pay his rent, the Rajah would proceed against him according to Regulation VIII. 1819; then if the putneedar objected to the proceedings, and wished to set aside the sale, he must bring his suit in the Civil Court: in such a case the Collector would have no jurisdiction.

MR. GRANT said, I understand the Honorable Member to say that, if a dispute arises respecting rent between a zemindar and his putneedar, if the zemindar claims two hundred Rupees as rent, and the putneedar admits only one hundred Rupees, after the passing of this Bill, the dispute will still be determined by the Civil Court.

MR. CURRIE. Yes, if the tenure has been sold for the claim of the zemindar.

MR. GRANT. Then why not allow the same remedy in other cases of dispute between the zemindar and under-tenant?

MR. CURRIE had already said, that all cases of dispute concerning rent were intended to be tried by the Revenue Officers. The case of the putneedar, however, was exceptional. Before the sale of any other tenure could take place, the existence of any arrear must be proved and a decree obtained, and, according to the provisions of this Bill, the case would be tried before the Collector. For the case of the putneedar there was a special law. If the zemindar had a claim against the putneedar at the time of the half-yearly sales, he could apply to the Collector, who would order the tenure to be sold at once on the responsibility of the zemindar. If the putneedar contested the justice of the sale, he must do so by suit in the Civil Court. He (Mr. Currie) did not see any necessity for giving jurisdiction to the Collector in such cases.

MR. HARINGTON said, he thought it was to be regretted that this discussion had not taken place on the Motion for the second reading of the Bill instead of at the present stage, and that Honorable Members who were opposed to the principle involved in the Section under consideration, which proposed absolutely to invest the whole of the Collectors and Deputy Collectors in the Presidency of Bengal, as well in the Lower as in the Upper Provinces, with the primary jurisdiction in all suits or cases of the nature of those described in the Bill, had not stated their objections on the Motion for the second reading, and had not at that time gone to a vote upon the question as to whether the Bill with this Section in it should be allowed to be read a second time. He thought that if the majority of the Council were opposed to giving to the Revenue authorities the absolute jurisdiction which it was intended that they should exercise, it would have been better to have thrown out the Bill on that ground on the Motion for the second reading. The Honorable Member for Bengal would then have considered whether it would be right for him to bring in a new Bill which would not be open to the same objection. He was aware that the Honorable and learned Member of Council on his left (Mr. Peacock) had objected to the Section on the Motion for the second reading of the Bill, but still he had allowed the Bill to be read a second time, though he had no doubt reserved to himself the right of refusing his assent to the Section in question at any future stage of the Bill. Now it certainly appeared to him (Mr. Harington) that there was very great inconvenience in allowing a Bill, containing important principles upon which much difference of opinion existed, to be read a second time, and after the Bill had been published for general information, had been carefully considered by the Select Committee appointed to report upon it, and had been recommended by them to be passed, in throwing it out either when referred to a Committee of the whole Council, or on the Motion for the third reading, because of the objections entertained by a majority of the Council to the principles on which the Bill was based, or to some one or more of them. Such a mode of dealing with a Bill, to say the least of it, certainly involved the loss of much valuable time and labor.

With regard to the objections taken by the Honorable and learned Member of Council on his left (Mr. Peacock) to the proposed transfer of jurisdiction to the Revenue authorities, they appeared to him (Mr. Harington) to have been so fully answered by the Honorable Member for Bengal, that he felt that, if he entered into any detailed observations with a view to meet those objections, he could only travel over the same ground which the Honorable Member for Bengal had already gone over; he could only repeat what had already been said by that Honorable Member. He would not thus unnecessarily occupy the time of the Committee, but he must be allowed to express his hearty and entire concurrence in all that had fallen from the Honorable Member for Bengal, to which he would add his testimony as to the advantages which might be expected to result from the Bill becoming law in the form in which the Select Committee had recommended that it should be passed, and as to the very great disappointment which would be generally felt, as well by the officers of Government as by the people at large, parti-

cularly in the North-Western Provinces, should the adoption of the objections taken by the Honorable and learned Member of Council on his left (Mr. Peacock), to the Section, as now framed, lead the Honorable Member for Bengal to abandon the Bill altogether. He certainly thought that, if the Honorable and learned Member of Council succeeded in his object, the Honorable Member for Bengal could scarcely be expected to proceed with the Bill shorn of what he (Mr. Harington) must regard as one of its most useful provisions, and nothing, therefore, would remain for him but to withdraw the Bill, leaving any Honorable Member who might think proper to bring in a new Bill. But after the failure of the Honorable Member for Bengal to pass the present Bill, what Honorable Member, he would ask, would undertake the task of bringing in a new Bill, even though he would have the full benefit of the labors of the Honorable Member for Bengal on the Bill before the Council? He need not tell them that the Honorable Member for Bengal would not be able to bring in a new Bill, for they all knew that in a few days the Council would be deprived of his valuable services. He felt sure that no one who heard him would consider him to be guilty of flattery when he said that, however desirable the departure of the Honorable Member for Bengal might be on account of his own health, and they must all regret that the state of the Honorable Member's health obliged him to leave India before he had completed his full term of Council, his loss would be severely felt here. He had had the good fortune to be associated with the Honorable Member for Bengal on most of the Select Committees appointed to consider and report upon the many important Bills which had occupied the attention of the Council during the last eighteen months, and he could bear witness to his unwearied labors and to the earnest desire at all times evinced by him to promote, to the utmost of his power and ability, the welfare of the natives of India, and of all others falling within reach of the measures of this Legislature. He believed he might say that some of the most important Bills passed by the Council during the five years of its existence had either emanated from the Honorable Member for Bengal, or owed much that was valuable in them to his judicious suggestions as they passed through their several stages; but however valuable those Bills might be, he thought it would be admitted that the Bill before the Council would lose nothing from a comparison with the best of them. By common consent this Bill, if not the most important that had ever been introduced into this Council, ranked second in importance to none. On the preparation of this Bill the Honorable Member for Bengal had bestowed particular attention and a large portion of time. He had brought to bear upon it the experience of a long, useful, and highly honorable career; he had also brought to bear upon it the largest feelings of benevolence towards those numerous classes who were the least able to defend themselves against the more influential members of the native community, and he (Mr. Harington) felt certain that this Bill would materially contribute to the comfort and happiness of those classes. It essentially sought the greatest happiness of the greatest number. Such then being the character of the Bill, he trusted that the Honorable Member for Bengal would have the great gratification, before he left them, of seeing the Bill pass into law by being present when His Excellency the Right Honorable the Governor-General gave his assent to it. He hoped that this reward, at least, awaited the arduous labors of the Honorable Member. Not that he cared for any such recompense; throughout he had looked simply to the advantages which he knew from his own experience would flow from the passing of this Bill to thousands, indeed, he might say millions; and he (Mr. Harington) trusted that, when the Honorable Member said farewell to the shores of India for ever, he would be followed by the grateful acknowledgments of these thousands, of these millions, not simply because he had brought in this Bill for their benefit, but because he had been the means of giving them so excellent and so valuable a law.

He did not know whether he could lay claim to having been one of the originators of the scheme now objected to by the Honorable and learned Member of Council on his left; but as noticed by

the Honorable Member for Bengal, he believed that it had been first proposed for adoption by Mr. Mills and himself. When engaged in drawing up a Code of Civil Procedure for the use of the Civil Courts in this country, to which he was ashamed to allude so often, he and Mr. Mills had carefully considered the subject of constituting the Collectors and Deputy Collectors employed in the three Presidencies Courts of first instance for the trial and determination of what might be called purely revenue suits, and the result was the introduction into the Code prepared by them of the Chapter which treated of the Civil jurisdiction of officers in the Revenue Department. Their reasons for the decision to which they had come had been read to the Council by the Honorable Member for Bengal at the time he introduced the present Bill, and it was unnecessary for him to repeat them. It seemed to be supposed by some that they were about to give an entirely new jurisdiction to the Revenue Authorities, but such was not the case. If Honorable Members would refer to Section 20 Regulation VII. 1822, they would see over what a large variety of cases the Revenue Officers of Bengal might already exercise a summary jurisdiction, and that, as respected the character of the suits cognizable by those officers, the Section under consideration really did not go beyond the present law. Every Collector in the North-Western Provinces had been invested for many years past with authority to try and determine, in the first instance, all the descriptions of cases mentioned in the Section of the Regulation just quoted, and he had never heard any complaint made of the manner in which they had exercised that authority. The framers of Regulation VII. 1822 must, it was to be presumed, have had good and sufficient reasons for passing that law, and for allowing the Revenue Officers to exercise the large powers with which they might be invested under its provisions; and the same reasons, for any thing he knew to the contrary, still existed for at least continuing to those officers the powers which could now be entrusted to them, and with which throughout the North-Western Provinces, as he had already stated, and he believed in many parts of Bengal also, they were invested at the present time. The effect, however, of modifying the Section under consideration, so as to meet the objections of the Honorable and learned Member of Council on his left, would be to deprive the Collectors and Deputy Collectors throughout the Presidency of Bengal of the powers which they were now competent to exercise, since they had already passed Section I of the Bill, which repealed all the existing summary suit laws. He did not know whether the Honorable and learned Member of Council proposed to go back to the first Section of the Bill in the event of the Committee adopting his views in respect to the question before them, and to move the rescission of that Section. No doubt under the law, as it now stood, every decision passed by a Revenue Officer in any of the cases mentioned in Section 20 Regulation VII. 1822 might be contested by a suit in the Civil Courts, but if no such suit was brought, the decision of the Revenue Court had all the force of a decree of a Civil Court. If, however, the decision was contested, there was first the regular suit, then there might be a regular appeal, and this might be followed by a special appeal to the Sudder Court, so that cases of this description, which, for the most part, were for a very trifling sum, were subject to a larger amount of litigation than any other class of civil actions. The Section under discussion was intended to remedy this state of things, and to get rid of at least one stage of the litigation to which the various classes of cases referred to were subject under the existing law. He thought that it would be very generally admitted that for the right decision of Revenue suits in this country peculiar knowledge was required, and that the officers appointed to decide such suits should have some practical acquaintance with the numerous tenures existing on this side of India and with the working of the Revenue laws.

Now this knowledge the Moonsiffs generally did not possess, certainly not on their first appointment. At their examination they might have answered correctly two or three Revenue questions, taken perhaps from the work which had been prepared by the Honorable Member of Council opposite (Mr. Ricketts), but more than this was re-

quired. The officers who would be employed to try cases under the Bill, being brought up in the Revenue Department, would be better qualified to deal with such cases than Judges who had no Revenue experience. He believed it was generally found to be the case that the best Collectors from their knowledge of Revenue matters made the best Civil Judges.

The Honorable Chairman had asked what objection there was to co-ordinate Courts. His objection to Courts exercising co-ordinate jurisdiction was that they gave an advantage to the plaintiff which did not extend to the defendant. The plaintiff could elect in which of the co-ordinate Courts he would bring his action, but the defendant had no power to demur to the suit being heard in the Court selected by the plaintiff. He (Mr. Harington) did not think that this was right. The defendant should have the same power in respect to the choice of the Court by which the suit brought against him should be heard as was enjoyed by the plaintiff. The law, as it now stood, was a partial or one-sided law. There might be an advantage in having different Courts to try different classes of suits; but financial and other considerations rendered this impossible. All that could be done was to assign to the existing tribunals those duties which they were best qualified to discharge, and he believed it would be found that the Deputy Collectors who would be employed to decide cases under the Bill, and who were much better paid than the Moonsiffs, would dispose of such cases much more satisfactorily than the present class of Uncovenanted Judges, particularly those of the lowest grade. He had only one more remark to make. He did not think it was fair to call the Courts proposed to be constituted under the Bill Deputy Magistrate's Courts. It was as Revenue Officers or as Deputy Collectors, and not in their capacity of Criminal Judges, that they would act in adjudicating the cases which would come before them. They might with equal justice call the Courts of the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs of the first grade, all of whom were invested with criminal jurisdiction, Deputy Magistrate's Courts in speaking of them in their capacity of Civil Judges.

MR. RICKETTS said, he hoped that the Council would not run away with the idea that they were about to try some great experiment. Such was not the case. Although it was proposed to give additional jurisdiction to Revenue Officers, they were only improving the road over which they had been long travelling. The Civil Courts had been tried and found wanting.

So long ago as 1795 it was declared that—

> "Government not admitting of any delay in the payment of the public revenue receivable from proprietors and farmers of land, justice requires that they should have the means of levying their rents and revenues with equal punctuality, and that the persons by whom they may be payable, whether under-farmers, dependent talookdars, ryots, or others, should be enabled, in like manner, to realize the rents and revenues from which their engagements with the proprietors or farmers are to be made good. Increased punctuality on the part of landholders in the discharge of their dues was now expected, and justice required that they should have the means of obtaining the rents due to them even more now than in 1795."

The Honorable Member for Bengal had correctly described the steps by which Revenue and rent cases were in the first place instituted in the Civil Courts and disposed of by those Courts, then sent for report to Collectors, and ultimately, in 1831, made cognizable by the Revenue Courts. The first object in giving the trial of these summary suits to Revenue Officers was punctuality. It was well known to all that, in spite of great efforts, there were heavy arrears of business in the Civil Courts, while he found it stated in the Report of the Board of Revenue for 1857-58, that during that year 56,735 summary suits were instituted; and how many out of that large number did the Council think had been pending more than six months at the end of the year? In the whole of Bengal, only fifty-two! If a similar enquiry were made as to the Civil Courts, the result, he apprehended, would be very different. He had no doubt that, if these Revenue cases were transferred to the Civil Courts, they would be disposed of after much greater delay. In the Report of the Board of Revenue, to which he had just

referred, he found further that out of upwards of 25,000 applications for execution of decrees received by the Revenue Courts, there were only twenty pending at the end of the year, which were above six months old.

He hoped that, however they might object to one description of suits being transferred to the Revenue Courts, they would not reject the whole Bill. The Bill smoothed all that he had found rough during the long years he was a Revenue Officer. All that was difficult would now be easy, all that was intricate would now be plain; young Revenue Officers, instead of having to search through many volumes and the enactments of many years, would find all the rules for guidance in the few pages he held in his hand. Pray don't reject this Bill. If there were some suits which it was considered advisable to leave in the hands of the Civil Courts, the Council might take up the Section, Clause by Clause, and provide for maintaining the jurisdiction of the Civil Court over such cases as they were unwilling to transfer. It was true that the present Officers had various powers and functions. But surely that was a bad reason for rejecting a good law. If the law is a good law, don't think of the machinery by which it is to be carried out, and which may and probably will be altered. It really appeared to him that it would be as reasonable to reject and refuse to use an improved engine because for a time the engineer, hands being short, had also to perform the duties of stoker.

SIR CHARLES JACKSON said, it was with the utmost diffidence that he expressed any opinion on the subject of this Bill. But the Bill proposed to remove certain suits from the jurisdiction of the Civil Courts, and to confer jurisdiction in respect of those suits on the Revenue Officers; that was to say, it proposed to transfer the adjudication of these cases from Courts which had been accustomed to Courts not so accustomed to deal with them. Now it seemed to him that the onus of proof lay on the party proposing the transfer, for he thought that *primâ facie* all cases should be tried by the Civil Courts. The onus of proof rested with the proposers of the present measure, who were bound to show on what grounds the Civil Courts were unfitted to deal with these cases. The statements made in support of the change were, first, that the Collectors and Deputy Collectors would make as good Judges as the Moonsiffs. Even if that were the fact—and he (Sir Charles Jackson) should require a little more than mere assertion before he gave his adhesion to such a statement—he considered it to be most disgraceful that Moonsiffs who were accustomed to perform judicial duties were pronounced to be inferior to those on whom no such duties devolved. Then it was said that Collectors made the best Judges, but he must beg leave to doubt that statement also, but must presume that the ordinary Judges of the country were more likely to have some general idea of the principles of law, and be better able to decide the case than those who were not accustomed to such work. As he had said, the onus of proof lay on the proposers of this Bill, and that such proof had not been given.

MR. PEACOCK said, no one concurred more cordially than he did in all that had fallen from the Honorable Member for the North-Western Provinces regarding the ability and valuable public services of the Honorable Member for Bengal. No one would regret more deeply than himself the retirement of the Honorable Member from this Council. But he could not conscientiously take away the jurisdiction of the Civil Courts and give jurisdiction to persons who might not be qualified. He did not know how many Deputy Magistrates were to be appointed Deputy Collectors of Sub-divisions; and why the Council should be thus called upon to legislate in the dark, and to transfer jurisdiction from the Civil Courts to persons of whose qualifications they were quite ignorant.

The Honorable Member opposite (Mr. Ricketts) had said that they had been travelling this road for the last twenty eight years. But hitherto Deputy Magistrates with Police functions had not been invested with the jurisdiction now proposed to be conferred. The Lieutenant-Governor, in his reply to the British India Association, spoke of the measure investing Deputy Magistrates with the power of Deputy Collectors, with authority to adjudicate summary suits for the recovery of rents, &c., as an experiment.

He wished to know the result of that experiment. The Bill adopted the vicious principle of former laws, namely, that the zemindar must necessarily have the same powers for collecting from his ryot as the State had for the collection of its land revenue. They were now asked to transfer jurisdiction without being informed of the result of the experiment. The Court of Directors in 1856 said:—

"To remedy the evils of the existing system, the first step to be taken is, wherever the union at present exists, to separate the police from the administration of the land revenue. No Native Officer should be trusted with double functions in this respect. We do not see the same objection to the combination of magisterial and fiscal functions in the hands of our European officers, because we can better hope they will not abuse their powers, and because, by employing the Collector as the principal Magistrate of each district, we are able to obtain for the chief administration of the penal laws a more efficient, and especially a more experienced, class of Officers than would otherwise be available. This is an important consideration which ought never to be lost sight of. Nevertheless, it is still more important that the Officers who control the police should be required to undertake frequent tours of their districts. And they must not be so burdened with other duties, such as the preparation of forms, returns, and statements, as to be deprived of the time sufficient for this essential purpose. This supervision, exercised by intelligent Officers, who are accessible at all times, is the most certain and effectual check to every abuse of authority by subordinate servants of police."

If this were so, they ought not to take away jurisdiction from the Civil Courts, and keep the Deputy Magistrates from their proper duties. He would ask the Honorable Member for Bengal, how many Deputy Magistrates were to be appointed in Bengal? What would be the extent of their Sub-divisions? Were they to be stationary or to travel about looking after the Police? His objection was not to giving jurisdiction to these Officers as Deputy Collectors, but as Deputy Magistrates having Executive Police functions. If the office of Deputy Magistrate should be separated from that of Deputy Collector, his objection would be removed. If as Deputy Collector the Deputy Magistrate would be called upon to dispose of upwards of 56,000 suits, as had been said, how could he look after his Police duties? For these reasons, though the Bill contained much of what he approved, he must oppose this Section.

MR. CURRIE said, he was sorry that he should be obliged to occupy the time of the Council again. But the Honorable and learned Member who had just spoken had quoted a letter of the Lieutenant-Governor of Bengal, written, he believed, in 1857, and had asked him some questions in reference to it. The Honorable and learned Member wished to know the result of the experiment of employing Deputy Magistrates to decide summary suits. How many Deputy Magistrates were to be appointed, and what was to be the extent of their Sub-divisions? That the result of the experiment had been satisfactory, was to be inferred from the wish of the Lieutenant-Governor to continue and extend the system, and the best reply he could make to the other question would be to read an extract from the Minute of the Lieutenant-Governor on the subject of the Bill, dated 27th of last November. The Lieutenant Governor said:—

"Nothing which is stated by any of the authorities who have reported on this Bill has altered my opinion in favor of constituting the new Courts in the hands of Collectors and Deputy Collectors, instead of Moonsiffs. Deputy Collectors, very carefully chosen, will shortly be stationed over every district in the proportion of one to every three Thannahs; and in the first instance, at all events, it will only be by putting the new jurisdiction into the hands of these Officers, that the essential protection and security of the ryot will be provided for. Hereafter it may be possible to use the Moonsiffs in this way, but not now. And to employ the Moonsiffs in administering the new law at first will be to risk all its proposed advantages."

That was the opinion of the Lieutenant-Governor. If a Deputy Magistrate were appointed for the purpose only of superintending the Police and trying offences in three Thannahs, his time would be insufficiently occupied. He (Mr. Currie) had no doubt that without any hindrance to his other duties he could perform the functions of Deputy Collector, and exercise the jurisdiction proposed to be entrusted to him by the provisions of this Bill.

MR. HARINGTON said, the Honorable and learned Judge opposite (Sir C. Jackson) had called on the promoters of the Bill to adduce proof that the proposed transfer of jurisdiction from the Civil Courts to the Revenue Authorities was necessary or desirable. The

burden of proving that such was the case rested, he maintained, on the Honorable Member by whom the Bill was introduced, and without such proof he did not think the Committee should be called upon to give their sanction to the proposed transfer. The Honorable and learned Judge would probably be willing to accept the evidence of those who would be chiefly affected by the Bill on this point. Under the existing law, suits relating to arrears or exactions of rent might be brought at the option of the plaintiff, either regularly in the Civil Courts, or summarily before the Revenue Authorities; but in order to give additional encouragement to the institution of such suits in the Civil Courts, the law provided that, when instituted in those Courts, they might be brought on a stamp of one-fourth of the value prescribed for plaints in regular suits. This no doubt was a great encouragement, but what had been the effect of it? From a statement which he held in his hand, he found that in one year rather more than 19,000 suits had been instituted in the Civil Courts of the Lower Provinces of Bengal for land or land rent, and upwards of 56,000 summary suits before the Revenue Officers. The statement did not show how many of the suits instituted in the Civil Courts were for land and how many related to land rent, but taking the latter at 12,000, or rather less than two-thirds, which was probably below the mark, it appeared that about five times as many suits relating to arrears or exactions of rent were instituted before the Revenue Authorities as in the Civil Courts. There could be no doubt, therefore, as to the tribunal to which the people gave the preference, and that too notwithstanding the encouragement held out to them to resort to the Civil Courts in the remission of stamp duty.

Clause 1 being put, the Council divided as follows:—

Ayes 7.	*Noes* 2.
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	
The Chairman.	

The Clause was carried.

Clause 2 being put, the Council divided as above, and so the Clause was carried.

Clause 3 was carried without a division.

Clause 4 being proposed, Mr. Grant moved to omit the following words at the end of the Clause, as involving questions likely to lead to great difficulties:—

"or on account of any rights of pasturage, forest-rights, fisheries, and the like."

After some conversation, the question was put and negatived.

The Clause being then put, the Council divided as follows:—

Ayes 6.	*Noes* 3.
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	The Chairman.
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	

The Clause was carried.

Clause 5 being put, the Council divided as follows:—

Ayes 7.	*Noes* 2.
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	
The Chairman.	

The Clause was carried.

Clause 6 being proposed, Mr. Grant proposed to omit the words "farm or tenure" in line 2.

The Motion was negatived.

The Clause being then put, the Council divided:—

Ayes 7.	*Noes* 2.
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	
The Chairman.	

The Clause was agreed to.

Clause 7 being proposed, Mr. Peacock proposed to substitute the word "may" for the word "shall" in line 8.

Mr. Harington

The question being put, the Council divided:—

Ayes 5.	*Noes* 4.
Sir Charles Jackson.	Mr. Forbes.
Mr. LeGeyt.	Mr. Harington.
Mr. Peacock.	Mr. Currie.
Sir James Outram.	Mr. Ricketts.
The Chairman.	

So the Motion was carried.

MR. PEACOCK then moved the omission of the following words at the end of the Clause:—

"and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court, or by any other Officer, or in any other manner."

The question being put, the Council divided as above.

So the Motion was carried, and the Clause as amended then passed.

Sections XXIV to XXXVI were passed as they stood.

Section XXXVII provided as follows:—

"In suits for the recovery of arrears of rent or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other suits the statement shall be written on paper bearing a stamp of the value of eight annas. No stamp shall be required in respect of the production or filing of any document, or the summoning of any witness, or of any application for the execution of any order or judgment passed in a suit under this Act."

MR. PEACOCK objected to the provision which entitled a plaintiff to recover money in the hands of an agent at a cheaper rate than other sums. He also objected that the proposed uniform 8-annas stamp for all other suits would operate hardly upon poor suitors.

After some discussion, the Council divided:—

Ayes 7.	*Noes* 1.
Sir C. Jackson.	Mr. Peacock.
Mr. Forbes.	
Mr. Harington.	
Mr. Currie.	
Mr. LeGeyt.	
Mr. Ricketts.	
The Chairman.	

So the Section was carried.

Sections XXXVIII to LXX were passed as they stood.

Section LXXI was passed after a trifling amendment.

Sections LXXII to LXXXI were passed as they stood.

Sections LXXXII and LXXXIII were severally passed after a verbal amendment.

Section LXXXIV was passed as it stood.

Section LXXXV provided for process of execution being taken out against a surety failing to deliver judgment-debtor into custody.

MR. CURRIE proposed the addition of the following words to the Section:—

"If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond in the same manner as if a decree for that sum had been passed against the surety."

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

Sections LXXXVI to XCII were passed as they stood.

Section XCIII related to the issue of warrants against the person.

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

"If the decree against any person arrested under a warrant be for the delivery of papers or accounts, and the papers or accounts shall not be delivered by him when he is brought before the Collector, such person may be committed to the Civil Jail, there to remain for such time not exceeding six calendar months, as the Collector shall direct, unless he shall in the meantime deliver the papers or accounts according to the terms of the decree."

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

Sections XCIV to CX were passed as they stood.

Section CXI was passed after a trifling amendment.

Section CXII provided that the produce of the land was to be held hypothecated for the rent, and that arrears of rent might be recovered by distraint, except in certain cases.

MR. CURRIE (in consequence of a suggestion received from the North-

Western Provinces) moved the addition of the following Proviso :—

"Provided further that in Putteedaree estates situated in districts under the Government of the Lieutenant-Governor of the North-Western Provinces distraint shall be made only through a Lumberdar."

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

Sections CXIII to CXVI were passed as they stood.

Section CXVII was passed after a verbal amendment.

Sections CXVIII to CXLI were passed as they stood.

Section CXLII was passed after a trifling amendment.

Sections CXLIII to CXLVI were passed as they stood.

Section CXLVII provided for the punishment by the Collector of any resistance or opposition to his lawful process under this Act.

MR. CURRIE said, it was provided by Section CLI that all orders passed by a Collector, except orders relating to the trial of suits or to the execution of decrees, should be appealable to the Commissioner. He thought, and it was so intended, that orders under this Section should be so appealable ; but it was possible that they might be held to fall under the exception to which he had referred. In order to prevent this, he moved the addition of the following words to the Section :—

"Orders passed by Collectors under this Section shall not be deemed to be orders relating to the trial of suits, or to the execution of decrees within the meaning of Section CLI."

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

Section CXLVIII was passed as it stood.

MR. PEACOCK moved the introduction of the following new Section after Section CXLVIII :—

"If, in a suit before a Civil Court for any cause of action hereby made cognizable by the Collector, it be brought to the notice of the Court that a suit for the same cause of action has been previously brought before the Collector, the suit shall be dismissed. In like manner, if in a suit instituted before a Collector it shall be brought to the notice of the Collector that a suit for the same cause of action has been previously brought before a Civil Court, the Collector shall dismiss the case."

Agreed to.

Sections CXLIX to CLXIV were passed as they stood.

Section CLXV was passed after the insertion of the word and figures "1st August 1859" as the date of the commencement of the Act.

Section CLXVI (or the Interpretation Clause) was passed after the omission of the interpretation of the word "Collector" on the motion of Mr. Ricketts.

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

"No Deputy Collector holding the office of Deputy Magistrate, or entrusted with Police duties, shall exercise any judicial powers or other jurisdiction under this Act."

THE CHAIRMAN, in proposing the Section, said that he would also read the following Section which had been put into his hand, and which Sir Charles Jackson intended to move in the event of the present Section being lost :—

"No Deputy Collector shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any Police functions."

MR. CURRIE proposed, by way of amendment, that the consideration of the proposed Section be postponed. This Motion, he said, had reference to a question already discussed and, as he had thought, settled. He was under the impression that the vote then taken had determined the question of the jurisdiction to be assigned to the Deputy Magistrates and Deputy Collectors. He thought that the question ought not to be re-opened in the absence of any of the Members who had voted in the previous discussion.

MR. PEACOCK said, he saw no reason for postponement on account of the absence of some Members. If this were admitted, the absence of the Governor-General might be assigned as a reason for adjournment. They were now called on to say whether these Deputy Collectors should have certain powers ? Were they to create this jurisdiction, and give it to Officers who at the same time exercised Police functions ?

MR. RICKETTS said, he had on more than one occasion lately expressed

himself favorable to the principle involved in the amendment, but a Clause in a Rent Bill did not appear to him a fit place in which to alter the executive machinery of the whole country. If the Honorable and learned Member would bring in a Bill to separate Police from Revenue powers, he would gladly give it his support, but he should vote against the amendment now proposed.

MR. HARINGTON said, he would support the Motion for adjournment. The Section which the Honorable and learned Member of Council on his left (Mr. Peacock) wished to introduce involved a very important principle. Most Honorable Members would probably wish to make some remarks upon it, but at this late hour, it being now nearly 5 o'clock, there would scarcely be time for them to do so. He certainly thought that the decision to which they had come upon the Section, which determined in what Courts or by what Officers cases cognizable under the Bill might be heard, had finally disposed of that point, and he believed he might say that every Honorable Member who voted on that Section, understood that the Collectors and Deputy Collectors, who would be competent to try and determine the cases falling within its provisions, might also be invested with Criminal jurisdiction as well as with Police functions. The Section proposed by the Honorable and learned Member of Council on his left would restrict the jurisdiction of those Officers to Revenue matters, and he certainly thought that all those who had voted on the Section, which had been passed with the amendment proposed by the Honorable and learned Member of Council, should also have an opportunity of voting on the new Section which he was desirous of introducing.

MR. CURRIE'S amendment being put, the Council divided :—

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

The numbers being equal, the Chairman gave a casting vote with the Noes, and so the amendment was negatived.

MR. PEACOCK'S Motion being then put, the Council divided :—

Ayes 3.	*Noes* 5.
Sir Charles Jackson.	Mr. Forbes.
Mr. LeGeyt.	Mr. Harington.
Mr. Peacock.	Mr. Currie.
	Mr. Ricketts.
	The Chairman.

So the Motion was negatived.

SIR CHARLES JACKSON'S Section was then put, and the Council divided :—

Ayes 4.	*Noes* 4.
Sir Charles Jackson.	Mr. Forbes.
Mr. LeGeyt.	Mr. Harington.
Mr. Peacock.	Mr. Currie.
The Chairman.	Mr. Ricketts.

The numbers being equal, the Chairman gave a casting vote with the Ayes, and so the Motion was carried.

Schedules A. B. and C. were passed as they stood.

Schedule D. was passed after a trifling amendment.

Schedules E. F. and G., and the Preamble and Title, were passed as they stood.

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

JAMSETJEE JEEJEEBHOY'S ESTATE.

MR. LEGEYT postponed the Motion (which stood in the Orders of the Day) for the re-committal of the Bill "for settling a sum of money, and a Mansion-house, and hereditaments called Mazagon Castle, in the Island of Bombay, the property of Sir Jamsetjee Jeejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith."

WARRANTS OF ATTORNEY AND COGNOVITS.

SIR CHARLES JACKSON gave notice that he would, on Saturday the 16th Instant, move the first reading of a Bill "to provide for the due execution of Warrants of Attorney to confess judgments and cognovits."

JAMSETJEE JEEJEEBHOY'S ESTATE.

MR. LEGEYT moved that the Bill "for settling a sum of money, and a Mansion-house, and hereditaments called Mazagon Castle, in the Island of Bombay, the property of Sir Jamsetjee Jeejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith" be referred to a Select Committee consisting of Mr. Peacock, Sir C. Jackson and the Mover, with instructions to report on what alteration may be necessary to give due effect to the substitution as trustees of the trust property of certain public Officers of the Bombay Government for the Governor in Council at that Presidency, and to report to the Council on Saturday next.

Agreed to.

ADJUDICATION OF FORFEITURES.

MR. HARINGTON gave notice that he would, on Saturday the 16th Instant, move the first reading of a Bill "relating to Forfeitures of Property."

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. CURRIE moved that 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") be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, and the Mover.

Agreed to.

IMPRISONMENT OF EUROPEANS AND AMERICANS.

SIR CHARLES JACKSON gave notice that he would, on Saturday the 16th Instant, ask the following question.

Whether the Government have taken any, and if any, what steps for the erection of a Jail in a suitable climate for the reception of European or American convicts sentenced to terms of Penal servitude under Act XXIV of 1855?

The Council adjourned.

Saturday, April 16, 1859.

PRESENT:

The Hon'ble J. P. Grant, Senior Member of the Council of the Gov.-Genl., Presiding.

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

SIR JAMSETJEE JEEJEEBHOY'S ESTATE.

MR. LEGEYT postponed the presentation of the Report of the Select Committee on the Bill "for settling a sum of money, and a Mansion-house, and hereditaments called Mazagon Castle, in the Island of Bombay, the property of Sir Jamsetjee Jeejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith."

SALE OF LANDS FOR ARREARS OF REVENUE (BENGAL).

MR. GRANT presented the Report of the Select Committee on the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency."

BREACHES OF CONTRACT BY ARTIFICERS, &c.

MR. CURRIE presented the Report of the Select Committee on the Bill "to provide for the punishment of breaches of contract by Artificers, Workmen, and Laborers in certain cases."

WARRANTS OF ATTORNEY AND COGNOVITS.

SIR CHARLES JACKSON moved the first reading of a Bill "to provide for the due execution of Warrants of Attorney to confess judgment and cognovits." He said that, in consequence of some irregularities which had lately occurred in the execution of these documents, it had appeared to the late Chief Justice and other Members of