LEGISLATIVE COUNCIL

OF

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Saturday, March 5, 1859.

PRESENT:

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

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

MERCHANT SEAMEN.

THE CLERK presented a Petition (enclosed in a letter from the Governor of the Straits' Settlement) from ship-owners and others interested in the trade of Singapore, praying that the Merchant Seamen's Bill be made applicable to the Ports in that Settlement.

MR. CURRIE said that, if he had rightly apprehended the substance of the Petition, the only points which concerned this Council were the extension of the Act to Singapore and the Straits and the limitation of advances to one month's wages, and those had already been provided for.

OATHS AND AFFIRMATIONS.

THE CLERK presented a Petition from Protestant Missionaries residing in and near Calcutta against the Bill concerning Oaths and Affirmations.

MR. FORBES moved that the Petition be printed.

Agreed to.

EXPORTATION OF PIG LEAD.

THE CLERK reported to the Council that he had received from the Foreign Department a correspondence with the Bombay Government on the subject of prohibiting the exportation of Pig Lead.

MR. PEACOCK moved that the correspondence be printed.

Agreed to.

VILLAGE WATCHMEN (BENGAL).

MR. RICKETTS said he rose, in pursuance of the notice which he had given on Saturday last, to move the first reading of a Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal," or, as it might more appropriately be styled, a Bill for the better regulation and management of the Rural Police. As he knew that the Council was anxious to proceed with the new Code of Procedure, he would occupy only a few minutes with explanations of the measure. The matter had been fully discussed when Act XX of 1856 was before the Council. It was not necessary for him to tell those acquainted with Bengal politics that the Rural Police had been next to useless. He assured his Honorable friend the Member for Bombay that it was as bad as the Bombay Police was before the reforms commenced in 1853-54; and he could assure the Honorable Member for Madras that it was as bad—no, that was an exaggeration—nearly as bad as the Police of Madras. There was not a word to be found in the dictionary of synonymes having any affinity to opprobrium that had not been applied to the Bengal Police. He (Mr. Ricketts) found the Honorable Member now absent (Mr. Grant) some years ago speaking thus of the Police:—

"It has always appeared to me that our local Police is the worst feature in our administration. It is neither the Police of the people nor the Police of the Government; it is therefore unpopular, arbitrary, and vexatious, at the same time that it is undisciplined, incapable, and ill-directed."

Mr. Grant had had long experience in Bengal, and no one was more qualified to express an opinion; if there was any one, it was the Lieutenant-Governor of Bengal, who said—

"No man with property worth two hundred Rupees in his house can lie down to rest at night without the most vivid and well-founded fear that he and his family will be awakened in the night by the assault of merciless plunderers, who only omit to murder as well as to rob when the terror of their attacks has prevented all attempt at resistance."

Going back for a few years, they would find the opinion of a Committee appointed in 1837 to report upon the subject. They wrote—

"It is even a question whether an order issued throughout the country to apprehend

and confine the chowkeydars would not do more to put a stop to theft and robbery than any other measure that could be adopted."

Act XX of 1856, as originally framed, embraced the Village Police as well as the watchmen of Towns, but the principle propounded in the Draft was to make the landowners answerable for the pay of the Village Police, and it being feared that that principle could not be maintained, the Village Watch were excluded from the Bill. In a Minute on the subject his Honorable and learned friend opposite (Mr. Peacock) wrote—

"I would not exempt the owners or occupiers of land from any liability to contribute to the support of Village Watchmen which may attach to them according to the custom and usage which have prevailed in each village.

"The custom to maintain watchmen seems to have existed from the earliest times in every village. I cannot think that it could ever have been intended that the maintenance of that class of officers should fall into disuse, or be considered as merely optional with those who have always contributed to their support. Where lands have been appropriated to their support, they should continue to be so. When the watchmen have been paid by the contributions from the village community, either in money or grain, such contributions should be considered obligatory. I find that the continuance of the Village Watchmen is contemplated by the Regulations passed at the time of the permanent settlement, although it does not appear that any provision was at that time expressly made for their support. By Regulation XXII of 1793, Section XIII, all Pykes, &c., and other descriptions of Village Watchmen are declared subject to the orders of the Darogah. He is to keep a register of their names, and upon the death or removal of any of them, the landholders or others to whom the filling up of the vacancies shall belong, shall send to the Darogah the names of the persons whom they may appoint."

He (Mr. Ricketts) had made this passage of his Honorable friend's Minute the foundation of his proposals; he sought to impose no new taxation, neither had he any wish to shift the responsibility of appointing Village Chowkeydars; all that he aimed at was to fix and systematize existing privileges and existing liabilities.

He (Mr. Ricketts) would at once prefer to dismiss all the Chowkeydars of Bengal, and see how we could do without them, if he thought reform was impracticable; but he believed that a certain degree of reform was practicable. When the attempt was made before and abandoned, at the request of Lord Dalhousie, an enquiry was instituted into the number of Chowkeydars, and the amount and mode of their payment, through the Magistrates of Districts, and it was found that there were 1,64,877 Chowkeydars in 1,59,309 villages containing 68,28,866 houses, being 1 Chowkeydar to 41 houses. The sum paid to these Chowkeydars was estimated at Rupees 59,35,572, including presents, or three Rupees per mensem each.

Now, the whole of this large sum was much worse than thrown away; so many men could not be necessary; he (Mr. Ricketts) thought that one-half well paid and well managed would be sufficient; he desired to see carried out the views of the Lieutenant-Governor of Bengal, as expressed in his Minute written after the receipt of the returns. In that Minute the Lieutenant-Governor wrote—

"What is however necessary to secure the old institution of a Village Watch from falling into utter desuetude, and for keeping it in a state of vigor sufficient for our present purposes, but doubtless to be further improved and reformed hereafter, is a law which shall enable a Magistrate, on finding a village without a Chowkeydar or a Chowkeydar without wages, to make a summary inquiry, and, according to the nature of the case, either to cause the nomination of a fit Chowkeydar by the person or persons to whom the nomination may be proved by custom and usage to belong, or to cause payment of his wages at the rate found customary by the person or persons on whom the customary liability to pay such wages may be found to fall. Any very precise provisions would, I humbly think, be out of place at present."

He (Mr. Ricketts) wished to carry out these views of the Lieutenant-Governor, and he thought that was all that could be attempted at present with any prospect of success. He would now, with the permission of the Council, read those Sections of the Bill upon which he thought it was probable that discussion might arise. He would call attention to Section V, which provided that—

"If the sum hitherto paid by the inhabitants of a watchman's beat does not amount to three Rupees per mensem, the Magistrate may cause the parties responsible to make good that sum, or may amalgamate such watchman's beat with the beat of another watchman or other watchmen, and make the pay

of the watchman dispensed with payable to such other watchman or to such other watchmen in such portions as may appear proper."

He anticipated some opposition to this principle out of doors, inasmuch as it took the matter out of the hands of the people, and placed additional power in the hands of the Magistrate, but he believed the measure to be necessary. It might be that the inhabitants of the beat were unable to pay more; if they were, he thought it would be better to have no watchman than to have one so badly paid that he could not live. Under the Bill a Chowkeydar would either be dispensed with, or have as much as would enable him to live honestly.

Sections VI, VII, and VIII provided that, when the watchmen were paid by the inhabitants, and not by landowners or by zemindars, a punchayet of five respectable persons should be formed to determine the cess necessary for the payment of the watchmen. This was doubtless conferring great power on the punchayet, as they would have to assess themselves with reference to their ability to pay, but he thought the power would be better in their hands than in those of any other party. The working might at first be attended with considerable trouble, but it was in his opinion, on the whole, the best arrangement that could be made. His Honorable friend (the Clerk Assistant of the Council), than whom no man knew more of the feelings, and wishes, and wants, and requirements of his countrymen, entirely agreed with him upon this subject.

The other Sections to which he would allude were Nos. IX and X, which gave power to the Magistrate to dispense with the appointment of one or more watchmen in certain cases, and to cause the money leviable to be paid to another watchman, with a view to the increase of his pay and to his appointment as head watchman; and provided for the formation of watch-posts and for making the head watchman answerable for the peace of all the villages or beats included in the tract of country placed under him. These measures probably would be opposed, but it was no use to have an army without officers to rule and manage it; he thought it advisable to enable the Magistrate to appropriate part of the fund available to the remuneration of a new class of superior watchmen, who would be responsible for the beats placed under them. It was well known that in Bengal thieves very seldom went alone; they were always in parties of two or three, and no Bengali watchman would meet three thieves: to be useful they must be employed two or three together.

He (Mr. Ricketts) would not detain the Council with further observations; it was universally admitted that reform was needed, and that any change must be for the better; that nothing could be worse than the existing state of things He was aware that, in undertaking this reform, he had imposed on himself a task of no little difficulty, but with the long experience he had had in Bengal, he ought to be able to accomplish it: he felt confident of having the cordial assistance of all his Honorable friends in the Council, and with their aid he hoped to be instrumental to the removal of this blot in the administration. He begged to move the first reading of the Bill.

The Bill was read a first time.

CIVIL PROCEDURE.

On the Order of the Day being read for the re-committal 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. CURRIE said that it fell to him to move the first amendment; and before doing so he would take the opportunity of saying generally that, since the publication of the amended Bill several communications had been received from the Sudder Courts and from Judicial Officers, and the Members of the late Select Committee on the Bill had held more than one meeting for the purpose of giving the suggestions contained in those communications a careful consideration. Some of the suggestions it had been thought advisable to adopt, others could not be entertained with advantage, and upon the merits of others there was some difference of opinion in the Select Committee, upon which the Council would decide. All the alterations which had been proposed had been carefully considered.

He had to move the omission of Section 2, and the substitution of the two following Sections :—

" The Civil Court shall not take cognizance of any suit brought in a cause of action which shall have been heard and determined by a Court of competent jurisdiction in a former suit between the same parties or between parties under whom they claim.

" The judgments of the Civil Court shall not be subject to revision otherwise than by those Courts, under the rules contained in this Act applicable to reviews of judgment, and by the constituted Courts of Appellate Jurisdiction."

The use of the word " suit" in Section 2, as it stood, was not quite accurate ; and it was thought that the provisions of Section 11 would stand better in immediate connection with Section 2.

Agreed to.

MR. HARINGTON moved the introduction of the following three new Sections after Section 5 :—

" Every suit shall include the whole of the claim arising out of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. If a plaintiff relinquish or omit to sue for any portion of his claim, a suit for the portion so relinquished or omitted, shall not afterwards be entertained.

" Causes of action by and against the same parties, and cognizable by the same Court, may be joined in the same suit, provided the entire claim in respect of the amount or value of the property in suit do not exceed the jurisdiction of such Court.

" If two or more causes of action be joined in one suit, and the Court shall be of opinion that they cannot conveniently be tried together, the Court may, on the presentation of the plaint, or at any stage of the suit, call upon the plaintiff to elect upon which cause of action he will go to trial, and may strike out the remaining cause or causes of action upon such terms as it may think proper ; but the plaintiff shall not be thereby debarred from bringing a separate suit for the portion of the claim so struck out."

He explained that the object of the Sections which he wished to introduce was to prevent the multiplication of suits between the same parties. This was proposed to be effected, *first*, by requiring that every suit should include the whole of the claim arising out of the cause of action ; and, *secondly*, by allowing two or more causes of action by and against the same parties and cognizable by the same Court to be joined in one suit, provided that the amount or value in dispute did not exceed the jurisdiction of the Court in which the action was brought, and provided also that there was no such dissimilarity in the character of the different causes of action as would render their being united in a single suit objectionable or improper. When a cause of action accrued upon a bond, and the sum claimed consisted partly of principal and partly of interest, he thought that the plaintiff should be compelled to institute one suit for both items, and that he should not be allowed to sue first for the principal and afterwards for the interest of the debt ; and that, if, for the purpose of rendering his suit cognizable by a Court of limited jurisdiction, the plaintiff should bring a suit for the principal only, he should be understood to have abandoned the rest of his claim, and a suit for the interest of the debt should not afterwards be entertained. Upon the same principle, there seemed no reason why a single suit should not be allowed to recover the amount of several bonds, where the parties to the contract were the same, provided that the sum claimed under the several bonds was cognizable by the Court in which the suit was brought. There was nothing in the Code as now drawn prohibitory of an action of this nature, but in a decision recently passed by the Privy Council, a doubt was expressed as to whether the practice of the Courts in this country would admit of such a suit being heard, and it was desirable to prevent any such doubt from arising hereafter, by introducing a declaratory rule. At the same time it would be obviously improper to allow causes of action of all kinds, however dissimilar in character, to be united in a single suit; for instance, a party should not be allowed to combine in one action a claim for possession of a house under a deed of sale, and a claim to recover damages for defamation of character; and, accordingly, the last of the Sections proposed by him gave the Court power, when it considered that two or more causes of action had been improperly joined together, to call upon the plaintiff to elect on which of them he would go to trial, and to strike out the remaining cause or cause of action.

The first and second Sections proposed having been put by the Chairman, they were agreed to.

Upon the Chairman reading the proposed Section No. 3—

MR. PEACOCK remarked that he thought it would be better that the Court should have the power of ordering separate trials, rather than that the plaintiff should elect upon which cause of action he would proceed. He would therefore move that all the words of the proposed Section after the word "may" in the 4th line be struck out, and that the following words be substituted:—"order separate trials to be had."

MR. CURRIE said that he would not oppose the motion, although the subject had been well considered in the Select Committee, and it was thought that it was better to put the Section in the form in which it stood. He thought that there ought to be as many plaints as trials and as many corresponding entries in the register; such a course would be far more simple, and would not be unduly hard upon the suitor who had joined incongruous causes of action in the same suit.

THE CHAIRMAN said, that he thought it would be advisable to avoid punishing the plaintiff and defendant by imposing the necessity of different stamps, which would be the case if of necessity separate actions had to be brought; it had been suggested to him that the first of the new Sections would operate very inconveniently, if, as was one construction which might be put upon it, it compelled the person who brought an action for the recovery of land to institute his claim for wassilaut in the same action and to pay stamp duty calculated on both claims. He was not prepared to say that these two claims did fall legitimately within the first Section as constituting the whole of the claim arising out of the cause of action. But he understood that that was the view of the Honorable Member for the North-Western Provinces. He (the Chairman) should vote for the amendment of his Honorable and learned friend.

MR. HARINGTON said, there could be no doubt that, under the Section referred to by the Honorable and learned Chairman, if a party suing for land claimed mesne profits also for a period antecedent to the institution of his action, he would be required to include their amount in the suit for the land on which they had accrued, otherwise the claim for mesne profits would be barred, and he thought that this was reasonable and proper. The title to the mesne profits would, ordinarily, in a case of this kind, be derived from the title to the land on which they were claimed, and as by establishing his right to the one the plaintiff would in most instances establish his right to the other also, there seemed no reason why he should not be obliged to bring one suit for both claims. The Section proposed by him would introduce no new rule of practice. So far back as the year 1839 the Sudder Courts at Calcutta and Agra had issued a circular, in which they pointed out that, when a party claimed not only to be placed in possession of an estate, but also to recover a sum of money as mesne profits, which had accrued prior to his coming into Court to establish his right to the estate, he should be required to declare the specific sum to which he considered himself entitled on this account according to the nearest estimate, and having made the entire claim the subject of a single action, should value his suit accordingly. The Calcutta Sudder Court had certainly since seen reason to relax the rule, but in so far as his own experience went, it had worked well in practice, and he should regret its omission from the new Code. No doubt the enquiry into the amount of mesne profits would often occupy a considerable time, and the proofs required to substantiate their amount would not infrequently be different from those on which the claim to the land rested; but in order that the decision of the suit might not be delayed on this account, a Section had been introduced into the Code, which gave the Courts power, when the amount of mesne profits was disputed, to pass a decree for the land, and to reserve the enquiry into the amount of mesne profits for the excution of the decree. With regard to the amendment proposed by the Honorable and learned Member of Council on his left (Mr. Peacock), he would only say that he saw no objection to it, and he was quite willing that it should be adopted.

SIR CHARLES JACKSON saw no objection to the amendment of his Honorable and learned friend (Mr. Peacock), provided that the judgment in each case be kept perfectly distinct, and the proceedings divided in every subsequent stage, as it was probable that one record might be required to be produced apart from the other.

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

THE CHAIRMAN proposed the introduction of the following new Section :—

"A claim for the recovery of land, and a claim for the mesne profits of such land, shall be deemed to be distinct causes of action within the meaning of the two last preceding Sections."

He said, if the Section was carried, the choice, of either selecting one cause of action or joining more than one, as the case might be, would rest with the Judge, whilst at the same time the plaintiff would be under no obligation to include both : if more convenient, however, that both should be tried together, such could be done.

MR. HARINGTON objected to the introduction of the Section proposed by the Honorable and learned Chairman, and should vote against the motion. He had already given his reasons for considering that both claims, that is the claim for the land and the claim for mesne profits which had accrued on the land prior to the date of suit, should form the subject of a single action, and he would not now occupy the time of the Committee with any further remarks on the subject.

MR. PEACOCK thought, that it would be very convenient to allow both to be so included. By the Section proposed the plaintiff would have such power, although he would not be compelled so to do.

MR. CURRIE was opposed to the introduction of the Section. If the title to the land and the right to mesne profits were regarded as distinct causes of action, the title might be tried in an inferior Court, and the claim to mesne profits in a higher one; for it was to be recollected that land was valued according to its jumma, and not according to its actual value.

The Committee then divided—

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

So the proposed Section was agreed to.

Upon the Motion of Mr. Currie Section 11 was omitted.

MR. FORBES moved the introduction of the following new Section after Section 14 :—

"When a pleader has been duly appointed under the last preceding Section, the Court, if it be satisfied that such pleader is for some sufficient cause unable to attend personally to make any such application or appearance as aforesaid, may allow him to appoint any other pleader of the Court to make the application or to appear (as the case may be) in his absence."

He said that such a privilege as he proposed was allowed in England and in the Courts in India established by Royal Charter. He believed that it was thought by some that under such a rule pleaders in this country would frequently neglect the cases of their poorer clients, but he thought that if any such evil arose by the adoption of the proposed course, it would cure itself, as a pleader's livelihood depended on his success, and if he was systematically to neglect the interests of his clients, they would soon leave him. It was not right that the time of three highly-paid Judges should be wasted by having to wait for the plaintiff's Attorney or Pleader, who might have three different cases to attend to in the Sudder Court, in the 24-Pergunnahs, and in the Magistrate's Court.

MR. HARINGTON opposed the introduction of the Section; he thought that no Pleader should be allowed to delegate his duties to another Pleader without the knowledge and consent of his client. The character of the English Bar was very different from that of the Native Bar, particularly in the Courts of the Uncovenanted Judges, and he was not prepared to say that what might be quite safe and proper in the case of the English Barrister would be equally safe and proper in the case of

the Native Pleader. He thought the Section proposed would be as unpopular as it was uncalled for.

The Committee then divided on the question—

Ayes 2.	*Noes* 6.
Mr. Forbes.	Mr. Harington.
Mr. Currie.	Mr. LeGeyt.
	Mr. Peacock.
	Mr Ricketts.
	Mr. Grant.
	The Chairman.

The Section proposed was consequently negatived.

Mr. CURRIE moved the introduction of the following new Section after Section 19:—

"If any plaint, written statement, or declaration in writing required by this Act to be verified, shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the provision of the law for the time being in force for the punishment of giving or fabricating false evidence."

He remarked that the Section which he proposed to introduce provided a penalty for false statements. Such penalty was provided in the Penal Code, but as it was likely that this Bill would come into operation before the Penal Code, he thought it would be better to make such a provision.

The Section was agreed to.

Mr. CURRIE moved the insertion of the word "ordinarily" after the word "party" in the first line of Section 29.

Agreed to.

Mr. HARINGTON moved the omission of the words "reject the plaint" at the end of the same Section, and the substitution of the words "return the plaint to the plaintiff." He remarked there was no reason why the omission to furnish the security required under this Section should necessarily be followed by the rejection of the plaint, which was a very heavy penalty, and he thought that the Court should be allowed in such cases to return the plaint, leaving the plaintiff to file it afresh at some future period with the required security.

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

Mr. LeGEYT moved the introduction of the following new Section after Section 29:—

"If in any stage of a suit it shall appear to the Court that the plaintiff (being sole plaintiff) is a person residing out of the British territories in India, the Court may order him, within a time to be fixed by such order, to furnish security for the payment of all costs incurred and to be incurred by the defendant in the suit. In the event of such security not being furnished within the time so fixed, the Court shall pass judgment against the plaintiff by default."

After some discussion the Section was agreed to.

Mr. HARINGTON moved the addition of the following words to Section 30:—

"The rejection of a plaint on any of the grounds mentioned in Sections 24 and 26 of this Chapter shall not preclude a plaintiff from presenting a fresh plaint in respect of the same cause of action."

He said it had been suggested that, unless these words were added to the Section, the Courts might consider themselves to be debarred from admitting a fresh action where a plaint had been rejected under either of the two Sections mentioned, which was certainly not intended. The case would be different if the rejection took place on one or other of the grounds specified in Section 27. In such case the plaintiff should not be allowed to institute a fresh action, though, if dissatisfied with the order of rejection, he would be at liberty to appeal from it.

Agreed to.

Mr. HARINGTON moved the addition of the following words to Section 35:—

"The Court shall determine at the time of issuing the summons whether it shall be for the settlement of issues only or for the final disposal of the suit, and the summons shall contain a direction accordingly."

He remarked that the Code, as originally prepared in England, allowed the plaintiff to elect whether the summons to the defendant should be for the first hearing and settlement of issues only, or for the final disposal of the case. It appeared, however, to the Select Committee on the Bill that the power to discriminate between the two classes of

cases would not be exercised with any beneficial results by parties instituting suits under the Code; that in practice almost every plaintiff would endeavor to obtain a summons for a final disposal of the case; and that defendants generally, rather than risk the loss of their suits or the costs of adjournments, would attend prepared for a final hearing when required by the summons to do so, whatever might be the character of the suit. It further appeared to the Select Committee that the special directions which must be endorsed on the summons to the defendant, in the event of the Section, as prepared by Her Majesty's Commissioners, being retained, would frequently be misapprehended, and that, to quote the words of the Report, "by misrepresentations of their effect to ignorant defendants, they might often be perverted for mischievous purposes." The Section was accordingly altered, and one general rule was introduced for all cases. But it had been objected to the Section as altered that it would prevent any disputed case, however simple in its character, from being finally determined at the first hearing. There was some force in this objection, and as it was desirable to enable the Courts, as far as possible, to dispose of cases at a single hearing, he was anxious to add to this Section the words of which he had given notice. The Court would generally be able to form a tolerably correct opinion from the particulars required to be given in the plaint, whether the case was one which would admit of being disposed of at the first hearing or not, and it would issue its summons accordingly. The distance at which the parties resided from the Court would also be taken into consideration. There seemed no reason to apprehend that the Courts would abuse the power proposed to be conferred upon them, or that they would exercise it otherwise than for the benefit of the parties. In making the present motion, he had particularly in view the different classes of suits which would be cognizable by Courts of Small Causes under the Bill introduced by him.

Agreed to.

MR. LEGEYT moved that the following words be added to Section 36 :—

"Unless he be resident within the limits of the jurisdiction of the Court."

Agreed to.

MR. CURRIE moved the substitution of the words "contained in the Schedule B hereunto annexed" for the words "B given in the Appendix" in the 2nd line of Section 38.

Agreed to.

MR. HARINGTON moved that the words "any order made by the Court under the provisions of this Section shall be open to appeal by the defendant" be added to Section 70.

He said, the Sudder Courts at Calcutta and Agra had strongly recommended that the orders passed for the arrest of a defendant or for the attachment of his property on mesne process, or for the issue of an injunction *pendente lite*, should be open to appeal, and it was in consequence of this recommendation that it was proposed to add to this Section and to Sections 79 and 87 the words of which he had given notice. He might add that his own experience confirmed what had been stated by the Sudder Courts just mentioned, though when the Sections were considered in Committee it was hoped that the appeal, now proposed to be given, might be dispensed with. It would be observed that it was not intended to confer any right of appeal upon the plaintiff, but to restrict the exercise of that right to the defendant.

After some discussion the amendment was agreed to.

MR. CURRIE moved the substitution of the word "and" instead of the word "or" in the 6th line of Section 67.

Agreed to.

MR. HARINGTON moved the substitution of the words "if judgment be given against the defendant until the execution of the decree, if the Court shall so order" for the words "until the execution of any decree that may be passed against him in the suit" at the end of Section 72.

He said, one of the Judges of the Sudder Court at Bombay had remarked as follows on the Sections which related to the arrest of a defendant, or to the attachment of his property on mesne process :—

"Provision ought to be made, declaring how long the defendant or his property may be detained to enable the plaintiff to obtain execution; they should not be released the

moment the decree is passed, but they need not be long detained, for by this proposed Code execution can be had at once. It need not, as under the present law, be delayed for ten days; that provision may have been the reason why no provision was made in our Code for the release of the defendant or his property, when sequestered before judgment, but it is a defect that should now be repaired."

He thought that the words proposed to be substituted for the last two lines of the Section would make sufficient provision for the release of a defendant arrested on mesne process, while as regarded any property attached *pendente lite*, if judgment went against the plaintiff, the attachment would cease and determine from the date of the judgment, but if judgment passed for the plaintiff, the defendant could always obtain an order for the withdrawal of the attachment, by paying the amount of the judgment into Court.

Agreed to.

MR. HARINGTON moved the addition of the following words at the end of Section 79 :—

"Any order for the attachment of property under the preceding Section shall be open to appeal by the defendant."

Agreed to.

MR. CURRIE moved the insertion of the words "or a tenure liable to summary sale under the provisions of Regulation VIII. 1819 of the Bengal Code" after the word "Government" in the 2nd line of Section 85.

Agreed to.

MR. CURRIE moved the insertion of the words "or tenure" after the word "lands" in the 4th line of the Section.

Agreed to.

MR. CURRIE moved the insertion of the words "or the rent due to the proprietor of the estate as the case may be" after the word "revenue" in the 5th line of the Section.

Agreed to.

MR. CURRIE moved the insertion of the words "or rent" after the word "revenue" in the 8th line of the Section.

Agreed to.

MR. CURRIE moved the insertion of the words "or tenure" after the word "lands" in the 11th line of the Section.

Agreed to.

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

MR. HARINGTON moved the introduction of the following new Section after Section 87 :—

"Any order made under either of the last two preceding Sections shall be open to appeal by the defendant."

Agreed to.

MR. CURRIE moved the addition of the following words to Section 107 :—

"When judgment is passed against a plaintiff by default, he shall be precluded from bringing a fresh suit in respect of the same cause of action."

After some conversation the Motion was agreed to.

In consequence of some remarks made in the conversation on the previous Motion—

MR. LEGEYT moved the addition of the following words to the new Section after Section 29 :—

"Unless he be permitted to withdraw from the suit under the provisions of Section 90."

Agreed to.

Upon Section 113 having been read by the Chairman—

MR. RICKETTS remarked, that he had a few words to say with regard to dispensing with written statements. The opinion of the Sudder Court was directly opposed to such a course, and he (Mr. Ricketts) had learned from the Judges themselves, that their letter to the Council by no means sufficiently expressed their feelings on the subject. All seven Judges were agreed in the necessity of written proceedings.

(Mr. Ricketts here read a statement from the Sudder Court.)

THE CHAIRMAN said that the question was certainly most important, and he thought that it would be better to print and circulate any proposed amendments, which could be considered on the recommittal of the Bill next Saturday.

MR. PEACOCK agreed with the Honorable and learned Chairman, that it would be better to postpone the question and have it fully discussed, so as

to hear any arguments which might be adduced on either side.

MR. CURRIE moved the addition of the following words to Section 118 :—

> "The substance of the examination shall be reduced to writing, and form part of the record."

Agreed to.

MR. HARINGTON moved the substitution of the word "evidence" for the word "proof" in the 6th and 10th lines of Section 138.

He said, that a doubt had been expressed whether the word "proof," as used in this Section, would be understood as including parole as well as documentary evidence; and as in cases in which the summons to the defendant might be for the final disposal of the suit at the first hearing, the parties would be required, on the day appointed for that hearing, to produce their witnesses, as well as any documents on which they intend to rely, he thought it might be advisable to substitute the word "evidence" for the word "proof" to meet the objection which had been taken to the Section as it now stood.

Agreed to.

MR. HARINGTON moved the insertion of the words "whether the summons shall have been issued for the settlement of issues only or for the final disposal of the suit" after the word "accordingly" in the 13th line of the Section.

Agreed to.

MR. HARINGTON moved the addition of the following proviso :—

> "Provided that, if the summons shall have been issued for the final disposal of the suit, and either party shall fail without sufficient cause to produce the evidence on which he relies, the Court may at once give judgment."

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

MR. PEACOCK moved the insertion of the words "who is examined" after the word "party" in the 7th line of Section 118.

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

MR. HARINGTON proposed the omission of the words "issues have been recorded" in lines 2 and 3 of Section 142, and the substitution of the following :—

> "Issue of the summons to the defendant if the summons be for the final disposal of the suit, or after the issues have been recorded if the summons to the defendant be for the settlement of issues only."

Agreed to.

MR. CURRIE moved the insertion of the words "or any other official papers" after the word "case" in the 7th line of Section 131.

Agreed to.

MR. CURRIE moved the substitution of the word "papers" for the words "any part of it" in the 9th line of the Section.

Agreed to.

MR. PEACOCK proposed the addition of a proviso to the Section, to show that State documents should not be deemed to be included in the alteration made by the Honorable Member for Bengal.

After some conversation the consideration of the question was postponed; and the Section for the present was agreed to.

MR. FORBES proposed the omission of all the words after the word "interest" in the 6th line of Section 187.

Agreed to.

MR. LEGEYT moved the addition of the following proviso to Section 194 :—

> "Provided that, when the decree is against Government or against any officer acting on behalf of Government, the Court shall not proceed by attachment or imprisonment, but if the officer whose duty it is to satisfy the decree, neglect or refuse to satisfy the decree, the Court shall report the case through the Sudder Court for the orders of Government."

After some discussion the Motion was by leave withdrawn, and Mr. Peacock moved the addition of the following words to the Section :—

> "When the decree is against Government, or against any officer acting on behalf of Government, if the officer whose duty it is to satisfy the decree neglect or refuse to satisfy the same, the Court shall report the case through the Sudder Court for the orders of Government, and execution shall not issue on the decree, unless the same shall remain

unsatisfied for the space of three months from the date of such report."

Agreed to.

MR. FORBES moved the introduction of the following new Section after Section 198 :—

" All monies payable under a decree shall be paid into the Court whose duty it is to execute the decree, unless such Court or the Court which passed the decree shall otherwise direct. No adjustment of a decree in part or in whole shall be recognized by the Court unless such adjustment be made through the Court, or be certified to the Court by the person in whose favor the decree has been made, or to whom it has been transferred."

Agreed to.

MR. HARINGTON moved the substitution of the following new Section for Section 235 :—

" When the property attached shall consist of debts due to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immoveable property, it shall be competent to the Court to appoint a manager of the said property, with power to sue for the debts, and to collect the rents or other receipts and profits of the land or other immoveable property, and to execute such deeds or instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits, or receipts towards the payment of the amount of the decree and costs ; or when the property attached shall consist of land, if the judgment debtor can satisfy the Court that there is reasonable ground to believe that the amount of the judgment may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land, or of any other property belonging to the judgment debtor, it shall be competent to the Court, on the application of the judgment debtor, to postpone the sale for such period as it may think proper to enable the judgment debtor to raise the amount. In any case in which a manager shall be appointed under this Section, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct."

He said, the former part of the new Section was the same as the Section proposed to be omitted; the latter part of the Section was taken with some slight modifications from Act VI of 1855, Section 2, which applied to the Supreme Courts of Judicature alone. The addition proposed by him was intended to meet to some extent the objections entertained by many persons to the sale of land in satisfaction of money decrees. He would not now go into the very important question as to whether such sales should or should not be allowed. He would, however, observe, that the large transfers of landed property which had taken place in this country were not, owing solely, or indeed, he might say, mainly to the action of the Civil Courts. He held in his hand a statement which had been prepared by the Sudder Board of Revenue, showing the number of acres of land that had been sold in the year to which the statement related. From this it appeared that in the Delhi Division 22,364 acres were sold by private sale, and 31,977 acres for arrears of Government revenue, and only 5,589 acres in execution of decrees of Court; that in the Meerut Division 18,884 acres were disposed of privately, and 140 acres for arrears of Government revenue, to 8,480 acres in execution of decrees of Court; that in the Rohilcund Division, in which sales of land by order of the Civil Courts were stated to have been unusually numerous, 38,326 acres were sold privately, and 5,170 acres for arrears of Government revenue, to 12,451 acres in execution of decrees of Court; that in the Agra Division 16,284 acres were sold privately, and 178 for arrears of Government revenue, to 8,878 acres in execution of decrees of Court; that in the Allahabad Division 59,440 acres were sold privately, and no less than 65,786 acres for arrears of Government revenue, to 27,498 acres in execution of decrees of Court ; and that in the Benares Division 97,909 acres were disposed of privately, and 1,482 for arrears of Government revenue, to 51,619 acres in execution of decrees of Court. The total number of acres which changed hands during the period referred to was 472,455, of which less than one-fourth was disposed of by order of the Civil Courts. From this it was evident that, if the sale of lands in execution of decrees of Court were prohibited altogether, alienation would still go on. Even if it were desirable, he believed it would be quite impossible to keep the land in the hands of the old proprietors—here as elsewhere it would gradually pass into the possession of the monied men.

The Motion was carried, and the Section agreed to.

MR. CURRIE proposed the introduction of the following new Section after Section 235 :—

"When in any district where land paying revenue to Government is ordinarily sold by the Collector, as provided in Section 239, the property attached shall consist of any such land or of a share in any such land, if the Collector shall represent to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector to make provision for such satisfaction in the manner recommended by the Collector, instead of proceeding to a public sale of the land or share."

He remarked that the proposed Section went a step further than the last new Section. The Judge of Cawnpore, the Commissioner of Allahabad, and the Agra Sudder Court objected to the indiscriminate sale of land. Mr. Muir objected to any sale of land at all under civil process. He (Mr. Currie) would not go so far as Mr. Muir. He agreed generally in what had been said on the subject by the Honorable Member for the North-Western Provinces. But even if it were admitted that the transfer of the land from the hands of the old proprietors was an unmitigated evil, still in the existing state of things that would be no sufficient reason for a general stoppage of sales.

Something, however, was to be conceded to opinions so strongly expressed and urged by the authorities he had named. The new Section which he proposed would enable the revenue authorities to interfere in behalf of old proprietors in all cases in which such interference could be beneficially exercised.

MR. HARINGTON said, he did not object to the introduction of the Section proposed by the Honorable Member for Bengal, but he thought that some provision should be made to secure the decree-holder from loss in the event of the property being sold for arrears of Government Revenue during its temporary alienation. Under Section X, Act I of 1841, the right of Government to hold the entire body of proprietors and the entire estate responsible for the amount of the whole revenue was expressly reserved, so that, whatever happened, the Government could sustain no loss. If the judgment creditor was not to be allowed to bring the real property of his judgment debtor to sale until it could be seen whether the amount of the judgment might not be realized from the profits of the property, he should not be exposed to the risk of losing the property altogether by the intervention of a Government sale.

After some discussion, MR. GRANT moved the insertion of the words "on security for the amount of the decree, or for the value of such land or share being given" after the words "authorize the Collector."

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

MR. HARINGTON moved the omission of the words "and shall direct the decree to be executed" after the word claim in the 38th line of Section 237. He said, the words proposed to be omitted were clearly out of place ; the decree must be in course of execution, otherwise the property to which the claim related would not have been seized, and in the event of the claim being disallowed, the order passed would be for the sale of the property.

Agreed to.

MR. HARINGTON moved the omission of the word "thereof" at the end of the Section, and the substitution of the words "of the order." He said, Mr. Gubbins, the Commissioner of the Benares Division, observed on this part of the Section, that the word "thereof" might mean anything, and he proposed the substitution of the words "of the order." He did not think that if the word "thereof" were retained, any doubts could arise as to what previous word in the sentence it referred to, but he had no objection to the substitution of the words proposed by Mr. Gubbins.

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

MR. LEGEYT moved the insertion of the following words after the word "districts" in the 43rd line of Section 240 :—

"The proclamation shall also declare that the sale extends only to the right, title, and interest of the defendant in the property specified therein."

Agreed to.

MR. LEGEYT moved the omission of Section 242.

Agreed to.

Upon the consideration of Section 246—

MR. FORBES, in accordance with the opinion and wish of the Sudder Court of Madras, moved that Section 247 be added to Section 246, so as to form one Section.

Agreed to.

MR. HARINGTON moved the substitution of the word "year" for the word "month" in the 19th line of Section 262. He said, the substitution of the word "year" for "month" was proposed in consequence of a remark of the Judge of Mirzapore, Mr. Lean, who observed that he could not understand why a year was allowed for a regular suit to be filed to contest the summary order passed on a claim to entirety of property made before the sale, and why a month only was allowed for the institution of such suit to contest the summary orders passed on claims made after the sale. He agreed with Mr. Lean that the same period should be allowed in both cases, and he did not think a year too long.

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

MR. HARINGTON moved the addition of the following words to Section 325 :—

"If the appeal lie to the Sudder Court, it shall be heard and determined by a Court consisting of three or more Judges of that Court."

He said, the Section as it now stood would admit of a single Judge of the Sudder Court disposing finally of an appeal, which he thought was very objectionable.

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

MR. HARINGTON moved the substitution of the words "period for preferring the appeal and the procedure thereon" for the word "procedure" in the 2nd line of Section 359. He said, the addition proposed to be made to this Section was also intended to supply an omission in the Code as now drawn.

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

MR. CURRIE moved the substitution of the word "district" for the word "zillah" in the 5th line of Section 361.

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

MR. HARINGTON moved that the following words be prefixed to Section 365 :—

"Unless otherwise provided by any law for the time being in force."

He said, under the Bill for the establishment of Courts of Small Causes brought in by him, it was not proposed to allow a special appeal in any case; the words, therefore, of which he had moved the insertion were necessary.

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

MR. CURRIE (in the absence of Mr. LeGeyt) moved the substitution of the following new Section for Section 373 :—

"When an application for a review of judgment is granted, a note thereof shall be made in the register of suits or appeals (as the case may be), and the Court shall give such order in regard to the rehearing of the suit as it may deem proper in the circumstances of the case.

Agreed to.

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

"From and after the time when this Act shall come into operation in any part of the British Territories in India, the procedure of the Civil Courts in such part of the said territories shall be regulated by this Act, and except as otherwise provided by this Act, by no other Law or Regulation.

He said it was intended, as soon as this Bill passed into law, to bring in a Bill to repeal all Regulations and Acts of the three Presidencies which would be superseded by the Code, but, in the meantime, the addition to the Code of a Section of the nature proposed by him appeared necessary.

The Section was agreed to.

MR. HARINGTON moved the insertion of the following words after the word "plaintiff" in the 12th line of Schedule B :—

["If the summons be for the final disposal of the suit, this further direction shall be added here; and as the day fixed for your appearance is appointed for the final disposal of the

suit, you must be prepared to produce all your witnesses on that day."]

Agreed to.

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

SALES OF LAND IN EXECUTION OF DECREES.

MR. RICKETTS said that, in the course of the preceding debate, mention had been made of the opinion of some of the Officers of the North-Western Provinces respecting the sale of lands.

He was aware that the very mention of the possibility of a change, in a case of this sort, must do harm; and that if it went forth that there was an enquiry pending on the subject, there was hardly a landowner or a money-lender in the country who would not be affected by it. Nevertheless, enquiry appeared to be unavoidable. One of the Officers he alluded to, Mr. Muir, was known to be able and experienced. Two years ago he would never have dreamt of any such change, but he had seen for himself and heard the opinion of others. He now recommended immediate alteration of the law. He wrote :—

"The passing of landed estates into the hands of mere speculators, without local influence or connexion with the soil, was always regarded as a serious disadvantage. It ousted from their ancestral lands those who, by their natural position, could best manage them, and be made instrumental in aiding the administration; and it substituted a set of men who were often unable even to maintain themselves in secure possession, and for all administrative purposes were far less responsible and less useful proprietors. In addition to this, we have now had universal proof that the moment the authority of Government is suspended, the old proprietors re-assert their foregone rights and oust the upstart intruders."

* * * * *

"But, whether regarded by the natives to be right or to be wrong, the practical result of these sales has been equally disastrous. They contributed seriously to the embarrassment of Government, and to the confusion and disorder of the days of anarchy. They proved an eminent source of weakness. This is a fresh argument against the present system, superadded to the evils that were already felt, to call for the adoption of all possible means for checking the frequency of sales and permanent transfers."

* * * * *

"I entirely concur in the principle proposed in the letter of Government indicated at the beginning of this memorandum. For all simple debts I would limit the process of our Courts to the person and personal effects of the debtor; and entirely exempt land from liability in the execution of the decree. Houses, with gardens or other plots of ground attached to them in cities, need not necessarily be classed with landed estates, but might follow the law of personalty."

Mr. Thornhill, another Officer of much experience in the North-Western Provinces, said :—

"There can, I think, be no doubt that the tendency of our system is to oust the old proprietors, and to transfer the land to men who have made their money by trading upon the vices or necessities of their neighbors, and who possess no local connexion or social position which could give them influence over their tenants."

* * * * *

"I think that the sale of land in satisfaction of decrees of Court might, with advantage, be absolutely prohibited; but if this measure be objected to, at least the same indulgence as is allowed in Clause CLXXXVII might be permitted to those landed proprietors who are threatened with a foreclosure of mortgage."

A third, Mr. Batten, was of the same opinion. He wrote :—

"I trust that, by some wise legislation involving the consideration of decrees non-absolute and payable by instalments, and of the whole question of pre-emption, entail, and tenure, a remedy may soon be provided for the great evil (which, as far as loud native complaint goes, may be called a "crying evil") of the constant transfer of lands from the agricultural population to the money-lending classes, through the operation of our present system, by which the Civil Courts make the soil the security for all money debts. A law of limitation, too, for all British India, reducing by at least half the present period for receiving suits for simple debts, damages, &c., is, in my judgment, urgently required. But I suppose, until further legislation takes place in regard to these important subjects, as also to the subject of Native insolvency in general, the Code of Procedure cannot afford the remedy which is so much desiderated.

"I may, however, add my own evidence as Special Commissioner and Sessions Judge, that the course of agrarian outrages in these Provinces, which followed the subversion of order by the mutineers, has shown that the right to land by execution of decrees has everywhere been treated by the people with utter contempt, and that for a time the ousted parties took the place of the auction purchasers, not without severe suffering, loss of property, and often death to the latter."

Now these were Officers of great experience and penetration, and the

opinion expressed in another paper, now before the Council in another matter, was confirmatory of their views. He believed that the gentleman he alluded to had now retired from the Service, but he could appeal to the Honorable Member for Bombay for confirmation of his representation, when he said that few men had done more for that Presidency than Captain Wingate, who had planned and superintended the survey which was now going on. He wrote :—

"This miserable struggle between debtor and creditor is thoroughly demoralizing to both. The creditor is made by it a grasping hard-hearted oppressor. The debtor a crouching false-hearted slave. It is disheartening to contemplate, and yet it would be weakness to conceal the fact, that this antagonism of classes and degradation of the people, which is fast spreading over the land, is the work of our laws and our rule. The corruption and impoverishment of the mass of the people for the enriching of a few have already made lamentable advances in some districts, and are in progress in all, and the evil is clearly traceable in my opinion to the enormous power which the law places in the hands of the creditor.

"The facilities which the law affords for the realization of the debt have expanded credit to a most hurtful extent. In addition to the ordinary village bankers, a set of low usurers is fast springing up, by whom small sums are lent, for short periods, at enormous rates of interest, to the very lowest of the population, who have not credit enough to obtain advances from the more respectable of the village bankers. All grades of the people are thus falling under the curse of debt, and should the present course of affairs continue, it must arrive that the greater part of the realized property of the community will be transferred to a small monied class, which will become disproportionately wealthy by the impoverishment of the rest of the people. No greater misfortune could befal any nation than this, by which the many are made miserable in order that the few may be pampered. And yet this is the inevitable tendency of the existing relations between debtor and creditor in our Presidency."

* * * *

"The second remedial measure I have already proposed to Government in a separate Report, No. 296, dated 3rd instant, and it is the following :—

"'The exemption of land or other immovable property from attachment and sale in satisfaction of decrees of Civil Courts, unless the suit specially refer to such land or property, and its attachment and sale are specified in the decree.

"'The following extracts from the Report just quoted show the grounds of this recommendation.

"'The compulsory sale of land by civil process in payment of debt not secured upon the land by mortgage or otherwise is, I believe, entirely opposed to Native law and usage throughout India. In our own Presidency the practice is authorized by Regulation, but so incompatible is it with Native ideas, that it has been resorted to to a very limited extent in the districts where our Regulations have been longest in force, while in others, as in the Southern Mahratta Country and the Deccan, it is to this day almost unknown. Throughout these districts, and I believe generally over the Presidency, the cultivators of fully assessed land believe their lands belong to Government, and that they cannot be dispossessed of them unless at the instance of Government. The idea of their lands being subject to sale in satisfaction of a bond debt or a running account with a money-lender has occurred to few of them, and the contingency, I may safely say,—is regarded by these few with dismay and amazement as the very height of injustice and oppression. In Guzerat I apprehend that sales of Enam land, even in satisfaction of bond debts, have only become frequent of late years, and that sales of Government land on the same account have been wholly unheard of until very lately.'"

Now this opinion of Captain Wingate was not less decided than the others which he had just quoted. But a letter had just been received from a much higher authority, the Secretary of State for India, pointedly disapproving of sales of land by subordinate judicial officers.

Lord Stanley wrote—

"It cannot be doubted that the increased powers in respect of suits relating to real property, which of late years have been conferred upon the subordinate Civil Courts, have greatly promoted the rapid transfer of such property from old to new hands. It was not until the year 1831 that Moonsiffs were empowered to try any suits but those for 'money or other personal property' (Regulation XXIII. 1814, Section XIII, Clause 1), and up to that time those Officers were strictly prohibited from enforcing their own decisions and from issuing any process or using any coercive means for that purpose (Regulation XXIII. 1814, Section XLIX), for which an application to a higher authority was necessary. In that and subsequent years the powers of the Moonsiffs were greatly enlarged, and under the law now in force the Civil Courts of every grade are placed upon the same footing in regard to the description of suits which they are competent to try (subject only to certain pecuniary restrictions), and in regard to the execution of their own decrees. The check imposed by the necessity of a reference to a higher Court has been removed, and the number of sales, if I am rightly informed, has lately very much increased in consequence of the exercise by a number of Courts in every district of the

power of ordering a sale which formerly could be exercised by only one or two. This result is not surprising. The sale of an estate or portion of an estate registered in the Collectors' Books is the most ready way of enforcing a judgment; it gives the least trouble to both the creditor and the Court, and holds out every inducement to both to resort to that mode of satisfying the decree in preference to any other, even in the most trifling cases.

" With reference to the foregoing remarks, the question arises as to the expediency of altering the existing constitution of the Moonsiff's Courts, and of reverting to the system under which they were tribunals for the adjudication of suits only for money or other personal property, at the same time enlarging, if thought advisable, their jurisdiction in such cases. A further check might be imposed by providing that no process either for attachment or sale of real property shall be allowed in cases below a fixed amount, and that in suits exceeding that amount, the Moonsiff shall not be competent to issue such a process without the previous sanction of the judge."

The Right Honorable the Secretary of India did not go so far as the Officers of the North-Western Provinces; but his Lordship's objection to sales is scarcely less general.

They were not without experience on the effect of sales. Prior to 1834 lands were saleable in the district of the South-Western Frontier.

It was supposed that the sale of land in those districts was in part the cause of the rebellion, and all executions of decree by sale of land were prohibited; since then those large districts had been perfectly quiet. Again, in the Sonthal districts, the same thing had occurred. In those Pergunnahs no land can be sold under Rule 26, unless with the consent and sanction of the Commissioner; and those districts also had remained quiet since the laws were altered. He (Mr. Ricketts) would not say that this alteration of practice had alone secured the quiet of these territories; but there were frequent disturbances before the alteration, and there had been quiet since. The result was unquestionable and should not be ignored.

He (Mr. Ricketts) thought then, that, although the enquiry he proposed was more or less fraught with inconvenience, it should be made; and he thought that the same plan might be adopted as had been resorted to with regard to the Oaths question, and that the Council should through the Clerk circulate the following questions to all the subordinate Governments :—

1. Is it desirable that land shall be declared not saleable in execution of decrees of Court ?
2. Should the rule embrace all land, or only estates paying revenue to Government ?
3. Should the immunity extend to land which has actually been pledged as security for a debt ?
4. In the event of sale not being allowed, should the Courts be authorized to attach land and liquidate the debt from the proceeds ; or would it be better to rule that landed property shall in no manner whatever be answerable for debts ?

THE VICE-PRESIDENT thought that it had better be brought forward as a notice of motion, and the consideration of so important a subject postponed till Saturday next. There might be strong political reasons for the change, but he (the Vice-President) could only designate a great deal of what had been written on the subject as sentimental nonsense. It was not, in his opinion, contrary to the notions of the Natives of India, that land should be sold for debt. According to the Hindoo Law, a person inheriting land had to pay the debts which his ancestor might have incurred upon it, and a Hindoo female might sell the land inherited from her husband, in order to pay his debts.

He (the Vice-President) could not see that much was to be gained by passing a Law to the effect that people should not pay their debts. He would instance the case of the late Nabob of the Carnatic, for the payment of whose debts a Bill had lately been before the Council, and whose exemption from legal process had only led to more extravagant usury, and to dishonesty and swindling on both sides. It was a question to which the most serious consideration should be given, since any change, such as was now contemplated, might shake credit throughout the country.

MR. GRANT said, that it was not his intention to oppose the motion for enquiry. The question appeared to him to be one on which, considering the opinions held upon it by many whose opinions were entitled to great respect, thorough discussion now would do more good than harm. He, for his own part, however, was inclined fully to concur in

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.

Saturday, March 12, 1859.

PRESENT.

The Right Honorable the Governor General, in the Chair.

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,