# LEGISLATIVE COUNCIL

# OF

# INDIA

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what had fallen from the Chair. He agreed with the Honorable and learned Vice-President that a great deal that had been written and talked about the sale of lands for debts under civil process was no better than sentimental nonsense.

He believed that, if any Honorable Member was to bring in a Bill to carry out what some gentlemen of the North-Western Provinces and others advocated, the proper Preamble of the Bill should run—

"Whereas the sepoys of the Bengal Army have mutinied, therefore it is right that land in all parts of India shall no longer be a marketable commodity."

He did not follow this argument, but there were many who took a different view, and the question therefore demanded an investigation.

He thought, however, that it would be well if the Council took a little time to consider the proposal of the Honorable Member before determining upon it, and he should therefore move the postponement of the motion to the following Saturday.

The motion was postponed accordingly.

CUSTOMS DUTIES.

MR. GRANT gave notice, that on Saturday next the Governor-General would move the first reading of a Bill for levying Customs Duties on goods imported and exported by sea.

The Council adjourned.

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*Saturday, March* 12, 1859.

PRESENT.

The Right Honorable the Governor General, in the Chair.

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| The Hon. the Chief Justice, | Hon. B. Peacock, |
| Hon. J. P. Grant, | P. W. LeGeyt, Esq., |
| Hon. Lieut.-Gen. Sir J. Outram, | E. Currie, Esq., |
| Hon. H. Ricketts, | H.B.Harington,Esq., and |
| | H. Forbes, Esq. |

MESSAGES.

THE PRESIDENT read Messages informing the Legislative Council that the Governor General had assented to the Bill "to empower the holders of ghatwalee lands in the district of Beerbhoom to grant leases extending beyond the period of their own possession," and the Bill "to empower the Governor of Bombay in Council to appoint a Magistrate for certain districts within the zillah Ahmedabad."

CUSTOMS DUTIES.

THE GOVERNOR-GENERAL said, in accordance with the notice given on Saturday last, he begged leave to lay on the table of the Council, a Bill to alter the rates of Customs Duties on goods imported or exported by sea. In proceeding to explain to the Legislative Council the reasons which had induced the Government of India to place this Bill before them, it would be right that he should notice the extent of the pressure which had compelled the Government to resort to this measure, the financial position in which the Government now found itself, the principle which had guided it in framing this measure, and the results which might fairly be expected therefrom. It might be convenient, as would be found from the sequel, if he went back some little distance of time before the mutinies. All would remember that the first open declaration of mutiny showed itself within a few days of the expiry of the financial year ending 30th April 1857. At that time the financial position of Government was good and full of promise. He said this on the following grounds. At the beginning of the year which then expired, that is on the 1st of May 1856, the Government had found itself with a deficiency arising from excess of expenditure over income of not less than one hundred and four lakhs. This excess of expenditure was due, in main part, to large disbursements on account of Public Works. Accordingly, on the 6th of May 1856, the Government felt it to be its duty to take immediate steps to prevent a continuance of this excess in the year about to commence. The first and most obvious course for the purpose was to restrict the expenditure on Public Works. That was done by an order that no Public Works, not already commenced, and the cost of which would be more than 10,000 Rupees,

should be begun within that year. This order was impressed on all the local Governments. But shortly afterwards the Court of Directors, anxious that Public Works urgently required should not be set aside, authorized the Government of India to raise by loan, in the course of that year, one crore, in addition to such other sum as it might be necessary to raise for the necessities of the Empire. This authority gave the Government of India more latitude than at the commencement of the year they had expected to have. Nevertheless, the Government did not relax the restriction which it had imposed on the local Governments. The crore which it had thus been empowered to appropriate to Public Works was assigned to such works alone as could fairly be called remunerative. It was divided between the local Governments in the manner which seemed to the Supreme Government best; but even with this crore at command it was found necessary to curtail the proposed expenditure of those Governments upon works which had been already begun, to the extent of nearly 50 lakhs. This caused much disappointment to the local Governments, and to an admirable body of men who have done invaluable service to Government in all emergencies—our Engineers. It could not be described otherwise than as a lamentable and depressing necessity, when the Government had to check the expenditure by two-thirds, and in some instances wholly, upon such works as the Baree Doab Canal, the Ganges Canal, the Lahore and Peshawur Roads, and the Bridges of the Grand Trunk Road between this and the North-Western Provinces, leaving them in the unfinished condition in which they stand at the present day. However, it was a matter of imperative urgency to place the financial affairs of the country in a wholesome condition. Partly owing to the restricted expenditure, but more to the prosperity and increase with which the country was blessed, (the increase of the landed revenue in Madras and Scinde was especially noticeable,) the Government found itself, at the end of the year of which he spoke—that was on the 30th of April 1857—in what he had ventured to call a favorable and very promising position. The deficit in 1855-56, aggregating at the beginning of that year 104 lakhs, had been reduced to 18 lakhs. But this was not all. The Government had, in the course of that year, a very exceptional increase of expenditure imposed upon it by the Persian War. The expenses of that war amounted to 22 lakhs. It had also to raise establishments in its newly acquired province of Oudh. If there had not been the expenses of the Persian War to meet, not only would the deficit have been reduced, but a surplus of 4 or 5 lakhs would have been secured; and but for other quite unusual expenditure, that surplus would have been larger. Certainly this gave good promise for the future.

He offered this explanation, because he wished the Legislative Council fully to understand that, in laying before them a financial measure of some magnitude, a measure which must be distasteful to a large class of the community, the Government had not been driven to that step by any lavishness of expenditure, or any laxity of watch over the revenues at its command.

The Government, then, began the year 1857-58 with no greater deficit than 18 lakhs. It had almost touched the point, at which, amongst states as amongst individuals, all who desire to administer their financial concerns with honesty and safety, must aim—namely, a balance of expenditure with revenue. It saw before it an early opportunity of being able to prosecute large works of material improvement without either increasing the burdens of the people, or anticipating the resources of its own successors on whom the future administration of the country should devolve.

This was a prospect to which he had looked forward eagerly. But it was not permitted to him to realize it. The new financial year was little more than a week old, when the spark fell which lit up a conflagration the embers of which were now and only now dying out. That was no longer the time to talk of balance sheets. Every hand, and heart, and brain, were needed for the struggle. We have now risen from that struggle, our honor vindicated, our power secured, and our character, as masters merciful in our strength, not, he ventured to hope, unworthily

maintained. But we had risen with resources drained; in the opinion of some, though he did not share in that opinion, with resources well nigh exhausted; and it was incumbent upon the Government to increase the revenue by the readiest and soundest means which it could devise.

It might be well to state to the Council, without going into detail, for which he was not prepared, some of the general heads of the expenses of the war, in order to show that the necessity which drove the Government to seek for new taxation, was not a doubtful one. Since the outbreak of the mutinies in 1857, there had been poured into India, from England, not less than 52 regiments of infantry, 9 of cavalry, and 33 companies of artillery and engineers. Every regiment of this large army had been kept in a state of constant efficiency, ready to take the field at a moment's notice, and for this purpose a stream of reinforcements, amounting for Bengal alone to 20,000 men, had been kept up. One hundred and sixty-five transports, most of them of the largest class, had entered the Hooghly. The number of horses landed in Calcutta alone was 5,000, and at least a proportionate number had been landed in Bombay for the use of the army on that side of India. The expense of the commissariat in 1857-58 amounted to two millions sterling—or at least the double of what it had been in the preceding year. The cost of that department for the following year was likely largely to exceed that sum. Upwards of 70,000 stand of arms, and more than 186,000 rounds of shot and shell had been landed in Calcutta.

The amount of other necessaries of war was in the same proportion. And when it was remembered that these expenses were incurred at a time when every necessary of war, from an elephant to a camp kettle, had risen in price 20, 50, 100, in some cases 300 per cent.; that during that time the cost of carriage, especially by water, had reached such a height that during the last year the Government had paid at the rate of £10,000 a month for the conveyance of men and stores between Calcutta and Allahabad; and that a more than corresponding increase of cost in England must be added to the cost in India, he thought that he might claim from the Legislative Council the admission that it was no imaginary necessity which led him to place this Bill upon their table.

But the cost of these gigantic operations might be measured in a way more distinct and complete than by the enumeration of details of this kind. When we arrived at the 30th of April 1858, the Government found, instead of a deficit of 18 lakhs from excess of expenditure over income, a deficit of 817 lakhs; that was to say, it found itself in a worse position than at the commencement of the year 1857-58 by 799 lakhs. Of that increase of debt 601 lakhs were due to expenditure in India—the rest was due to expenditure at home. Of the items of expenditure at home he was unable to give the particulars. Of the expenditure in India 350 lakhs were due to loss of revenue, 130 lakhs to loss of treasure, and 382 lakhs to increase of military expenses. Up to that period—that was to say, up to the end of the last financial year—he could speak with knowledge and certainty. For the year now about to close he could speak only according to estimate; but he was bound to say—and it was not to be expected that it should be otherwise—that there was no sign of bettering the condition of our financial affairs by the 30th of April now ensuing. He feared that the deficit for the current year would exceed thirteen hundred lakhs. To meet this expenditure, the Government had been compelled to have recourse to exceptional resources. By debentures in England, in the course of the past year, 8 millions sterling had been raised. By the loan of last year in India, counting from the opening of it to the present day—namely twenty-two months—the amount raised was 914 lakhs. These two sums together did not meet the expense of which he had just spoken. But the expense was met within a very trifling sum from the excess which existed between the cash balance in May 1857 and the cash balance in May 1858. The difference between these two balances amounted to 414 lakhs, and that sum, joined to the two sums raised by loan in England and India, very nearly came up to the full amount of the ex-

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penditure he had mentioned, including in this the estimated deficit of the current year. Now, whatever might be done by loans, and whatever might be the opinions held as to the loans which had been levied, and as to the extent to which they should be raised in England or in India respectively—and there was a difference of opinion on those points—it was incontrovertibly the fact that, come the loan from where it might, the Government of India must find the interest for it. On that ground alone he asked the Legislative Council to give their assent to this Bill. It was the duty of the Government to provide at once for the payment of the interest that would be required by increasing the revenue by every means within its reach which sound policy would allow; and of all such means he knew of none which would be less injurious to public or to private interests than the proposed measure of raising the duties in the Tariff.

It was, doubtless, well known to the Council, that the Tariff, as it stood, was based on a system of financial policy which had now for some years passed away in England. The last occasion on which any rise in the duties had been sanctioned by the Indian Legislature, was in the year 1845.

In 1848 changes were introduced in consequence of changes adopted in England, which, in certain instances, modified the protective character of the duties; and at present protection was no longer given to the national flag, but only to goods of British origin.

Upon goods of British origin the duties varied from 3½ to 5 per cent., and upon goods of Foreign origin from 5 and 5½ to 7 per cent.

He proposed to put on the table a copy of a Resolution which the Government of India had passed at the commencement of the month, and which would set forth completely the changes submitted for the assent of the Legislative Council.

The nature of those changes was this. Everything which bore the semblance of a differential or protective duty, was done away with. If this Bill should be passed, not a Rupee would be raised in India except for the purpose of the revenue. On all articles of luxury, and not of prime necessity, it fixed a duty of 20 per cent. On the generality of articles, and on all that were not enumerated, it fixed a duty of 10 per cent. On cotton yarn it fixed a duty of 5 per cent.; and it gave an immunity from duty to certain articles. Amongst these were bullion, grain of every description, cotton wool, machinery for the improvement of the communications and for development of the resources of the country, horses, and all sorts of cattle, coal, and books. He claimed no great merit for the Government in exempting these articles from duty. Most of them were exempt already by law, and others were so practically. Duties were prescribed for these latter in the Statute Book, but it was competent to the Supreme Government to suspend the levying of them by an order, and this power had been freely exercised already. Henceforth, however, it would stand recorded that each and all of these articles would be free by law for ever.

He next came to articles which he proposed to tax with the comparatively heavy duty of 20 per cent. The articles were tea, coffee, tobacco, spices, haberdashery, hosiery, grocery, provisions, perfumery, and jewellery;—and to articles which were subjected to a rate assimilating to 20 per cent., but which would not be levied as an *ad valorem* rate. These were beer, wines, and spirits.

These changes would bear mainly on the European community; but he thought he might appeal to that community to submit ungrudgingly, at a moment like the present, to the increase which they would make to their burdens, especially when they considered that, notwithstanding that increase, they would be in no worse a condition than that of their fellow-countrymen in the colonies of this Empire, and that they would be in a far better position than the inhabitants of any European State. To establish this statement, he would refer to the respective rates imposed in the other colonies and in Great Britain, upon the articles of most general consumption.

Taking the average cost of tea in India at 12 annas a lb, which he believed to be a fair estimate, the Bill before the Council gave a duty of 3½*d.* on the

lb. When it was remembered that the duty in England was very nearly four times that amount—that in other States of Europe, for the most part, the duty was very much above that which obtained in England—that in our colonies of the Cape, of Ceylon, and of Victoria, it was considerably higher than that now proposed, being in Ceylon and Victoria 6*d.* a lb, and at the Cape 4½*d.* a lb, and that in Sydney alone it was lower by one-half penny—he could not think that the duty proposed for this country was too high. The article of coffee, if taken at the value of 16 Rupees for 80lbs., would give at 20 per cent. a duty of 1*d.* in the lb, or only one-third of what was levied in England, and only one-half of what was levied in Victoria and Sydney. In the article of tobacco, taking the best at the value of 30 Rupees for 80lbs., and the cheapest at the value of 12 Rupees for 80lbs., the *ad valorem* duty of 20 per cent. would vary from 3*f.* to nearly 2*d.* a lb. Compared with the duty imposed on the same article in England, this was an utterly insignificant amount. In England manufactured tobacco was subject to a duty of 3*s.* per lb; in our colonies of Victoria and Sydney a duty of 2*s.* per lb. was charged. There were only two colonies, Ceylon and the Cape, at which the rates stood lower; namely, 1*d.* at Ceylon and 1¼*d.* at the Cape.

He would pass over as less deserving of notice, and as items respecting which it was scarcely necessary to occupy the time of the Council, the rates which the Bill imposed upon spices, haberdashery, grocery, provisions, perfumery, and jewellery. These were for the most part luxuries, and, moreover, it would be difficult to institute any fair general comparison between an *ad valorem* duty upon them in this country, and the duties levied upon them at home, and in the colonies, inasmuch as all these heads were broken up into many sub-divisions in the Tariffs of other countries. The only Tariff that he was acquainted with, which presented an opportunity of making such a comparison, was that of the United States, and the duty in that Tariff on every one of the articles in question was 100 or 150 per cent. higher than the duties proposed to be levied by this Bill.

He then came to beer, wines, and spirits. Measuring the duty by the rate of 20 per cent., it was proposed to impose upon beer a duty of 4 annas per gallon. In Victoria it was the same as that now proposed to be levied here. In Sydney it was only 1*d.* In Ceylon 3*d.* In respect of this one article, therefore, India will be less favorably placed than those two colonies.

On wines the Bill proposed to levy a duty of 2 Rupees a gallon. That was below the rate in England, and considerably below half the rate of 10*s.* a gallon levied in Sydney, but it was more than the rate in Ceylon which was 1*s.* 6*d.*, and the rate in Victoria which was 2*s.* a gallon.

On spirits it was proposed to raise a duty of 3 Rupees per gallon. This was very much less than the duty fixed in England, where it was £1—much less than the duty imposed in Sydney and Victoria where it was 10*s.*, and only a trifle more than the duty imposed in Ceylon where it was 5*s.* He had shown, therefore, that only to an inappreciable extent would some of the colonies enjoy any advantages over India, and those in respect of articles the general consumption of which does not stand in need of encouragement.

On articles not included in the above enumeration, a duty of 10 per cent. was proposed to be levied. In respect of these it would be unnecessary to say much. There was, however, only one article of importance which, coming under this general head, ought not to pass without notice—cotton piece goods. No doubt the rate of increase, from 5 to 10 per cent., was considerable, but seeing how deep a root that trade had taken in India, how steadily it had increased, and that it now much exceeded in value 3 millions sterling a year, he had no apprehension that the proposed enhancement of the duty to 10 per cent. would affect it in the slightest degree. An exception had been made in favor of cotton yarns. But this was a half manufactured article, and one which tended to the promotion of Native industry. The trade in it had been fluctuating, and had not yet taken so firm a hold of the country as that in the fully manufactured article, to which he had last adverted, had done, and the Government would do wisely in fixing

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the duty upon it at no higher figure than 5 per cent.

Before proceeding to speak of the results which were expected from these changes, it was necessary to say a few words respecting the alterations proposed in the duties on exports. Although these were not large, there were one or two not without importance. The only article amongst exports on which it was intended to levy any increase of duty, was grain. On grain a duty of 2 annas per maund, or 4 annas per bag, was proposed, the duty at present being between ½ an anna and 1 anna a maund, and between 1 anna and 2 annas per bag. From the best information which the Government had been able to command, he believed that this increase would not affect the export of grain in any appreciable degree. Should this expectation be realized, the change would yield to the Government an increase of 20 lakhs of revenue, without inflicting injury on any interest whatever. But although that was the only increase contemplated in export duties, there were two articles the export duties upon which it was proposed to remove altogether—silk and tobacco.

Silk had last year paid upwards of 1½ lakh. The duty upon it was 3½ annas a seer. He proposed that this duty should be altogether abolished, and that the competition of India in silk with other markets should be left wholly unshackled.

On tobacco the sum which the existing duty produced was inconsiderable, the tobacco of India not being well known, or being unsuited to foreign markets, and the loss would be limited to 29,394 Rupees. It was not to be supposed that this duty was abandoned because tobacco was not a fit subject of taxation, or one which might fairly be made to yield a profitable revenue. But it was his opinion that, if a duty was to be raised on this article, it was far better that it should be raised by an internal or an excise duty, levied possibly in the form of a tax upon the growers, than by an export duty at the port.

There was one other export duty which it was proposed to give up—that on spirits, which was quite insignificant. In the last year for which accounts were forthcoming, it had produced a revenue of no more than 55 Rupees.

If the Legislative Council should sanction this measure, the result of it, assuming that consumption would in no sensible degree be diminished, would be this:—The duties levied on imports during the last year for which accounts were available, amounted to 75½ lakhs. The amount levied on exports during the same year was 28½ lakhs. The increase under the proposed new Tariff would be, as regards imports, about 74½ lakhs, and, as regards exports, 20½ lakhs; this last being due solely to grain. The sum total of the Customs Revenue in the last year for which there were accounts before the Government, was 1 crore and 4 lakhs. The addition which would be obtained by increased rates under this Bill, calculated, as he had said before, on the hypothesis that consumption would not diminish, would be 95 lakhs, giving a total of 1 crore and 99 lakhs. On the other hand, there would be a decrease in the export duties of 1¾ lakh. This would reduce the total to 1 crore 97 lakhs and a quarter;—that is to say, the Customs duties will give within three lakhs of two crores.

There remained to be decided the time at which the Bill, if passed, would be brought into operation. In an ordinary case, a delay of three months must intervene before a change in the law could take effect. It was his intention, if the Legislative Council read this Bill a first time to-day, to propose that the Standing Orders be suspended, and that effect be given to its provisions at once. In proposing to do this, he was not unmindful of the interests of the class which was most directly concerned in the change. But the Government was of opinion that it would be better for all classes, including that particular class, that there should be no interval of suspense between the enactment of such a law and the bringing of it into operation. This had been the rule of practice in England. The forms of procedure there were somewhat different indeed, because in Parliament they had the means of giving effect to any changes, by passing a Resolution which should have the force of law pending the enactment of the law itself; the new duties coming into force from the day that the Resolution was adopt-

ed, and the law, which was passed with greater deliberation, giving indemnity to Collectors who had acted on the Resolution in the meantime. But there were reasons for this course in England which did not exist here. In England no law could pass at once, as there were two branches of the Legislature through which every Bill must be carried. And a delay of even a few days between the introduction of the enactment of such a measure, and its being brought into force, created great confusion and disorder, and benefited nobody. He therefore proposed, if a first reading were given to the Bill, which he had had the honor to introduce, to resort to that course of which he by no means approved as a general rule, but which he thought was advisable in cases of this nature, and which would have the same effect as acting by Resolution; the course, namely, of suspending the Standing Orders.

There was one case, however, in which hardship might arise if this were done without limitation. It was the case of persons who might have entered into contracts at prices calculated according to the duties fixed in the existing Tariff. To save such persons from all injustice, a clause had been inserted in the Bill, authorizing the contractors to claim the new duties from those to whom they were engaged, just as though these duties had been considered in the contract.

There were two articles omitted in the Bill, on which it was right to say a few words—these were salt and opium.

With respect to salt, although he was very far from subscribing to the opinion which had obtained in England sometime ago as to the impolicy and oppressive character of the Indian salt duties, he still considered that the Customs duty was not one which ought to be touched for the purpose of raising it. Should it hereafter be touched, it would be by the Executive Council that the question must be dealt with. He would content himself by saying that he was entirely opposed to an increase of it in Bengal.

With respect to Bengal opium, it was not intended that it should find a place in this Bill. The duty on that article was raised irrespectively of the Customs Law, and it was competent to the Executive Government to deal with it. He had no intention to introduce any change whatever in respect of it. He thought that it would be very difficult to devise any scheme for loading an article with the largest amount of tax that it could contribute to the State, which should show so much ingenuity and successful policy as the scheme under which opium was grown in Bengal. He did not deal with the question as one of morality or dignity, but as one of finance. In Malwah, however, there was a clear stage for acquiring more revenue. The last time the duty there was touched, it was raised to 400 Rupees a chest. Since the increase, the export of Malwah opium had very nearly doubled. The rise in the export at the Presidency of Bombay had been from about 16,000 chests in 1848, to more than 37,000 chests in 1858. The value of a chest of Malwah opium at Bombay was something more than 1,200 Rupees. Each chest reached the owner there at a cost of not more than 900 Rupees. There remained a margin, therefore, of 300 Rupees, and from that margin it was quite fair that the Government should claim an increase of revenue, and this might be done with little or no risk of smuggling or of diminished production.

This measure, however, was one in which the co-operation of the Legislative Council was not necessary. Indeed, it had been already adopted, and instructions had been sent to the Governor-General's Agent, that the duty to be henceforth levied upon Malwah opium should be 500 Rupees instead of 400 Rupees per chest. Taking the increase to be derived from the Customs at 93 lakhs, and the increase from Malwah opium at 37 lakhs, he hoped it would be admitted that a very considerable addition would be made to the revenues of the country by means as little oppressive to the interests of individuals or of trade as possible, and in no way opposed to the principles of sound policy.

He would make but one remark before he resumed his seat. Of course when he said that the consumption of the goods—the duties upon which it was proposed to increase—would suffer no check, the calculation was a hypothetical one. But he hoped he had proved, by his appeal to the rates of taxation

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in other countries, that the duties prescribed in the present Bill were moderate. And if they were moderate, he had little doubt that, in a country like this, where expenditure was liberal, and where many of the most productive articles, if not actually necessaries, very nearly approached to them, the anticipation of Government would be fairly fulfilled.

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

MR. GRANT seconded the motion, which was then carried.

The Bill was read a first time.

THE GOVERNOR-GENERAL moved that the Standing Orders be suspended, in order that he might carry the Bill through its remaining stages.

MR. GRANT seconded the motion.

MR. CURRIE said, he had no intention whatever of opposing the motion for the suspension of the Standing Orders to the extent of reading the Bill a second time this day; but he had understood the Noble Lord to say that he proposed to pass the Bill at once at the present sitting. He thought that the Council ought not to be called upon to pass a Bill of this kind without having had an opportunity of considering the details it involved, and, therefore, that the passing of the Bill should not take place until next Saturday. It was true that the Bill had been read at length at the table; but it was scarcely possible to follow all the items as they were read, and to give to each provision the consideration which might be necessary. It appeared to him to be making mere cyphers of those Members of the Council who had had no previous opportunity of becoming acquainted with the provisions of the Bill to call upon them to pass the measure at once. Even as the Clerk read the Bill, two points had struck him as open to question. The first was the provision respecting salt. The Bill repeated absolutely the existing Tariff which fixed a duty on salt. Afterwards it was said that nothing in the Bill should apply to salt. He did not see exactly in what state these provisions would leave the law respecting the salt duty. But, however that might be, he thought that the salt duties ought not to be left in their present state. The legal duty upon salt was 3-4 per maund The Executive Government, it seemed, had power to reduce that duty by an order of Government. It had thrice reduced it, and the actual rate which was now levied was 2-8 per maund. Whether this diminished rate was retained, or increased, or further lessened, he thought that the duty to be actually levied should be fixed by this Council. His own opinion was that some portion of the legal duty which the Government had foregone, ought, in the present times, to be re-imposed.

Then, he did not see any reason why machinery should be free from duty. He supposed that most of the machinery imported was imported for the purposes of the Railway; and if the Railway Company ran its trains at a profit, he did not see why the machinery, which came out to it, should be exempt. All such exemptions were fruitful sources of dispute and dissatisfaction.

THE GOVERNOR-GENERAL said, with reference to what had fallen from the Honorable Member for Bengal, he should first touch on the question raised by the Honorable Member as to the suspension of the Standing Orders, and the end to be attained thereby. He hoped that it was unnecessary for him to say that nothing had been further from his thoughts than to propose a course of procedure which could be reasonably construed into a slight upon any Member of the Legislative Council. He had stated his reasons for pressing forward the measure—reasons in no way concerning the Government, but concerning the interests of the Community at large—and supported by the invariable practice which obtained in the Parliament of England. The object of the Government was to avoid doubt and suspense which, more than anything else, paralyzed mercantile action, and which were sure to arise if an interval of time were to take place between the enunciation and the enactment of the Law, and if the community were kept in ignorance of what the Tariff was to be. Of course, if any delay, not inconsistent with this object, would enable the Legislative Council to consider this Bill with greater deliberation than its immediate adoption would do, it would be most gladly acceded to by him: and after the appeal made by the Honorable Member, he was quite ready

to receive any suggestion which heor any other Honorable Member might make as to a day for the further consideration of the Bill. But he would only beg of the HonorableMember to consider again, that the pressing forward of the Bill was for the interest of the whole community, and that it was on no other account than this that the Government was concerned in doing so.

As to the supposition of his Honorable friend, that a slight was conveyed in his motion on the Members of this Council who were not connected with the Executive Council, he was sure that it would not hold in his mind when he remembered that it was the invariable practice in the Parliament of England, to pass any measure which effected any large change of this nature in the same way, and that this was done with less deference to the assembly which was there called upon to act, since the measure was not dealt with as a Bill, which necessarily is considered in Committee, but in the form of a Resolution which was brought down to the House, and proposed and passed in one action.

With respect to salt, he had expressed his opinion that it was not advisable to increase the Customs rate upon it to any extent. His expression was that it ought not to be touched in the direction of raising. If the Honorable Member for Bengal wished to introduce a Clause on the subject into the Bill, the Government would be happy to consider it in the Committee, or in any of the remaining stages of the measure.

THE CHIEF JUSTICE said, the course proposed by the Government took him somewhat by surprise. In common with the Honorable Member for Bengal, he had been under some impression that, although the Bill would not be allowed to run the ordinary course of being three months before the Public, and that the Standing Orders would be suspended in respect of it, still he did not expect that they would be suspended to the extent of passing the Bill into law at once to-day. His own opinion certainly was in favor of the suspension of the Standing Orders, if necessary, for the purpose of letting it go through a Committee of the whole Council to-day ; but he would allow a delay of one week in its final enactment, to admit of an expression of opinion respecting its details from beyond the walls of the Council. If the Bill were passed to-day upon discussions which were confined to the Council Chamber, the consequence might be that representations might come in from the Public at large, which might lead to the repeal of the measure and the enactment of another law. He admitted that the analogy derived from the practice of the Parliament in England, and which His Lordship had suggested, was to some extent correct ; but either from the imperfection of our machinery, or from some other cause, the Public here would be at a disadvantage, under which the Public in England did not labor, and the measure passed would not receive that full discussion which it would have received under the system at home. There, the Chancellor of the Exchequer would go down to Parliament, and propose a Resolution altering the Customs duties. The House at large would be taken as much by surprise as those Members of this Council who were not also Members of the Executive Government were at the Bill proposed to-day. But the House would, from the confidence which it reposed in the Government, pass the Resolution, the effect of which would be that the new duties would come into operation at once. A Bill would next be framed upon that Resolution, and there would then be an opportunity of discussing each article of the Tariff, and in the Act as finally passed, there might be modifications introduced in consequence of suggestions from the House at large and from abroad, which would show that what the Government proposed was capable of improvement. Here, however, if the Bill before the Council should be passed to-day, and the details should appear to be capable of improvement, there would, under the local system, be no means of improving them, except by introducing another law to amend the Tariff. That, certainly, would afford the means of alteration, but it would not altogether be so convenient a course as that of considering the Bill in Committee to-day, but deferring its final enactment

*The Governor-General*

for one week. If, therefore, there was no overwhelming necessity for passing the measure this day, and a short delay would give the Commercial Community an opportunity of being heard upon the details, it appeared to him that it would be better to give them that opportunity. He should vote accordingly for the suspension of the Standing Orders so far only as to settle the Bill in Committee to-day, postponing the third reading until next Saturday.

He certainly did not think that the Executive Government had intended any slight upon this Assembly in the proposal to pass the Bill at once; but certainly to ask the Council to assent to such a course in respect of a measure involving details of so important a nature which several of its Members had no opportunity of considering before, did seem to him premature.

At present, it seemed to him necessary to adopt such a measure as this. It was not a matter of argument, but one of figures and arithmetical demonstration.

He was in favor of the general principles of the measure; but as to the details, he was not certain that there might not be some objections by persons more conversant with such matters than he was.

MR. PEACOCK spoke in support of the opinion that the Bill should be passed this day. If, however, any Honorable Member desired time to consider its details, a clause might be inserted, providing that the rates of duties prescribed in it should take effect from this day, but that the Bill itself should be further considered and passed by the Council on the 31st Instant, or even on Monday next, the Collector of Customs being indemnified for enforcing the increased rates in the mean time. This would be in accordance with what had only recently been done in England. Any delay in imposing the new duties might raise the impression that the Government and the Council had not made up their minds about the measure, and the effect of this would be to unsettle trade—a result which it was very important to avoid.

The question, that the Standing Orders be suspended, was then put and carried.

THE PRESIDENT next moved that the Bill be read a second time.

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

After some conversation, the President gave notice of Motion for a Committee of the whole Council on the Bill on Monday next, the 14th Instant.

## MADRAS POLICE.

MR. FORBES moved the second reading of the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George."

MR. HARINGTON said, before offering any remarks upon the Bill to which the motion of the Honorable Member for Madras referred, he wished to ask the Honorable Member a few questions. *First*—He desired to be informed who, if this Bill should pass into law, would be considered responsible in the Districts, into which it was introduced, for the maintenance of order and the repression of crime—the District Magistrate or the District Superintendent of Police? His *second* question was—What were to be the duties of the Police under this Bill on the apprehension, without the issue of a warrant by the Magistrate, of persons charged with criminal offences, in addition to bringing the accused before the Magistrate within a certain period. In such cases were the Police to make any preliminary investigation, and, if so, what was to be its nature and extent, and by what rules were the officers making the investigation to be guided? *Thirdly*—He wished to be informed, under the head *Police Officer* in Section XXIII of the Bill, what Officers of the proposed Police Force were intended to be included. His *fourth* question was—Were the Village Watchmen or Chowkeydars to be entirely under the District Superintendent and Chief Commissioner of Police, and to be appointed and removed by those officers, or was the District Magistrate to exercise any and what control over them? And, *fifthly* and *lastly*—He desired to be informed with what object and for what purpose

was the Chief Commissioner of Police to be appointed a Magistrate throughout his jurisdiction.

MR. FORBES said that, as the Honorable Member for the North-Western Provinces had, with his usual courtesy, given him notice of his intention to ask these questions, he had come down to the Council prepared to give what he hoped would be satisfactory replies. He had stated, when he introduced this Bill, that, as he did not approve of its principle, he thought he should be doing more justice to it if, instead of speaking upon it himself, he allowed the Madras Government to be heard in support of their own measure, and in like manner he considered that he should best reply to the questions of the Honorable Member if, as far as possible, he replied to them from papers furnished to him by the Government.

The first question which he had been asked was—"Should his Bill pass into law, who will be considered responsible in the Districts into which it is introduced for the maintenance of order and the repression of crime, the District Magistrate or the District Superintendent of Police?" To this question he would reply that it was the intention of the Madras Government that the Magistrate should be held responsible for the maintenance of the peace; and in support of this view he would read an extract from a Minute recorded by the Governor:—

"The Collector and Magistrate should be considered as the Chief Administrative Officer of Government in each province. In this capacity he would direct the distribution of the Police, and call for their services when required; but he would have nothing to do with the interior economy of the force—that would be regulated by the Commissioner, under the orders of Government."

The second question which had been asked him was—"In such districts what are to be the duties of the Police in the apprehension, without a Magistrate's warrant, of persons charged with criminal offences, in addition to bringing the accused before the Magistrate within a certain period? In such cases are the Police to make any preliminary investigation, and, if so, what is to be its nature and extent, and by what rules are the Officers making the investigation to be guided?"

In introducing this Bill, he had said that the Police Force to be constituted by it would be guided entirely by the Code of Criminal Procedure; and he had added that the Sections in the Bill which referred to procedure had been purposely left as they had been drafted at Madras, because, if the Code passed into law before this Bill, they would be struck out in Committee; and if this Bill became law before the Code was passed, they would be modified in Committee, so as to suit whatever it might be determined should be the established course of procedure.

The third question was—"Under the head *Police Officer* in Section XXIII of the Bill, what Officers of the proposed Police Force are intended to be included?" And this question he would reply to by referring to Section II of Chapter VI of the Code, in which it was enacted that "a Police Officer may, without warrant, arrest, of his own authority, a person against whom a reasonable complaint of an offence, for which a warrant may issue on complaint, is made." The Section in the Bill now before the Council was taken from the Section in the Procedure Code which he had just read.

The fourth question put by the Honorable Member was—"Are the Village Watchmen or Chowkeydars to be entirely under the District Superintendent and Chief Commissioner of Police, and to be appointed and removed by those Officers, or is the District Magistrate to exercise any and what control over them?" To this question he would reply by reading extracts from two Minutes recorded by Lord Harris on the 4th of May 1855 and the 11th of September 1856. In the first Minute Lord Harris had said that "the plan of leaving the Village Police entirely under the local authorities, and ultimately under the Collector, is judicious and almost necessary under the peculiar circumstances of society in India;" but in the second Minute His Lordship said that "on one point, since writing on this subject, I have very decidedly changed my opinion, and that is with respect to the Village Police. They, I think, should be under the same control as the District Police, in order to ensure uniformity of discipline and action."

From this the Honorable Member might assume that the Village Police was intended to be entirely under the Chief Commissioner and District Superintendent.

But he would further refer the Honorable Member to the Bill itself. In the first Section the Honorable Member would find that the word "Police" was interpreted to include "Village Police," and in Section XI he would find that the appointment and dismissal of all Police Officers, including therefore the Village Police, were to be vested in the Chief Commissioner. The Honorable Member would further find in Section II, that the Regulation under which the control of the Village Police had been vested in the Magistrate, was repealed.

Lastly, he had been asked—"With what object and for what purpose is the Chief Commissioner of Police to be appointed a Magistrate throughout his jurisdiction?"

It was not intended that the Chief Commissioner should interfere in any way with the ordinary duty of the Magistracy, and power to officiate as a Magistrate was to be given to him only in order that, in time of political difficulty, or in cases in which it might be unadvisable that notoriety should be given to any particular investigation, the Government might be enabled to commit the enquiry to the Chief Commissioner, and thus obtain the information they desired in a more quiet and secret manner.

MR. HARINGTON said, having first thanked the Honorable Member for Madras for so fully answering the questions which he had considered it necessary to put to the Honorable Member, he would proceed to address himself to the motion before the Council. The Bill, of which the Honorable Member for Madras had just moved the second reading, being limited in its application to that Presidency, and having been introduced at the request of the Government of Madras, acting under orders from Home, the opposition which he (Mr. Harington) felt it to be his duty to offer to the further progress of the measure, at any rate until the Council had better means than it at present possessed of forming an opinion upon the advisability or otherwise of its adoption, would not improbably be met by the objection which he had heard more than once within that chamber when exception had been taken to local measures, recommended by any of the subordinate Governments, namely, that the Government which proposed the particular measure must be the best judge of the necessity or propriety of its introduction; and that, ordinarily, this Council should not refuse its assent to local laws applied for in due form, and considered by the Governments applying for them essential to the proper administration of affairs in the Territories committed to their charge, for which they were of course immediately responsible. When any particular measure, for the introduction of which legislative sanction was required, was altogether of a local nature, this objection might be entitled to some consideration and, as a general rule, he for one should be disposed to admit it; but it was scarcely necessary for him to say that such was not the character of the Bill before the Council. The principle upon which that Bill was based was one of general application. That principle he understood to be that the union of police and judicial functions in one and the same Officer was wrong and objectionable in itself, and unjust towards parties accused of criminal offences, inasmuch as it subjected them to be tried before the authority whose duty it was to cause the apprehension of criminals, and to collect proofs of their guilt. Now, if such union was wrong in principle in Madras, and should no longer be allowed to exist in that Presidency, he submitted that it must be equally wrong in principle in the Punjab, where it also existed; it must be equally wrong in principle in the North-Western Provinces and in the Lower Provinces of Bengal, in both of which places it was also to be found; and it must be equally wrong in principle in every other part of India into which it had been introduced, and where it was still maintained; and this Bill, instead of being restricted in its application to the Presidency of Madras, should be made generally applicable, not only to that Presidency, but to each and all of the places to which he had alluded, unless it could be shown that they were so dissimilar in their circum-

stances and in the character of the inhabitants, that what was wrong in principle in the Presidency of Madras was not wrong in principle in them. Now he had no hesitation in saying that there was no such dissimilarity, and if any Honorable Member was prepared to assert to the contrary, he trusted that he would point out in what the want of resemblance consisted. Except in the recency of its acquisition, what he would ask was the material difference between the province of Oude, in which the separation of the police and judicial functions heretofore vested in the same authority was now being carried into effect, and between the adjoining districts of Gorückpore, Azimghur, Juanpore, Allahabad, Cawnpore, and Furruckabad, and the province of Rohilkund, which also bordered upon Oude. So that if he should vote in favor of the motion of the Honorable Member for Madras for the second reading of the Bill brought in by him, and any Honorable Member should hereafter get up in Committee and propose the extension of the Bill to the North-Western Provinces, with what show of consistency could he vote against the proposition; on what ground could he justify his acquiescence in the introduction of the principle of the Bill into the Presidency of Madras, and his refusal to allow it to extend beyond the limits of that Presidency—how could he reconcile the two votes? He could not therefore consent to vote for the second reading of the Bill under consideration, contrary to his own convictions, simply because the Madras Government had asked for it, and because he might be told that there was no intention of extending the principle of the Bill, for the present at least, to the part of the country which he (Mr. Harington) had the honor to represent. He saw reason to fear that, if those who advocated this particular measure succeeded in getting in the thin end of the wedge, they would never stop until the whole wedge was introduced. He thought that every one would allow, as well those who were in favor of the present Bill, as those who objected to it, that it proposed to introduce a vast and most important change into one of the most important departments of Government. So vast, so important indeed was the alteration which this Bill, if carried, would effect in the Police system of Madras, that he thought its very extent should make them the more cautious how they gave their assent to it, and should lead them, before committing themselves to the principle of the Bill, by allowing it to be read a second time, to enquire whether so sweeping a change was necessary: what were the evils which this Bill was intended to remedy; was this Bill the best practical remedy for those evils—and was not the existing system susceptible of improvement to a sufficient extent to admit of its fulfilling what was required of it? To the theory of the Bill he might have no objection to make. In theory it might be quite right that the same Officer should not be allowed to exercise police and judicial functions, and in some places the separation of those functions and their being vested in different Officers might be very right in practice also. But there were many things which, in theory, might be right all over the world, and which in some places might be found good in practice also, but which, if introduced into this country, would prove not only not good but positively mischievous. It might have been quite correct in theory to declare that money might be traded with like any other commodity, and that the rate of interest to be charged on loans was not a fit subject for legislation; but they knew that the result of the exaction of usurious interest was a rebellion not long ago in one part of the country, the suppression of which, as they were told by the Honorable Member of Council opposite (Mr. Ricketts), on Saturday last, cost many valuable lives, and a large outlay of public money. In theory it might have been quite right to legalize the re-marriage of Hindoo widows, and the Bill brought in for that purpose by the Honorable Member of Council on his left (Mr. Grant) received his cordial support, though he had before him, at the time, the opinions of former Judges of the Sudder Court at Agra, in which they strongly deprecated the passing of such a law, which they believed would be very unpopular amongst the people, and would be regarded by them as an im-

proper interference with their prejudices, habits, and religion. It might have been quite correct in theory to declare that a change of religion should not be followed by a loss of civil rights, yet many old and experienced Officers would tell them, with what truth he could not say, that the measures to which he had been alluding and others of a similar character, induced a very general belief amongst the natives, that those measures were adopted not because they were good in themselves, or because they cared for Hindoo widows, or for the property of Natives converted to Christianity, but because they were determined, by fair means or by foul, to christianize the country ; that the late mutiny in the Native Army of Bengal was the consequence, in some degree, of that belief, and that where the more respectable classes of natives joined the sepoys, it was because they sympathized with them, and considered that the sepoys were fighting the battle of their religion. It might be quite correct in theory to declare that a man should pay his just debts, and that the whole of his property, as well as his person, should be made answerable for their amount, and yet, presently, they would be engaged in a debate, the object of which was to determine whether, looking at the question in a political point of view, it was not objectionable in practice to allow land to be sold for the recovery of money demands. So that in coming to a decision upon the important measure before them, he thought they should be careful not to allow undue weight to the consideration that it might be perfect in theory ; what it appeared to him they should rather look to was, what would be the practical effects of the measure.

To ascertain the grounds on which this great change in the management of the Police at Madras was proposed for adoption, he (Mr. Harington) naturally went to the preamble of the Bill ; but there he found nothing beyond a general declaration of expediency, which of course did not help him in the least. All that the preamble said was, " whereas it is expedient"—" therefore it is enacted." He then had recourse to the Statement of objects and reasons circulated by the Honorable Member for Madras with a copy of the Bill, and there he found that the state of the Police at Madras was considered most unsatisfactory, and that the inability of the present Police establishment at that Presidency to cope with the prevailing amount of crime, or to ensure protection to person and property, had latterly become more than ever marked and notorious. The present Bill then was introduced to remedy this state of things, and it was thought that the Police, proposed to be created under it, would be able to cope with crime, and to ensure protection to person and property. But what were the arguments adduced in support of the measure ? What were the grounds on which its introduction was recommended ? What reason had they for supposing that it would prove effectual for the attainment of the object in view ? Let them look at the opinions which had been expressed by those who, from their position and experience, were the most competent to form a judgment on the subject. The balance of opinions would, he thought, be found greatly against the proposed measure, and, if tried by this test, prudential considerations would appear to be in favor of their staying the progress of the Bill at its present stage. He was prepared to admit that, in addition to the promoters of the Bill, whose opinions were of course entitled to great respect, there was one very high authority in favor of it. He alluded to the Honorable Member of Council on his left (Mr. Grant), whose sound judgment and practical ability must always command the greatest weight for every opinion expressed by him on any question connected with the Government of this country. Whenever he found himself differing from that Honorable Member, the impression forced itself upon his mind, that the Honorable Member must be right, and that he (Mr. Harington) must be wrong, and such would probably be the case now, and he might not have considered himself justified in addressing the Council on this occasion, were it for the many high authorities whom he found ranged on the opposite side. He held in his hand a letter which purported to have been lately

addressed by an intelligent native to the Honorable Member for Bengal, in which he found the opinion of His Excellency the Governor-General on this subject stated at great length. His Lordship said :—

"After giving the subject my best consideration, and carefully weighing the arguments which have been adduced on either side, I have come to the conclusion that the two offices, where now separate, should be reunited, and that the system which is found to work equally well in the Non-regulation Districts, in the North-Western Provinces, and in several districts of the Lower Provinces, should be uniformly adopted. It seems to me, speaking with sincere deference to the opinion of my Honorable colleague, Mr. Grant, that reason, no less than experience, points to the necessity of concentrating the whole executive power of the Government, in each district of Bengal, in the hands of one experienced man. We have the authority of Lord Dalhousie, after four years' experience of local administration, in favor of the measure; and we have the earnest and repeated recommendation of the Lieutenant-Governor on the same side. The system of separating the two offices seems to have been adopted rather on theoretical grounds, and in the hope that any change would conduce to the improvement of the Police, than from the experience of practical inconvenience from their union; though, if it had been otherwise, the previous system can hardly be said to have had a fair trial, seeing that it existed only a few years, and at a time when the chief energies of the Collector-Magistrates were taxed for the performance of the onerous duties imposed by the sudden and energetic enforcement of the resumption laws.

"I agree with the Honorable Mr. Grant (His Lordship proceeded to observe) that a system of administration, which suits an uncivilized country, may not be adapted to one more advanced in civilization; but there still remains the question, whether the districts in Bengal, in which the offices have been divided, are in that advanced state of civilization which renders the division of magisterial and fiscal functions a preferable mode of local administration to that in which these functions are united, and whether there is such material difference in point of civilization between those districts and the districts in which no such division has taken place, or between those districts and all the districts of the North-Western Provinces, as to require a separate and more theoretically perfect system of administration. Judging from all the evidence before me as to the state of things in the Upper and Lower Provinces of the Bengal Presidency, I find myself constrained to answer this question in the negative. I think that, in Bengal especially, the efficient administration of the penal laws requires all the force and influence which the Government can bring to bear upon it, and that this force and influence will be increased by substituting, for the divided authority now partially existing in these provinces, that union of local control which, as it seems to me, is much better suited to the character and wants of the people. I do not think that the case would be met by raising the salaries of the Magistrates and reducing those of the Collectors, or by putting them upon an equality. An inexperienced Collector may be as mischievous as an inexperienced Magistrate, and it is not desirable that any man should exercise independent authority of any kind over a whole district until he is ripe for it. And even if experience could be secured in both officers, the division of authority is to be avoided rather than sought. As regards the people, I fully believe that what has been called the patriarchal form of Government is, in their present condition, most congenial to them and best understood by them; and as regards the governing power, the concentration of all responsibility upon one Officer cannot fail to keep his attention alive, and to stimulate his energy in every department to the utmost, whilst it will preclude the growth of those obstructions to good Government which are apt to spring up where two co-ordinate Officers divide the authority.

"Neither do I think that a parallel can be drawn between a Bengal Mofussil district and the Presidency Town of Calcutta in respect to a division of offices. In the former the Collector is and must be an Officer of high authority, whose relation to the Zemindars and to the rest of the agricultural community, in connection with the settlement and collection of the land revenue and the disposal of *quasi* judicial questions relating to it, must always be one of influence and power, and whose co-operation with the Magistrate it is most important to secure by the closest union. In Calcutta, on the other hand, the Magistrate, an Officer of long experience with an expensive and numerous staff of European and Native Police at his command, and assisted by Justices of legal attainments and practice, would derive no appreciable addition of power from being charged with the collection of petty ground-rents and the excise upon spirits, a duty entrusted to an Uncovenanted Officer, under the control of the Collector of the 24-Pergunnahs. Moreover, the concentrated wealth and civilization of the town of Calcutta are such as to require and support a more perfect division of labor in its local administration than any entire district or town of the Mofussil can be expected to claim, upon like grounds, for many generations to come."

The next opinion which he would read, was that of the present Lieutenant-Governor of Bengal, whose intimate knowledge of the natives of India and of the circumstances of the country, and whose large experience, derived from the various high and important offices which he had filled, gave a de-

gree of authority and a weight to his opinion which seemed to him (Mr. Harington) quite irresistible. Mr. Halliday in his well-known Minute on the Police of Bengal said :—

"There is, however, an opinion which has found favor with some persons of just weight and authority in matters of this kind, and which has indeed a certain plausibility which tends to recommend it to many, and especially to those whose experience, or whose mode of thinking has been derived from European rather than from oriental habits, against which I am specially desirous of raising my testimony in this place, the rather perhaps that in the days of my smaller experience, I myself have held and advocated the opinion which I now very heartily condemn. The opinion to which I allude is this, that the Magistrates of every degree should be debarred from all judicial power, and should have nothing but the executive duty of preventing and detecting offences, and that separate judicial functionaries should receive and try cases of every description committed to them by Magistrates of various degrees.

"It is one very serious objection to the scheme, that it will be very expensive. It is a scheme foreign and unintelligible to Asiatic notions, and altogether founded on European ideas and habits, going indeed, in its excessive provisions, to a degree even beyond any general European practice.

"I am very sure that our Mofussil administration will, *cæteris paribus*, be generally efficient, while it is certain also to be acceptable to the people, according to the degree in which it conforms to the Simple and Oriental in preference to the Complex or European model. The European idea of a Provincial Government is by a minute division of functions and offices, and this is the system which we have introduced into our older territories. The oriental idea is to unite all power in one centre. The European may be able to comprehend and appreciate how and why he should go to one functionary for justice of one kind, and to another for justice of another kind. The Asiatic is confused and aggrieved by seeing that this tribunal can only redress a particular kind of injury; but that if his complaint be of another nature, he must go to another authority; and to a third or fourth kind of judicature if his case be, in a manner incomprehensible to himself, distinguishable into some one kind of wrong or injury.

"Accordingly, not only in all our recent acquisitions, such as Scinde, the Punjab, Burmah, Nagpore, and Oude, but in most of those which date thirty or forty years further back, such as the Nerbudda Territories, Assam, Arracan, we have carefully framed our administration upon the Oriental plan, modifying it only when absolutely necessary to ensure real benefit to the people. And while Europeanized methods in our oldest territories have been notoriously unsuccessful, the result has, on the whole, been so decidedly successful in the newer districts, that no sound Indian Statesman would now dream of proposing for any new acquisition any other plan of administration. Now nothing can be more opposed to the Oriental plan of administration than the entire separation of judicial from executive duties, which is advocated by the over-much occidentalists to whom I have alluded. At the same time it is going backwards from the course which experience has been gradually forcing on our older territories since 1793.

"No one who is familiar with the state of the interior will deny that, amidst much that is good, our present system (that is in Bengal) is often marred by one or other, or all of the evils which I have above depicted; and these evils, whenever they occur, arise undoubtedly from the antagonism of locally opposed judicial and executive authority. But conceive this antagonism, not merely at each zillah station, but all over every district, and the antagonism in each case, not of two liberally educated Englishmen, but of two half-educated and Orientally civilized natives, and let those who know the country and people declare what would be the practical result. We may imagine the bickerings, crimination, and re-crimination, that would ensue. For, though under the greatest provocation, corruption is the last thing which a Native attributes to a European Judge or Magistrate, it is the first imputation which a Native casts on a Native, on great provocation, slight provocation, or no provocation at all. Thus, in too many instances, would Executive Officers account for failure by insinuations against the judicial department, and thus, as often, would the judicial functionaries resort by insinuations against the purity of the executive. At best all the difficulties and embarrassments which even now not unfrequently impede the administration, owing to divided authority, would be multiplied a hundred fold. If it were asked why crime had increased in a particular district, the Executive Officers would reply, because of the pertinaciously unreasonable acquittal of all our criminals by the judicial functionaries. If the judicial functionaries were in any way questioned for this result, they would answer, 'it is because of the negligence and inefficiency of the executive.' Nobody would be responsible. Power would be everywhere divided and everywhere contending against power. The administration of the interior would be torn in sunder, and the result would be good made bad, bad made worse, and confusion everywhere worse confounded."

Then they knew that the Honorable Member for Madras, who must be regarded as a very high authority in all matters relating to that Presidency, was strongly opposed to the measure, because he had told them so in the remarks which preceded his motion for the first reading of the Bill; and he believed the Honorable Member could likewise tell them that the measure was

no less at variance with the opinions entertained by a large proportion of the ablest and most experienced Members of the service belonging to the Presidency which he represented. The late Court of Directors of the East India Company had also admitted in one of their Despatches, that the principle of separating the judicial from the police functions of the Magistrate had been strongly opposed by men of intelligence and experience. The North-West and the Punjab had not yet spoken out publicly; but he had received several letters from gentlemen holding high offices in the North-West, from which, with the permission of the Council, he would read some extracts. The first of these letters was from Mr. Spankie, the present Judge of Saharunpore. This Officer was certainly not open to the charge which was not long ago brought against him (Mr. Harington) of being so wedded to the existing state of things, that he desired no change, for, if left to himself, he believed that Mr. Spankie would abolish the Civil Courts altogether, while they knew that he had lately recommended to Government that the thannah records in criminal trials containing the result of the preliminary investigation by the Police should be at once and entirely discontinued. Mr. Spankie said :—

" *Festina lente*—we are moving too fast again. What you tell me would be a sweeping innovation, not a wise and gradual reform. I would not separate the Police Powers from those of the Magistrate. The people do not want many masters, but one. That one should be a person of influence from position, experience, energy, and ability. My experience assures me that, if you had separate agencies, the people would be like sheep without a shepherd. Instead of providing one open channel of communication with them, you would practically leave them without any intercourse at all. As things are at present, the Magistrate's tendencies are rather to distrust his Police, and incline to the people under his jurisdiction. He is interested in the good conduct of his Police, but he is most interested in the well-being of his people. He knows their characteristics and the nature of the crimes they are likely to commit. From mixing with them in the interior, he knows the well behaved and the bad classes; and this knowledge gives him great aid in dealing with the Police. If he does his duty and is accessible the people themselves will come to him for redress. His influence can be exercised, from his position, beneficially in matters of Police, affecting the zemindars, markets, fairs, religious observances, public health, and the like. There are no interests which clash with his—he cannot blame any party but himself if things go wrong. He is also in a position to train up good successors in his post. Alter the system, and what will you give in its stead? You must settle an European Superintendent in each district, probably a young Military Officer without any experience at all, or an old one, who knows nothing of Police, except from hearsay, or in a Cantonment Joint Magistracy, not the healthiest of experiences, as I can testify. You have not a sufficient number of Scinde or other good Police Officers with whom to commence the scheme here. The men whom you must select have not been for years mixing with the people as the Magistrates do. He has not the same influence from position, and he has not the same kindly tendencies towards the people. It is impossible that he should have them. He belongs to a commission, in the vitality of which he is intimately concerned. His inclination would be to support the Police and distrust the people, for which purpose his office has been created. If the people complained of his Police, he would (to reverse the picture as representing the Magistrate) distrust them *ab initio*—his Police, he would argue, are more likely to speak the truth, because they were specially raised to take the place of Police, who did not do so. If the Magistrate once commenced to hear complaints of the Police, the number of them would be legion. The Superintendent of Police would resent this. Perhaps two honestly inclined Officers from their very opposite interests would be involved, in repeated disputes. The general Superintendent in high authority would support his own men; if he did not, the system would not have a fair trial. The natural idea would be that the Magistrates looked upon it with an evil eye, and withheld cordial co-operation —such things have been said before.

" I do not think that the conduct of the Police during the rebellion should stamp them as bad. Far wiser and better men looked upon our cause as hopeless, and their falling away when a district went to pieces was nothing wonderful. We should regard the order and security which reigned during the last ten years in these Provinces, and not the failure of the Police in a time of general anarchy, when they merely followed the example of thousands bent upon upsetting a Foreign Government. It will be found that, in keeping order, in general duties of a Regular Police in the prevention of crime, we have greatly improved of late years. The better appointments, though still insufficiently paid, have been rendered more attractive by higher remuneration. There has been a closer arranged system of patrol on high roads and a better distribution of Police in the interior of districts, and, consequently, a great diminution of crime, irrespective of murder, the prevalence of which is capable of explanation

without reference to the Police. There is, too, I honestly believe, less corruption, though there is wide room for improvement in this respect.

"What do you propose now? To replace the Thannah Police with the Military? If so, how long will the Military character prevail? Who is to conciliate the towns or villages? Who to arbitrate between people coming to the Police Court with petty grievances like an honest and well disposed Thannahdar can do? Who will induce people to return to their homes and not carry idle complaints into Court, and so lose their time and labor? Who is to watch the conduct of the zemindars and other classes within the limits of a Thannah?—the havildar, who will be removed every three months? You will be compelled to have recourse to the same sort of agency you have now, but it will not be so well controlled, for it will be under authority, which it will more easily deceive, and which will not have the same power of rewarding honest and zealous service."

Mr. Martin Gubbins, one of the Judges of the Sudder Court at Agra, had written him a long letter very much to the same effect as the letter which he had just read from Mr. Spankie. This letter, should the Honorable Member for Madras succeed in carrying his motion, he proposed, with the permission of the writer, to print. No one who knew Mr. Gubbins, or who had read his very popular, able, and interesting work on Lucknow, in the memorable siege of which place, from the commencement to the close, he had played so conspicuous a part, earning for himself the character of a good and valiant soldier, and of a kind and hospitable friend to all whom it was in his power to aid, would look upon him as *laudator temporis acti* in the sense in which he (Mr. Harington) was supposed by some to be. In the last edition of his work, Mr. Gubbins, somewhat indiscreetly as he thought, and certainly not in very good taste, had called the Sudder Courts nuisances. As a Judge of one of those Courts, he (Mr. Harington) trusted that Mr. Gubbins would soon discover how little he knew of their real character when he called them bad names, and that in his own practice, at least, he would show that they could be just the reverse of what he had described them. The next letter which he had received was from an officer now holding the appointment of Magistrate and Collector in the North-Western Provinces, but who was formerly employed in the Punjab. He said:—

"All is here serene; if anything will operate to produce discontent anew, it will be the Military Police Bill. I am entirely opposed to the proposed scheme, which is the offspring of crude, ill-digested imaginations."

The last letter was from an officer who was formerly employed in Scinde, and afterwards he believed in the Punjab. He was subsequently transferred to the North-West, and for many years held the appointment, first of Magistrate and Collector, and afterwards of Civil and Sessions Judge in the Doab. On the annexation of Oude he was offered a high office in that Province, and he was now officiating as Commissioner of a Non-Regulation Province, so that he was an officer of very considerable experience. He said—

"I am glad to learn you are opposed to the proposed law for separating the judicial and police functions of a Magistrate; the more universal the powers of a District Officer, the more his resources for detecting crime and obtaining the co-operation of the agricultural community. Great will be the impediment to energetic administration, if the Police is not wholly under the district hakeem" [meaning the Magistrate].

He (Mr. Harington) believed that these letters expressed the sentiments of the great majority of the ablest and most experienced officers in the North-Western Provinces and in the Punjab at least, if not throughout India, so that they had opposed to the scheme of the Madras Government the late Governor-General of India, Lord Dalhousie, His Excellency the present Governor-General, the Honorable the Lieutenant-Governor of Bengal, the Honorable Member for Madras, the experienced and intelligent men alluded to in the Despatch of the late Court of Directors of the East India Company, the officers from whose letters he had read extracts, all practical men, and many others who were equally well qualified to give an opinion on the subject. But he was told that the system, now proposed to be introduced into the Presidency of Madras, had succeeded wherever it had been tried. He was told that it had succeeded in England; that it

had succeeded in the Presidency Towns of Calcutta, Madras, and Bombay; that it had succeeded in Bombay, and that it had also succeeded in Scinde. He did not think that it would be safe to travel all the way to England to learn what was the best system of Police management for India, or, perhaps he should rather say, all the way to London, for he was informed that in the rural Districts of England the Police, though nominally independent of the Bench of Magistrates, was in reality entirely controlled by them. With regard to the Presidency Towns he would only observe that their circumstances were so different from the circumstances of the Mofussil, that it did not at all follow that a system which might be very well adapted to them would answer equally well, or might advantageously be introduced beyond the limits of those Towns. In Bombay he believed that the Military Police were subject to the control of the District Magistrate, but whether such was the case or not, he asked for proof that the system had succeeded there and in Scinde; he asked for figured statements extending over a certain number of years prior to and after the introduction of the system, and showing the number of crimes ascertained to have been committed—the number of persons apprehended out of the number supposed to have been concerned in the offences reported—the number of persons committed and the number of persons acquitted—the amount or value of the property ascertained or reported to have been stolen, and the amount or value of the property recovered; let them be furnished with a return containing these particulars, and they would then be able to judge for themselves whether any and what degree of success had attended the introduction of the system at Bombay and in Scinde. But he would ask, if the system had really succeeded so well in Scinde, how came it to pass that it was not introduced into the Punjab by Sir John Lawrence before he left the country. Sir John Lawrence must have carefully watched the working of the system in Scinde; he could not have been ignorant of the success which was declared to have attended its introduction into that Territory, and they all knew that he was about the last man in India to have refused to introduce the system into the Punjab simply because he could not claim the credit of having originated it; yet he had gone away leaving the Police and the judicial functions in the Punjab to be exercised by one and the same functionary according to the system originally adopted. They had been told again and again that in so far as this country was concerned the Punjab system approached nearer to perfection than any other system in force in the British Territories in India; now what, he would ask, was the distinguishing feature of that system? why, the concentration of all power in one officer. Such being the case it was scarcely necessary for him to say, that if this Bill were extended to the Punjab it would inflict a heavy blow upon the system now in force in that Territory. But he might be asked, did he approve of the Collector and Magistrate being also Civil Judge? To this question he would give an answer in the negative, first, because there was no such connection between the office of Judge and the offices of Magistrate and Collector as to render it desirable that they should be united in the same functionary; and, secondly, because the duties which the Magistrate and Collector had to perform were generally of so urgent and pressing a nature that they could not be put aside or postponed without very serious inconvenience, and the consequence was, that where, as in the Punjab, the Collector and Magistrate was also Civil Judge, to quote words which had been imputed to a distinguished Punjab officer, "the civil business got only the fag end of the district officer's time." He could easily believe that such must be the case, for he had been long enough in India to recollect the time when the offices of Judge and Magistrate were united in one officer, and the consequence was that the civil work in those districts in which the criminal duties were heavy was almost entirely neglected; month after month the Judge and Magistrate was obliged to account for his short comings in the former capacity by referring to the heavy duties which had devolved upon him in the latter capacity, until at last the separation of the two offices was

forced upon the Government as a matter of necessity and of justice to the suitors in the Civil Courts; and, unless he was greatly mistaken, a similar separation of the two offices would at no distant date become necessary in the Punjab: such also seemed to be the opinion of many experienced Punjab Officers. There was not the same objection to the union of the offices of Magistrate and Collector in one functionary, provided, of course, that he had a sufficient staff of subordinate officers to admit of all cases arising in the two departments being disposed of with proper despatch. This had been the case for some years past in the North-Western Provinces. The result was that the Magistrate and Collector, not being overburthened with details, was able to exercise a careful and vigilant supervision and control over the whole district and over all the officers subordinate to him, particularly in the department of Police, and they had the testimony of Mr. Spankie to the great improvement which had taken place in that department previously to the breaking out of the mutiny. The union of the offices of Magistrate and Collector, which had now existed in the North-Western Provinces for upwards of a quarter of a century, had his most hearty approval, but he felt satisfied that much of the utility and advantage of that union would be lost if the Police functions were taken away from the Magistrate and vested in an independent officer. He might be told that the present highly respected and deservedly popular Lieutenant-Governor of the North-Western Provinces, Mr. Montgomery, had become so convinced of the great superiority of the system which it was proposed to introduce into Madras over the system now in force in that Presidency, that he had ordered its introduction into Oude during his short but successful administration of that Province. But surely it was too soon to educe any argument in favor of the system from what had been done in Oude beyond what was to be derived from the fact, that Mr. Montgomery, after having for many years successfully administered a very different system in the Punjab, had seen reason to change his opinion, or, at any rate, to introduce a different system of Police administration into Oude from what was followed in the Punjab. Whether he had acted judiciously in this respect was a question which time only could determine. As yet the introduction of the system into Oude must be regarded as purely experimental, and to those who were so anxious to obtain a solution of the difficult question as to what was the best system of Police for this country, he would suggest whether it would not be better to await the result of the experiment now being tried in Oude, and to defer the extension of the system to Madras or elsewhere until it had been a sufficient time in operation in Oude to admit of an opinion being formed as to the advisability or otherwise of carrying it further. He might also be told that Mr. Wingfield, the present Chief Commissioner of Oude, was in favor of the measure introduced by his predecessor. If such was the case all he could say was that his conversion to the system had been as sudden and unexpected as Mr. Montgomery's had been, for in a paper written by Mr. Wingfield only in December last, he (Mr. Harington) certainly understood him as expressing himself strongly in favor of the concentration of all executive, judicial, and revenue powers or functions in one officer. This paper had been printed, and a copy was in the hands of Honorable Members.

With regard to that part of the Bill before the Council which proposed to vest the administration of the Police throughout Madras in an officer to be styled the Chief Commissioner of Police, he would observe that this centralization of Police powers in a single officer had already been tried in Bengal. For many years both in the Lower and Upper Provinces there was a Superintendent of Police, and the office was considered one of so much importance that it was always held by a picked Member of the Civil Service. After a full trial, however, the office was abolished, he supposed, in consequence of its not answering the end contemplated in its creation, and he saw no prospect of its succeeding better at Madras. The opinions which he had read contained such a full and clear exposition of the

advantages which resulted from having at the head of the Police in each District an officer of some standing uniting in his own person the functions of Magistrate and Collector, and of the evil consequences which might be expected to result from transferring the Police functions now vested in such officer to comparatively young and inexperienced Military men, acting independently of the Magistrate, and in no way subordinate to him, that he would not further occupy the time of the Council, upon which he had already trespassed too long, with any observations of his own. Suffice it to say that he entirely concurred in those opinions, and he should have been disposed to meet the motion of the Honorable Member for Madras with a direct negative, but looking to the labor and time which had been bestowed on the preparation of the present Bill, and to the anxious desire expressed by the Government of Madras for its adoption, he thought that the subject might fairly be regarded as deserving further and fuller consideration, and he proposed therefore to move, by way of amendment to the motion of the Honorable Member for Madras; that this Bill be read a second time this day four months, that the Bill be published for general information; and that the Clerk of the Council be directed to address the Government of India and express the wish of the Legislative Council that they would call upon the several local Governments to obtain and transmit the opinions of the several European Judicial and Revenue authorities upon it. He observed that this was the course pursued in respect to the Bill relating to Oaths and Affirmations, which was also brought in by the Honorable Member for Madras, and he thought that it might be followed with equal advantage on the present occasion. Before resuming his seat he wished to make one or two remarks on the answers given by the Honorable Member for Madras to the questions which he (Mr. Harington) had put to him. In reply to the first question the Honorable Member for Madras had stated that it was the intention of the Government of Madras, even after the passing of this Bill, that the Magistrates should continue to be held responsible for the maintenance of the peace of their districts, but he did not see how this responsibility could with any fairness be thrown upon the Magistrate, seeing that, according to the provisions of the Bill, he was to have no control whatever over the instruments by whose means crime was to be repressed and order maintained. He had not overlooked the Sections relating to the Village Watchmen, to which the Honorable Member for Madras had referred in his reply to the fourth question put to him; but he had found it difficult to believe that it was really intended to place the Village Chowkeedars entirely beyond the control of the District Magistrates; he certainly thought that the Right Honorable the Governor of Madras was quite right in the opinion originally entertained by him, that "the plan of leaving the Village Police entirely under the local authorities, and ultimately under the Collector, was judicious and almost necessary under the peculiar circumstances of society in India," and he could not understand on what ground His Lordship had since changed that opinion. He begged to thank the Council for the hearing they had been so good as to give him, and he would now make his motion for the postponement of the second reading of the Bill, with the object stated.

MR. LEGEYT wished to say a few words in support of the second reading of this Bill.

He hailed its appearance with very sincere satisfaction and thought the authorities of Madras had entitled themselves to the thanks of all India for having brought forward a measure so important, so comprehensive, and so complete as this Bill appeared to him to be.

If he did not entirely recognise the necessity of the large Military constabulary constituted by the Bill, he found in it elements of a Police law which he trusted would eventuate in a total change of the existing character of Indian Police, and go far to place in the hands of Government a powerful and effective engine for the good government of the country, and to give adequate protection of life and property to the people. Although he

believed the proposed system of Police had not yet obtained the universal suffrages of the various public functionaries who had power to deal with Police questions, yet this system certainly came before the Indian public with this great recommendation, that in the various parts of the world in which it had been tried, he believed it had succeeded. It was first introduced in India, he believed, in the Presidency Town of Bombay about the year 1833-34; subsequently it was established in Calcutta; and in 1856 an Act was passed for the three Presidency Towns. He believed he was quite right in saying that the system had worked well in these Towns.

In the Presidency of Bombay, the Police, by the Regulations of 1827, was placed under the Collector and Magistrate of the Zillahs subject to the general control of the Sudder Foujdaree Adawlut. The law, Regulation XII. 1827, provided that the Collector should also be Magistrate, and as such have the charge and management of the Police; so that the primary duty of the chief civil functionary in a Zillah was Revenue, the second Magisterial, and the third Executive Police. As might be expected, the Police did not succeed under this triple arrangement, and things had gone on from bad to worse, till in 1847 Sir George Clerk, then Governor of Bombay, resolved on re-forming the Zillah Police. He selected one of the largest and most troublesome Zillahs (Belgaum) for the experiment; he began wisely, as events had proved, with the Village Police. An Officer was specially appointed to re-organize this body, which was completed in about two years. It was extended to other Zillahs, and in 1854 a Commissioner of Police was appointed. The law of Bombay still existed, by which the Magistrate was still the head of the Zillah Police; but since the appointment of the Zillah Superintendents, Magistrates had, under the instructions of Government, power to interfere with the details of the Executive Police. Fears were at first entertained that collisions and heart burnings would ensue, but happily common sense and anxiety for the common weal had generally prevailed, and the system had worked harmoniously. The Honorable Member for the North-Western Provinces had demanded statistics to satisfy him of the success of this measure. He (Mr. LeGeyt) was glad to be able to give this information. He had looked into the returns of crime published in the Presidency of Bombay during the years 1845, 1846, and 1847, the three years immediately preceding the reform. He had also examined the returns for the years 1854, 1855, and 1856, which were the latest received. He found the number of offenders apprehended in the three former years was 199,811 and the convictions 104,256. In the three latter years the number was 171,000 apprehended and 118,730 convicted, showing a great decrease of accused persons and a great proportionate increase of convictions. He also found that in the former three years the persons accused of crimes attended with violence numbered more than 14,000, in the three latter years these had decreased between 800 and 900. He thought he had a right to claim credit for the Police in this improved state of things. He mentioned these particulars to show that, where the principles of the Madras scheme had been tried, they had succeeded. He believed he might also quote the state of Police in Scinde as another instance of good obtained from this system of Police. He had heard a great deal about one common chief in every District—a patriarchial rule is most consonant with Asiatic feelings and habits. It was his belief that no Police worthy of the name could be at all in consonance with Asiatic feelings and habits, though he believed no people would more gratefully appreciate a good and sufficient Rural Police than the well-disposed portion of the native community. The Police had hitherto been an accomplice and shield to crime, let it be so no longer, and if the plan proposed in the Bill were conceded, it would assume a totally different character.

Mr. RICKETTS said, the principles involved in this Bill were the separation of Police duties from fiscal duties, and the organization of a Police partaking in its discipline and training of more of the Military character than they have been accustomed to in the peace-

able parts of the Empire. Hitherto in Madras, Revenue, Magisterial, and Police duties had been in the hands of the same officers. The Madras Government, seeing the error of their ways, had made a long step in the right direction, and they must be greatly surprised to find their measure opposed in this Council. Wicked people had been in the habit of speaking of Madras as the benighted Presidency, but now that they had stepped well out of the fog and the mire, they ought to be welcomed by reformers on this side of India. They had on their side in this move a great authority. Mr. Montgomery, with all the predilections which he must naturally have for the system observed in the North-Western Provinces and the Punjab, had quite changed his opinion, and was entirely in favor of separating Police from Magisterial duties. He wrote :—

"With the multifarious duties entrusted to a District Officer, experience has taught the Chief Commissioner that the organization and efficiency of the Police cannot properly be attended to. In no part of India has the experiment been more fairly tried than in the Punjab by officers who have distinguished themselves for untiring zeal and exertion, and if the Chief Commissioner, when employed in that Province as Judicial Commissioner, perceived defects to exist, he feels sure that elsewhere perfection in that system cannot be attained. The opinion of the Honorable Court of Directors, supported by the experience and representations of the Governments of Bombay and Madras, are all in favor of separating the Executive Police from all connection with the Magisterial branch of the administration. There can be no possibility of a criminal being prejudged before his trial, or of a case being got up, and carried through to conviction by the intrigue of the Police. Under the former system, the District officer had to perform multifarious duties. He first of all appointed his own Police, he watched crime and directed his constables to apprehend a suspected person, he collected through them the evidence against the accused, and then he sat on the bench to try impartially the case. That an English Judge ever descended to countenance the concoction of a false case, or that he willingly permitted his anxiety to arrest the criminal to bias his mind against the prisoner at the bar, the Chief Commissioner would be loth to believe, but he is fully convinced that many a case has been fabricated and brought before the Magistrate in a form that would ensure conviction through the villainy of the Police and the intrigues of the Court officials. To separate the connection between these two branches must have a good effect in breaking the link and in throwing obstacles in the way of successful intrigue."

But there was a still higher authority in favor of the principle of the Madras Bill. The Court of Directors, in their Despatch of the 24th September 1856, wrote :—

"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 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. The 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.

"In the second place the management of the Police of each District should be taken out of the hands of the Magistrate (who would thus have more time for exercise of the double functions adverted to in the former paragraph), and be committed to an European Officer with no other duties and responsible to a general Superintendent of Police for the whole Presidency."

In all this he heartily concurred. There might be some of the details of the Madras measure admitting of improvement, especially the extreme centralization and the placing the whole Presidency under one Commissioner of Police ; but this might be remedied in Committee, if the Council would allow the Bill to be read a second time.

MR. CURRIE said that, if a vote in favor of the second reading of this Bill could be held to pledge the Member so voting to a concurrence in the principle of the measure as applicable to the Bengal Presidency, he should be as little disposed as the Honorable Member for

the North-Western Provinces to give such a vote. But he did not view the subject in this light. The circumstances of Bengal and Madras were very different. It was agreed on all hands that in Madras a reform of the Police was urgently required. A plan had been framed which was most strongly recommended by both the local Government and the Sudder Court, and had received the approval of the Home Government. He thought that the Council could not refuse to receive and give the fullest consideration to this plan, and therefore, without at all pledging himself to an approval of the principle of the Bill as generally applicable to all the Presidencies, he should vote for the second reading. In the Districts under the Bengal Presidency a totally different plan of reform had been sanctioned by the Home Government, and was now in course of introduction, and he did not apprehend that the progress of that measure would be at all affected by any thing which might be determined on for Madras.

THE VICE-PRESIDENT said, in dealing with this Bill, it was to be remembered that they could not boast that a perfect system of Police had been discovered in any part of India. He might go farther and say that the Police in India was a subject which stunk in the nostrils of the public. Mr. Montgomery had recently introduced a new system in Oude : the Bombay Government had lately altered theirs ; and the Madras Government now asked to have their system changed also. If the Honorable Mover of the amendment could point anywhere to a system of Police which was based upon a good principle, that would be a reason for rejecting this Bill and telling the Madras Government that they should adopt that system. But if it appeared that there was no such system in any part of India, and that the Madras Government had maturely considered the subject, and desired to try the new principle, it would be ungracious to refuse them, and to postpone the second reading of the Bill they had sent up for four months, for the purpose of taking the opinions of old and experienced officers in other parts of India, not as to what would best suit their own localities, but as to what would best suit the Presidency of Madras. As the Honorable Member for Bengal had said, the circumstances of Madras were quite different. There, if anywhere, there seemed strong reasons for severing the functions of officers of Police, at any rate, from those of officers of Revenue. In Madras the revenue was collected directly from the Ryot : in Bengal it was collected, under the permanent settlement, from Zemindars.

With regard to the details of the Bill, he would remark that many of its Clauses seemed to be designed more for the Town than the Rural Police. One of these Clauses was not very happily expressed, for it gave Police officers the power of omnipresence. The Clause provided :—

> "Every Police Officer shall, for all purposes in this Act contained, be considered to be on duty at all times and in all places."

SIR JAMES OUTRAM said, he had purposed to offer some remarks in support of this Bill. But being satisfied from what had passed that its second reading would be allowed, it was needless for him to take up the time of the Council on this occasion. He should content himself therefore with placing before them the scheme of Police lately introduced into Oude by Mr. Montgomery, which, as nearly analogous to what was proposed for Madras in this Bill, might be useful for them to consider before the third reading, and which he would move might be printed.

MR. PEACOCK said, after the very full discussion which the question had undergone, he would not have troubled the Council with any observations, had not the principle involved in it appeared to him to be most important. The Honorable Member for the North-Western Provinces had read certain letters from functionaries in the North-Western Provinces opposed to the measure, but he (Mr. Peacock) did not see why, in consequence of these opinions, the Council should delay the second reading of the Bill for three months, in order that the opinions of other functionaries, who thought in the same way, might be collected. He, for one, could not vote for the postponement of the Bill, because his mind

had already been made up, that the principle upon which the Bill was based was a very correct one. At present the functions of Magistrate and Collector were united in one set of Officers, and not only was this system contrary to theory, but he believed it had also been found unsound in practice. The Honorable Member had not shown that it had worked well in practice. If the Honorable Member had shown that it had worked well in Madras, he might very reasonably have asked—"Why demand a change?" But it was known that it had not worked well in Madras. The Madras Government was of opinion that it had worked ill and therefore asked for a change as a matter of reform. The Honorable Member had read the Minute of the Lieutenant-Governor of Bengal in 1856, in which His Honor changed the opinion on this subject which he had given on a former occasion. (Mr. Peacock here read the passage which Mr. Harington had quoted.) This, as the Lieutenant-Governor admitted, was a change of an opinion which he had expressed before in a Minute which he wrote in the year 1838, on the subject of the Police in Bengal. In that Minute, after having given the subject his full consideration, he made the following summary of the principal alterations which he either proposed or concurred in with the other Commissioners :—

"To dissever the judicial from the executive functions of Magistrates, and to vest the former in Civil and Criminal Judges and Sudder Ameens, and the latter in the Officers of Police.

"To take into the hands of Government the funds now applicable for the payment of Village Police, and adding to them the amount now expended on the Police, to organize a complete and connected body of Police officers, under the control of a Superintendent General."

The Lieutenant-Governor therefore was of opinion at one time that the system did not work well in Bengal. He had since changed that opinion; but at present the Council was considering the case not of Bengal, but of Madras. Did it appear that persons in Madras obtained relief or redress when they applied to Officers who were vested with both Police and Revenue functions? The Commissioners appointed to enquire whether torture did exist in the Revenue and Police Departments had come to the conclusion that it did. They said:—

"It would seem not only plausible but reasonable to look for such a remedy in the separation of the Revenue and Police functions; and it is to this that we venture to draw the attention of Government. We abstain from offering any direct or positive opinion upon the subject ourselves, because it does not fall within the immediate sphere of our enquiry: the expediency of this measure may be regarded as a separate question, which might form the subject of a totally distinct investigation; and certainly we should be desirous of sifting the matter much more fully than we have had any opportunity, before pledging ourselves to any confident determination regarding it. Much doubtless is to be urged on both sides. We should require to compare the different systems as tried in Madras before and since the laws of 1816, to ascertain how the two principles work in Bengal, Bombay, and the North-Western Provinces. We know that in Mysore there is scarcely a third of the European agency employed in the districts of Madras; that the Superintendent of a Division has not only the work of a Madras Collector, but much of that of the Civil and Criminal Court, with the power of presiding at trials in capital cases; yet if it should be found that there crime is more rigorously repressed, litigation less uncertain and tedious, the revenue more readily realised, and the country on the whole better managed than in our oldest possessions, this alone must make us pause and consider deeper as to a remedy which seems to promise much from its apparent applicability to the evil and its causes; yet it appears to us worthy of the fullest consideration, since the disjunction of the Police and Revenue authority of the native servants would break the neck of that power which is wielded by them with such terrible force and concert. It is the union of the two duties which gives them their principal power, and presents a tempting facility for abuse."

The Madras Government, having this Report before them, had recommended the change in the existing system, which was proposed in the Bill before the Council, and he saw no reason why the Council should refuse to read the Bill a second time now, when the change which they proposed was supported by theory, and the system which now existed had been shown to be highly injurious in practice.

When these Police Officers, whose duty it was to protect the people from injury, were also employed in collecting revenue, and in that capacity were guilty of torture, as represented, it was not un-

reasonable for the Madras Government to ask the Legislature to separate the two functions, and not allow Revenue Officers to discharge Police functions.

He would not trouble the Council with any further extracts; but it appeared to him that, when the Madras Government had taken into consideration this Report, and proposed a new system for the adoption of the Council, it was not for the Council to say—"We reject your recommendation, and postpone the consideration of the Bill until four months, in order that we may ascertain what public functionaries in the North-Western Provinces, or public functionaries all over India, think about it." He was very sorry to trouble the Council at any length; but he could not help remarking that in a minute recorded by the Honorable Member of the Supreme Government to his left (Mr. Grant) on this subject, occurred the following observation in reference to a passage from Hansard:—

"I find that the union of the powers of Magistrate with those of Collector was strongly animadverted upon by several of the speakers, as one of the causes of the prevalence at Madras of Torture for the realization of Revenue; and that this union was defended by none. I may fairly rely on the tenor of the speeches of the Noble Lords who spoke on that occasion, as showing how the highest English feeling regards the question I am discussing; and as an argument to be weighed even by those who take a different view from mine on the abstract question."

With all this before them, the Council would not be justified—it would not be fair to the Government of Madras—if they did not come to a conclusion as to whether they should adopt the principle of this Bill or not. He for his own part was prepared to adopt it. He approved of the principle which separated Police from Revenue functions, and should vote for the second reading of the Bill to-day.

MR. FORBES said, that the question now before the Council was should the second reading of this Bill be postponed for four months, in order that the opinions of all the officers of the several Governments should be obtained upon the principle of it? and to that question he desired to be allowed to say a few words in explanation of the vote he intended to give, because, as he was known to disapprove of the principle of the Bill, it might be thought that he would support the motion, in the hope that the result might be adverse to the Bill, while he intended to vote against it.

It was his opinion that the result of the motion, if it were carried, would be that the Council would, four months hence, be in precisely the same position in which they were at present. He had no doubt that the opinions of many able men would be recorded in favor of the principle of the Bill, and he had as little doubt that the opinion of many able men would be recorded against it, so that at the end of the four months the Council would be no nearer to a settlement of the question than they were at present.

On introducing this Bill, he had read an extract from a Despatch from the Honorable Court of Directors, which, as it was not long, he would, with the permission of the Council, now read again:—

In this Despatch, No. 13 of 1857, the Honorable Court in paragraph 4 said:—

"You are probably aware that the principle which you so strongly advocate of separating the judicial from the Police functions of the Magistrate, has been as strongly opposed by men of intelligence and experience. The question has been fully and ably discussed on both sides. A satisfactory solution of it will best be obtained by a practical application of the two systems in different localities."

It was the wish, therefore, of the Honorable Court, that the experiment should be tried, and if this were the case, it appeared to him that the sooner it was tried the better. On this ground he should vote against the motion of the Honorable Member.

Before he sat down he would say one word in explanation of that part of the Bill which had been referred to by the Honorable and learned Chief Justice as requiring omnipresence in a Policeman.

The expression used, namely that a Policeman was to be considered as on duty at all times and in all places, was perhaps an unfortunate one, and it might be amended in Committee; but the meaning was only that no Policeman should be able to decline to give his ser-

vices or assistance when called on, under the excuse that he was not on duty—He was to be bound by law to act in his capacity as a member of the Police force whenever he might be called on.

MR. HARINGTON said, after the opinions which had been expressed by Honorable Members, he would not persevere in his motion. He was reluctant to trouble the Council with any further remarks, but in reference to what had fallen from the Honorable and learned Member of Council on his left (Mr. Peacock), on the subject of the inefficient state of the Police in the Presidency of Madras, which showed how necessary it was to make some change in the present system, he must say that he did not think that system had had fair play either at Madras or in Bombay. In both places where the offices of Magistrate and Collector were united, he believed that the officers holding the appointments were too much burthened with details, and the consequence was they were not able to devote that amount of time and attention to the Police which was absolutely necessary to secure efficiency in that department. The same was formerly the case in the North-Western Provinces, but of late years the Magistrates and Collectors in those Provinces had been provided with a large staff of subordinates, which enabled them to confine themselves chiefly to the important duty of supervision and control, and to the improvement of the Police whose conduct was brought under their notice in various ways. He thought he had stated that, whatever objections there might be in theory to the union of Police and Judicial functions in the same officer, it had certainly worked well in practice in the North-Western Provinces: he said this not as the result merely of his own experience and observation—for it was many years since he held the appointment of Magistrate and Collector—but on the authority of Mr. Spankie, whose letter he had read, and of other officers of experience. He had no doubt the system would work equally well at Madras and elsewhere if it only had fair play.

He quite agreed in all that had been said of Mr. Montgomery. He had the highest respect and esteem for that officer, but he could not overlook the fact that Mr. Montgomery had himself for many years successfully administered the system about to be superseded in Madras, first as Magistrate and Collector in the Regulation Provinces, and afterwards as Judicial Commissioner of the Punjab, and that Sir John Lawrence, than whom there was not a more practical man in all India, had not considered it advisable to introduce the proposed system into the Punjab, notwithstanding the success which was declared to have attended its adoption in an adjoining territory. He regarded this as a most significant fact. With respect to the Despatch from the late Court of Directors of the East India Company, from which the Honorable Member of Council opposite (Mr. Ricketts) had read extracts, he would only say that a later Despatch from the Honorable Court showed that their minds were not made up on the subject, though they wished that the system of separating the Judicial functions of the Magistrate from his Police functions should be introduced experimentally into the Madras Presidency. But the experiment was being tried in Oude. It was being tried there under most favorable circumstances, Major Bruce, an old and experienced officer, being at the head of the Police, and the Chief Commissioner being also, it was stated, favorable to the measure; and it certainly seemed to him, as he had already said, that before extending the system further it would be better to await the result of the experiment in Oude. With these remarks he would, with the permission of the Council, withdraw his motion.

MR. HARINGTON then, with the leave of the Council, withdrew his Motion.

MR. FORBES' Motion was then carried, and the Bill was read a second time.

## MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved the second reading of the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the Town of Bombay)."

MR. CURRIE said, there was one provision of the Bill which seemed to him to involve a question of principle, and upon which he wished to make a remark. He was the more desirous of taking this opportunity of doing so, as he would not be here when the Bill came again before the Council in Committee.

The point to which he referred was in Section IV, where it was provided that, when any article on which the town duty had been levied, "being the property of Government, is re-exported or is issued from any Government Depôt at Bombay for the use of the Indian Navy, or *for any other Government purpose*, the whole of the town duty shall be remitted." The words to which he took exception were "for any other Government purpose." It was quite right that the duty should be remitted on articles re-exported, and on articles issued for the use of the Indian Navy; but he apprehended that some part of the timber, for instance, imported by Government, might be issued for the construction and repair of Government buildings; and as Government buildings were liable to the house rate, the materials used for their construction or repair should be liable to the town duty. This would seem to be the view of the Bombay Government, for they asked only for the remission of the duty on articles issued for the use of the Navy.

He had, of course, no intention of interfering with the second reading of the Bill; but he had thought it right to call attention to the point which he had mentioned.

MR. LEGEYT said, he concurred in the remarks made by the Honorable Member, and would propose an alteration to the purport suggested by him when the Bill came under the consideration of the Select Committee.

MR. PEACOCK said, Section III of the Bill provided that the Municipal Commissioners might, at their discretion, compound for any period not exceeding three years, for a certain sum in lieu of town duties. He would not oppose the second reading of the Bill; but it appeared to him that this Section was very inappropriate.

MR. LEGEYT said, he would take a note of this objection also, and consider it in Select Committee.

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

## CIVIL PROCEDURE.

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

MR. RICKETTS said, he now begged to move the amendment, of which he had given notice. His object was to prevent the abolition of written pleadings in the Courts. He based his proposals on the following passages of the letter from the Sudder Court:—

"We think, therefore, that it would be preferable to adhere to the present system of written pleadings, aided by the oral examination of the pleaders, or, if necessary, the parties to the suit. By the former documents the Lower Courts would be led naturally to perceive at once the real issues in the case, and by the latter statements they could supply any thing which may be deficient in the pleadings themselves.

"The written verified statements recognized by the Code may be at variance with the oral statements, and be consequently superseded, and the oral statements may be drawn up so confusedly as to leave the Appellate Court in doubt whether the real issues in the case, as between the parties, have really been settled by the Lower Court or not. When this is the case, the Appellate Court will have no written document of an unquestionable character to which it can refer to ascertain this point, and in its absence justice is most likely to miscarry.

"It may be objected that the difficulties raised above are speculative difficulties, and may never occur in practice. It may be so, and the Court would be happy to think it likely that they were in error in suggesting the probability of their happening; but, guided by the experience which the Court has of litigation in this country, they desire to put it emphatically on record, that no system of procedure can in this country be entirely satisfactory, which does not embody the principle of written pleadings."

It was to be remarked that it was not a mere matter of opinion whether the system proposed was a good system or a bad system. It was a matter of fact. The Court said, whether the system be a good one or a bad one, it could not at present be carried out, and he believed them. With such pleaders

and with such Judges as they were obliged to employ, the success of the scheme appeared to him impossible. They were obliged to employ European Judges who had had little personal experience, and they were obliged to employ Native Judges who had had no practical experience at all. The Judges who submitted this letter to the Council were many of them men of great experience, thoroughly acquainted with the character and efficiency of the subordinate Judges, European and Native; and they would not have given the decided opinion he had just read, had they not been quite assured that the measure proposed was unsuited to the condition of the Courts. The Council were aware that in the Code of Procedure prepared by Messrs. Harington and Mills, written pleadings were retained. Yielding to the opinion of Her Majesty's Commissioners, the Honorable Member for the North-Western Provinces agreed to the provisions inserted in the Bill; but he (Mr. Ricketts) knew it to be his opinion that written pleadings, shortened and regulated as they might be under the direction of the Sudder Court, were indispensable to the due administration of justice in their Courts, and he was prepared to support the amendment, which he now begged to submit to the consideration of the Council. Should it be rejected, he felt quite sure that the great work now at length completed would fail to satisfy any classes. Before long a revision would be called for from all parts of the country. The industry and learning which had been brought to bear on the work might command admiration, but before long all would lament their ignorance of the real wants of those who had to seek justice in their Courts. With these remarks he begged to move that the following new Section be introduced after Section XXVI:—

"If the claim be for immoveable property, or for moveable property exceeding in amount or value the sum of five hundred Rupees, the plaint, in addition to the particulars specified in the last preceding Section, shall state all material facts and circumstances required to elucidate the claim without argument or repetition."

THE CHAIRMAN said, he was opposed to the amendment. He thought it would entirely alter the system which the new Civil Code intended to introduce, and would not secure the object which the Honorable Mover had in view—namely, a clear and satisfactory elucidation of the issues. He remembered that, in one of the debates on the Mofussil Small Cause Courts Bill, his Honorable and learned friend to the right (Mr. Peacock) produced a nuttee, and showed clearly from it that the system advocated by the Honorable Member (Mr. Ricketts) was not suited to the inferior class of Judges, for whom his amendment was designed. The real question in the case set out in the nuttee was, whether a party had executed a mortgage to another. Upon that question a long pleading was put in, stating all sorts of facts; and on that pleading the Moonsiff stated one of the issues to be, whether one of the parties did not go to a certain house and assault a woman with a felonious intent! If the parties had come into Court and told their own story, the Moonsiff would have taken down the only real issue—namely, whether, on a certain day, A had executed a mortgage to B.

The Honorable Mover of the amendment had referred to pleadings in England. No doubt, originally, there were oral pleadings in England; but it was afterwards deemed more convenient and cheap that the pleadings should be prepared out of Court. In the English County Courts the system was very much what the system in the Small Cause Court here was. A summons was issued, and the defendant appeared upon it and pleaded orally. Where a set-off was claimed, notice was given to the plaintiff; but otherwise there were no written pleadings at all.

MR. CURRIE said, he quite agreed in what had fallen from the Honorable and learned Chief Justice. It appeared to him that the amendment struck at one of the fundamental principles of the Bill, and he doubted whether such a question ought to be entertained in the stage at which the Bill had now arrived.

The subject of written pleadings had been very fully considered by Her Majesty's Commissioners; they had given the preference to oral examinations, aided, when necessary, by written statements, and had framed their rules of

procedure on this principle. Their reasons for having done so were stated in the notes to the Code. He would not occupy the time of the Council by reading them, but with reference to what had been said he would just observe that the Commissioners quoted the experience of the County Courts in England in support of their opinion for discontinuing the practice of written pleadings. The Code having been framed upon this principle, it appeared to him that, if any Honorable Member considered it objectionable, he ought to have brought forward his objection on the motion for the second reading of the Bill, or when it first came before a Committee of the whole Council. The Honorable Member said that he based his objection on a letter from the Sudder Court. But then why had the Sudder Court not stated their views before? Had they held these opinions all along, or had they formed them in consequence of some new light that had broken in upon them?

When the Report of Her Majesty's Commissioners was received, the Court was called upon to express their sentiments upon it. In consequence of that requisition, a letter had been written by the Registrar of the Court, and Minutes had been recorded by the Judges individually.

[MR. CURRIE here read extracts from the letter and minutes to show that the principle adopted by the Commissioners had been acquiesced in without objection by the Court.]

It appeared to him that the opinion now held by the Sudder Court ought not to be allowed to weigh against the opinion formerly expressed by them, supported as that former opinion was by the opinions of all the other Sudder Courts, and of those of the local Judges from whom communications had been received on the subject.

MR. HARINGTON said, the Honorable Member of Council opposite (Mr. Ricketts), in the remarks which fell from him at the last Meeting of the Council on the subject of his present motion, had alluded specially to him (Mr. Harington), and, if he recollected rightly, had stated that, in agreeing to dispense with written pleadings in suits which would be instituted under the Code, he had acted rather in deference to the opinions of others than from his own convictions. He wished, therefore, to say a few words in explanation of the line of conduct pursued by him in connection with the part of the Code under consideration. When he and Mr. Mills were engaged in the year 1854 in preparing a Code of Civil Procedure for the use of the East India Company's Courts in the three Presidencies, they gave much attention to the subject of written pleadings, and carefully weighed all the arguments for and against their use. In regard to petty actions of debt and the like, which they proposed should be tried by Courts of Small Causes or Courts exercising summary jurisdiction, they had no difficulty in coming to a decision. For cases of that description they did not see the necessity of written pleadings, and they proposed, therefore, that the plaintiff should be restricted to a brief written statement of his claim, and that the Court should be left to ascertain the grounds of the claim, as well as of the defence, by an oral examination of the parties or their representatives. They then considered whether they might not make the same system of pleading which they had proposed for simple demands of small amount applicable to all other classes of cases, but the conclusion at which they arrived was that such a mode of procedure, to quote the words of their Report, "was not suited to the habits of a civilized people, whose laws were not uniform, whose usages were peculiar, and whose transactions were frequently of a complex character." They went on to say:—

"With oral pleadings only, the Court might mistake the statements of the parties; the parties would come before the Court, not knowing beforehand what either party had to say or prove, and without the means of obtaining legal advice in the matter in suit between them; and the result would, we fear, be to increase litigation and expense. Moreover, we do not think it would be safe in suits relating to real property and other cases of complexity and difficulty to give to the Courts, as constituted and composed in this country, the power of reducing to writing the oral statements of the parties and of settling the issues altogether thereon.

"So violent a change would, we have reason to believe, be generally extremely unpopular and unsatisfactory to the people, and considering written allegations, therefore, to be indispensable to the efficient administration

of justice in cases of the above description, we have endeavored to simplify and limit the present form of pleading, and to render it less expensive and dilatory."

Her Majesty's Commissioners did not agree with Mr. Mills and himself for reasons which would be found stated in their report, though in the Code prepared by them, they introduced a Section which empowered the parties, for the purpose of assisting the Court in framing the issues, to put in written statements at the first hearing of the suit. The Code sent out by Her Majesty's Commissioners having been referred for his opinion, he made the following remarks in respect to the Section to which he had alluded and to the mode of pleading proposed therein.

"The system proposed by Her Majesty's Commissioners may be, and no doubt is, well adapted to simple actions of debt and the like, but I view its extension to complicated cases involving claims to real property, particularly those relating to inheritance, with considerable alarm, and think it would be unfair to the defendants in such cases to subject them to a *vivâ voce* examination by way of answer to the plaintiff's claim, in regard to many points involved in which they might be unable to give a clear and distinct answer without having recourse to a legal adviser, and then to hold them bound by what they may have so stated; while, if the *vivâ voce* examination is to be that of the advocates of the parties, instead of the parties themselves, I anticipate that the whole object of the law, which is to arrive at the truth by the simple process proposed by Her Majesty's Commissioners, will be defeated; that the advocates, frequently ignorant upon the points upon which they are examined, rather than acknowledge their ignorance, will hazard an answer to the questions put to them without caring much for the injury which they may be doing to their clients (this is found already to be the case even under the present system), and that it will soon be a trial of skill between the Court and the advocates, the former trying to elicit, and the latter trying to conceal as much as possible what they know; under such a system I cannot conceive that the ends of justice will be promoted to any greater extent than is the case at present. The objections which I entertain to the proposal of the Commissioners will no doubt in some measure be obviated by the written statements which the article under consideration will admit of the parties giving in whenever they may think proper to do so; but if written statements are to be allowed at all, I submit that it will be better for the parties themselves, and more convenient for the Courts, as tending to show the points on which issue is joined, or as distinguishing the facts admitted from those disputed, if they be in the form of plaint and answer, prepared according to a form or fixed rules, so far as rules can be laid down for their preparation, with a strict prohibition against the introduction of any argument or irrelevant matter."

Shortly after submitting the Report, in which these remarks were contained, the honor of a seat in this Council was conferred upon him, and having been nominated a Member of the Select Committee appointed to consider and report upon the Code, he lost no time in making the other Members of the Committee acquainted with his views; he failed, however, to convince them, and it was with some difficulty that he succeeded in obtaining a majority of votes in favor of a proposition made by him, that the Section to which he had already alluded should be transposed from the Chapter where it had been put by Her Majesty's Commissioners, to the place which it now occupied in the Code, and that the mention of the purpose for which written statements were to be allowed should be omitted. He considered that, in effecting these alterations in the Code, as prepared by Her Majesty's Commissioners, he had achieved a great triumph, and seeing no probability of being able to accomplish more, he was content to allow this part of the Code to stand as at present framed; but as the Honorable Member of Council opposite proposed now to alter the Code in a manner which would make it accord with the views expressed by Mr. Mills and himself, and to which he (Mr. Harington) still adhered, he felt that he was bound to support the Honorable Member's motion. He might observe that the amendment of the Honorable Member of Council, if carried, would lead to the discontinuance altogether of written pleadings or statements in all personal actions in which the amount or value in dispute did not exceed the sum of five hundred Rupees; in other words, in about four-fifths of the entire litigation of the country, which he thought would be a great improvement and a move in the right direction; while, as regarded suits of the description just mentioned, a further effect of the amendment would be that it would bring the Code more into conformity with what was proposed by Her Majesty's Commissioners.

*Mr. Harington*

He did not think the case referred to by the Honorable and learned Chairman furnished any argument against the adoption of the motion of the Honorable Member of Council. He was quite prepared to admit that the present system of written pleadings had been greatly abused, and the case alluded to might be quoted as an instance of such abuse; but, after all, what did that case prove? Surely not that written pleadings were bad or objectionable in themselves, but that the Judge, who framed the issues in the suit, was ignorant of his duties. Precisely the same thing might occur after an oral examination of the parties under the system proposed to be introduced. There would be nothing to prevent a defendant from entering in his defence into similar details to those contained in the written answer in the case in question, or a careless or ignorant Judge from falling into similar mistakes as regarded the issues to be laid down and tried.

He agreed with the Honorable Member for Bengal, that it would have been more convenient, if the objections, now urged by the Sudder Court at Calcutta to the doing away with written pleadings, had been taken in that Court's earlier remarks upon the Code; but if those objections were well founded, he did not think that it would be right to reject them simply because of the lateness of the period at which they had been brought forward.

MR. PEACOCK said, it appeared to him that the Code went quite far enough in the way of admitting written statements. Indeed, he was not certain that it did not go too far. Section XXVI, Item 3, required that the plaint should contain, among other particulars, the following:—

"The relief sought for, the subject of the claim, the cause of action and when it accrued; and, if the cause of action accrued beyond the period ordinarily allowed by any law for commencing such a suit, the ground upon which exemption from the law is claimed."

According to the form prescribed in Schedule B, the plaintiff must set forth the particulars of his claim in the summons; so that the defendant would see the nature of the cause of action specified in the summons.

It was provided as follows by a later Section:—

"The parties or their pleaders may tender at the first hearing of the suit written statements of their respective cases, and the Court shall receive the same and put them on the record. Such statements shall be written on the stamp paper prescribed for petitions to the Court where a stamp is required for petitions."

And afterwards:—

"No written statement shall be received after the first hearing of the suit, unless called for by the Court. But it shall be competent to the Court, at any time before final judgment, to call for a written statement, or an additional written statement from any of the parties. When such statements are called for by the Court, they shall be received on plain paper."

He thought that this would answer every useful purpose. Whatever the nature of the subject matter of the complaint might be, the defendant would have notice of it in the summons, and he might, if he wished, state his defence at the first hearing.

The effect of the proposed amendment would be that in all claims for immoveable property, or where the cause of action exceeded five hundred Rupees, there must be written pleadings. The object of Her Majesty's Commissioners was to avoid written pleadings, unless the case was of a complicated nature, and the Judge required them. They said:—

"In the great mass of cases the matter in dispute between the parties is evident from the first. In cases of more complexity it may be necessary to resolve the case into one or more distinct points; in other words to settle the issues. To assist the Judge in this operation, the parties are allowed to present written statements of what they respectively believe to be the material facts of the case; or, where they omit to present written statements, the Judge may call for them if he think proper. From the statements and the oral examination of the parties he is to frame and record the issues of law and fact on which the right decision of the case may appear to him to depend; and he is to appoint the time at which the issues of fact are to be tried, or the questions of law argued.

"This mode of settling the issues is not new to India. It has long been in practice in the Company's Courts; and great importance has always been attached to it by the Court of Sudder Dewanny Adawlut. It was intro-

duced by Regulation XXVI. 1814 of the Government of Bengal, which contains the following provisions on the subject, Section X Clause 2 :—' If from the pleadings in the case the points at issue cannot be clearly ascertained, or if from any other reason further explanations may be requisite, the Court shall, on the day on which the suit may be first brought to a hearing, make such inquiries from the parties or their pleaders as may appear necessary, with a view to ascertain the precise object of the action, and the grounds on which it is maintained, and shall record the result in their proceedings. 3. The Court shall then consider and record the point or points to be established respectively by the plaintiff and defendant, and shall proceed to take the evidence which may be adduced by either party upon such points in the manner prescribed by the rules in force.' The above provisions have been adopted at Madras and Bombay, and on five different occasions the Sudder Dewanny Adawlut at Calcutta has called the particular attention of its subordinate judicatories to them requiring their strict observance. In an appeal to the Privy Council from a decision of the Sudder Dewanny Adawlut at Madras, the Lords of the Council refused to sustain the judgment of the Court mainly for the purpose of supporting and securing compliance with what they term ' this most wholesome Regulation.' Recently, by an Act of the Indian Legislature, the provisions of the Regulation have been extended to suits before the Moonsiffs ; and it is believed that the provision adverted to is now in very general operation. Finally, Mr. Mills and Mr. Harington recommend its continuance by their proposed Code of Procedure.

" If a statement of fact be substituted for the word ' pleadings' in the Clauses of the Regulations above cited, the settlement of issues in the manner suggested in our proposed scheme is only the continuance of an operation which is familiar to all the Judges of the Company's Courts in India; and the only difference between the measure suggested by us and the present practice is, that the production of written statements, and the formality of settling the issues, are reserved by the former for the complicated cases in which the Judge or the parties may think that they are required ; and that by the latter they are made general, and are used in all cases, whether really requisite or not."

The Select Committee on this Bill thought that the parties in any suit should, if they pleased, put their written statements on record.

To compel a defendant to put in a written answer, might operate injuriously to him. He might have to go to a pleader for the written answer; whereas under the Bill, as it stood, he would go to the Court direct, the Judge would ask him what his answer to the summons was, and the answer would probably be some simple statement, namely, that he had paid the money sued for, or the like.

He referred to the extreme length of the record in suits under the present system, instancing the nuttee formerly spoken of, and one which he had since seen. It appeared to him that the Code as amended went quite far enough, and that, if the Council should alter its provision to the extent recommended, a door would be opened to the evils and abuses which prevailed under the present system.

MR. GRANT said, he had a very few observations to offer upon this question. He had not had an opportunity of giving much consideration to it before this day, but his vote would be regulated by the arguments he had heard on the motion made. The Honorable Mover had grounded his motion on the objections which had been brought forward by the Sudder Court. He had read those objections, and he must say that they appeared to him to be entirely well founded, and that he had not heard anything to-day which appeared to him an answer to them.

The Sudder Court said that there were three systems, and intelligible systems—the system of oral pleading, the system of written pleading, and the system of written pleadings controlled and checked by oral examination of the pleaders, and, if necessary, of the parties to the suit. He believed that all these three systems were more or less good. For a particular class of cases, he had no doubt that oral pleadings were the best system ; whilst he believed that for other cases written pleadings, checked by oral proceedings, would form the best system. And there was experience enough to show that written pleadings alone constituted a fair working system. But under this Bill, there would be neither one thing nor the other. The system is to be one of oral pleadings ; but there are to be written statements, which the parties are to have a right to put upon the record, and which he, (Mr. Grant) must take the liberty of calling written pleadings. Then, after these written pleadings are recorded, the Judge need not pay any attention

to them; and if there should be a complete difference between them, and the record of the oral pleadings, that is to be a matter of no consequence. He (Mr. Grant) could imagine no object for this, unless it were the object to perplex and confuse the Appellate Court. The record was the oral pleading: the parties, however, would put in what would be in the nature of written pleadings, and the two pleadings would have no reference to each other. The defendant might say "the oral pleading is incorrect, go to my written statement;" but the written statement need never be looked at for all that. He (Mr. Grant) suspected the truth to be that the framers of the plan were in theory strongly in favor of the simple system of oral pleading; but when they came to think out the question, and to trace what the practical result of that system might be in India, they had become afraid of their own theory, and thus had grown out this excrescence of written statements, which as far as he could see would be no security, whilst it would create confusion and disorder in the appeal, and render the Appellate Court incapable of coming to a conclusion satisfactory even to itself.

The whole system reminded him of a celebrated cause in Rabelais, in which the plaint is unintelligible enough, and the humour consists in the answer, which is no more intelligible, having no reference whatever to the plaint; and the climax of the fun is in the judgment, which has not the remotest connection with the plaint or the answer. Now if it were the object to have our causes tried on this model, the proposed system seemed likely to meet it. For look what that system is. The two written statements, which are in fact the written plaint and answer, are to be put in simultaneously; so that the person who draws the answer is not to see what he has to answer until afterwards. Now if that was not the way to get an answer like that in Rabelais' case, he did not know a better. Then it is expressly provided that the Judge may, if he pleases, give a judgment with no more respect to these written pleadings than Rabelais' judge showed. He (Mr. Grant) did not think that this could be a good system. He should vote in favor of the Honorable Member's Motion; but meaning by that vote only to go as far as to affirm in regard to large cases, the opinion of the Judges of the Calcutta Sudder Court, that it would be preferable to adhere to the present system of written pleadings, aided by the oral examination of the pleaders, or if necessary the parties to the suit.

THE CHAIRMAN observed that it was expressly provided that the summons to be served on the defendant should state the particulars of the claim. The written statements would be put in at the first hearing.

MR. RICKETTS' motion being put, the Council divided—

| *Ayes* 3. | *Noes* 5. |
|---|---|
| Mr. Harington. | Mr. Forbes. |
| Mr. Ricketts. | Mr. Currie. |
| Mr. Grant. | Mr. LeGeyt. |
| | Mr. Peacock. |
| | The Chairman. |

So the Motion was negatived.

MR. HARINGTON moved the insertion of the words "or if the pleader be accompanied by another person able to answer all material questions relating to the suit, then such other person" after the words "by a pleader" in the 6th and 7th lines of Section 125.

Agreed to.

MR. HARINGTON moved that the words "Such examination shall (unless the pleader be the person examined) be" be substituted for the words "Every party who is examined shall be examined" in the 6th and 7th lines of the Section.

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

MR. CURRIE moved the insertion of the words "not being documents relating to affairs of state, the production of which would be contrary to good policy" after the word "papers" in the 7th line of Section 138.

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

MR. CURRIE moved that the words "satisfaction of the decree be otherwise" be substituted for the words "it shall be proved to the Court that satisfaction thereof has been" before the word "made" in the 7th line of Section 245.

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

MR. HARINGTON moved the addition of the following Proviso to Section 378 :—

"Provided that no review of judgment shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree of which a review is solicited."

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

MR. HARINGTON moved the omission of the words "Provided that" in the beginning of Section 379.

Agreed to.

MR. PEACOCK moved that the words "This Act shall come into operation in the Presidency of Bengal from the 1st day of July 1859, and in the Presidencies of Madras and Bombay from the 1st day of January 1860, or from such earlier day as the local Government in those Presidencies respectively shall fix and shall publicly notify in the Gazette of the Presidency three months at least before the date so fixed" be substituted for all the words before the word "But" in the 4th line of Section 387.

Agreed to.

MR. PEACOCK moved that the words "pending at the time when this Act shall come into operation" be substituted for the words "then pending" in the 5th line of the Section.

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

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

## MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved that the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in the Town of Bombay)" be referred to a Select Committee consisting of Mr. Peacock, Sir Charles Jackson, and the Mover.

Agreed to.

## SALES OF LAND IN EXECUTION OF DECREES.

MR. RICKETTS postponed, till Saturday, the 19th Instant, his adjourned motion respecting sales of land in execution of decrees of Court.

## CIVIL PROCEDURE.

MR. PEACOCK gave notice that he would on the same day move the third reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter."

## PENAL CODE.

MR. CURRIE moved that a communication received by him from the Bengal Government, relative to the introduction of Corporal Punishment for infraction of the Abkaree Regulations in Military Cantonments, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned at 5 o'clock on the motion of Mr. Grant till Monday the 14th Instant.

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*Monday, March* 14, 1859.

PRESENT:

The Right Honorable the Governor-General, in the Chair.

| | |
|---|---|
| Hon. the Chief Justice. | P. W. LeGeyt, Esq, |
| Hon. J. P. Grant. | E. Currie, Esq. |
| Hon. Lieut.-Genl. Sir J. Outram. | H. B. Harington, Esq., and |
| Hon. H. Ricketts. | H. Forbes, Esq. |
| Hon. B. Peacock. | |

## CUSTOMS DUTIES.

THE GOVERNOR-GENERAL moved that the Council resolve itself into a Committee on the Bill "to alter the Duties of Customs on goods imported or exported by sea."

The question being proposed—

MR. GRANT said, before the Council went into Committee, he wished to say a few words on one particular point in connection with the Bill.

The Bill did not touch Salt, and very properly so; because the Salt duty was in effect an Excise duty, and the Customs Laws applicable to it were merely auxiliary to the Excise Law.

In the speech which His Excellency had made last Saturday, His Excellency had remarked that he should be opposed to any proposal for raising the