

Saturday, February 12, 1859

**LEGISLATIVE COUNCIL**  
**OF**  
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**P . L .**

MR. PEACOCK said, the Council were now amending an Act, and adopting a very stringent measure; he thought that the abstraction of the seals should be mentioned as a justification of the course proposed. Though there was no direct evidence of fraud, it was clear that efforts were being made to concoct fictitious claims. The Madras Government had spoken without doubt on this subject, and in the letter of the Advocate-General of Madras it was stated—

“The recent felonious abstraction of two of the late Nabob's seals and information connected therewith, points strongly to an intention to fabricate Bonds bearing date during the time of the Regency of Prince Azem Jah, when those seals were actually used to authenticate Sircar Bonds.”

He (Mr. Peacock) thought the fact should be stated as a ground for believing that fraud was about to be committed.

MR. CURRIE'S motion was put and negatived.

MR. PEACOCK'S motion was then put and agreed to.

The Title was passed as it stood.

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

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

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

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

Agreed to.

#### REMOVAL OF PRISONERS.

MR. CURRIE moved that the Bill “to make further provision for the removal of prisoners” be now read a third time and passed.

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

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

Agreed to.

#### ADJOURNMENT.

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

Agreed to.

The Council adjourned accordingly.

The Council afterwards met pursuant to adjournment.

#### ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. PEACOCK returned to the Council Chamber with the Bill “to amend Act XXX of 1858 (to provide for the administration of the Estate, and for the payment of the debts of the late Nabob of the Carnatic),” and delivered it to the President, who thereupon announced that the Governor-General had signified his assent to the same.

The Council adjourned.

*Saturday, February 12, 1859.*

#### PRESENT:

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

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

#### CANTONMENT JOINT MAGISTRATES: REMOVAL OF PRISONERS.

THE VICE-PRESIDENT read messages informing the Legislative Council that the Governor-General had assented to the Bill “for conferring Civil jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those Officers Registers of Deeds,” and to the Bill “to make further provision for the removal of prisoners.”

#### LIMITED LIABILITY.

THE CLERK presented a petition from the Bengal Chamber of Commerce, praying for the extension of the principle of Limited Liability to Banking Companies.

MR. CURRIE moved that the petition be printed.

Agreed to.

#### AHMEDABAD MAGISTRACY.

MR. LEGEYNT presented the Report of the Select Committee on the Bill "to empower the Governor in Council of Bombay to appoint a Magistrate for certain districts within the Zillah Ahmedabad."

#### MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYNT postponed the first reading of a Bill to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a Fund for Municipal purposes in the town of Bombay).

#### PRESCRIPTION AND LIMITATION.

Upon the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to provide for the acquirement and extinction of rights by Prescription and for the Limitation of Suits," the Council resolved itself into a Committee for the further consideration of the Bill.

Upon Section I being proposed—MR. CURRIE said that he had given notice of his intention to move, as an amendment, the omission of the first and fourteen following Sections of the Bill. He had already stated the reasons why he considered this course advisable when the Bill was before the Council on a previous occasion; and, as he understood that the Honorable and learned Member who had introduced the Bill was now disposed to accede to the proposition, he would not detain the Council with a repetition of them. He should vote against the Section standing part of the Bill.

THE CHAIRMAN said that he had no intention of opposing the omission of these Sections, but he was bound to say that he thought the Bill would be more complete and efficient with them, than it was likely to be if they were omitted. He (the Chairman), notwithstanding the stress which had been laid upon the point, thought that those who would have to administer the law would have no real difficulty in understanding

or applying the Clauses relating to prescription. He felt, however, that the principle of positive prescription was new to the law of this country; that, although many of high authority outside the Council were in favor of its introduction, many were opposed to it. He was not satisfied that he could carry these Clauses through the Council, and, if he did, he should not like to carry a change in the law, upon the expediency of which there was so considerable a conflict of opinion, by a narrow majority.

The Council must bear in mind, however, that if the Bill were passed as proposed, with the omission of the first fifteen Sections, a very material point would be left untouched. The Clause which his Honorable and learned friend (Mr. Peacock) was about to propose, would go far to meet one of those mischiefs to remedy which he (the Chairman) was anxious to introduce the principle of a title by positive prescription to land or other immoveable property. But it would do nothing towards defining the law relating to easements, or the rights which one man may have over the adjoining land possessed by another, to their acquisition, protection, or extinction. To put the law relating to easements on a more satisfactory footing, it had been found necessary to introduce the principle of positive prescription into the law of England. This Bill, if amended as proposed, would leave the law on this subject untouched, and in a very unsatisfactory state.

It was said that the subject would be dealt with by a separate measure. He (the Chairman) rarely heard that promise made without some apprehension touching its performance. In the present case he could but hope that the promise would be kept, and that his Honorable friend, the Member for the North-Western Provinces, who had devoted so much time and care to the present Bill, would take the matter in hand, and introduce a measure which would be satisfactory.

MR. HARRINGTON said, having signed the Report of the Select Committee, in which the Committee had expressed themselves in favor of the introduction of a positive prescription, and recommended to the Council that the

first fifteen Sections of the Bill should be adopted, he desired to offer a few remarks in explanation of the course which he had made up his mind to pursue on the present occasion. He was bound to admit that, at the time he entered upon the duty which devolved upon him as a Member of the Select Committee appointed to consider and report upon this Bill, which proposed, for the first time, directly to introduce the principle of positive prescription into the Presidencies of Bengal and Madras (for at Bombay it had already obtained upwards of thirty years, at least in those parts of that Presidency which were not subject to English law), he had no very strong prejudice in favor of the principle, nor any very decided conviction as to the necessity of its introduction where it did not at present exist; and, although as the revision of the Bill proceeded, and he had an opportunity of further considering the subject, and of hearing it discussed, both in Committee and out of Committee, by much abler and more competent judges than himself, the principle grew in favor with him, and he became the more anxious for its adoption, he did not think now, any more than he had thought before, that the practical usefulness of the Bill would be impaired in any great degree, even though the Committee, acting upon the motion of the Honorable Member for Bengal, should determine to omit the provisions, under the operation of which a title to real or personal property might be acquired by prescription alone, much less that they would be right in abandoning the Bill altogether simply by reason of the omission of those provisions. He thought there could be no doubt that the most useful and important part of the Bill, and the part which, in practice, would come most frequently into action, were the Sections which related to limitation, using that term in the sense of a bar to a civil action, and that those were the Sections which were most needed. The great length of time allowed by the existing law for the institution of suits, extending, in some instances, to sixty years, while, in other cases, there was no limit in point of time, had long formed a ground of complaint against our judicial system, and to this source had been traced much of the perjury and forgery

which were a disgrace to our Civil Courts, and which, in the hands of designing men, were so often made the means of converting those Courts from Courts of justice into Courts of injustice. An opinion to this effect was given by him when the expediency of modifying the existing Statute of Limitations, with a view to a considerable reduction of the period allowed therein for preferring claims, was first discussed, now nearly sixteen years ago, and subsequent experience had not led him to alter the views then expressed. At the same time, looking to the very long period that the present Bill had been before the public, to the men who introduced it, and to those who had succeeded them in carrying on the Bill until it had reached its present stage, men of great ability, large experience, and sound judgment, to the favorable reception which the Bill had generally met with, and, above all, to the fact that the Council, by allowing the Bill to be read a second time, had, in some measure, committed themselves to the principle of positive prescription; looking, he said, to all these circumstances, it had certainly seemed to him open to question whether they would now be justified in rejecting the principle merely because there might be some difficulty in so wording the provisions of the law necessary to carry it out as to render them perfectly intelligible to all classes, as well those whose duty it would be to administer the law, as those who would be affected by it, which appeared to be one of the principal objections taken to the Sections to which the amendment of the Honorable Member for Bengal related. He believed he was correct in stating that prescription had existed in some form or shape under the law of every civilized nation except the Jewish, according to which all lands, not in the hands of the real owners, were restored to them at certain periods. Under the old Roman Civil Law prescription existed; it exists in Scotland at the present time; it existed in England as regarded what were called easements; it existed, as already noticed, at Bombay; it existed under the Hindoo law; it existed in the United States of America, and he believed it existed in France also; and they were not told that in any of those places any difficulty was experienced in

administering the law, under which a title by prescription could be acquired or enforced, by reason of the technical character of the language in which it was framed, or that, in practice, prescription operated with greater injustice as an instrument of the acquisition of property than it did as an instrument of exemption only from the service or issue of judicial process, and if in the places, to which he had referred, legislators had been found competent to the task of framing a law of prescription sufficiently simple in its language to admit of its being administered by those who were ordinarily appointed to the judicial bench in the places in question, he could not conceive that the difficulty so much dwelt upon now would prove insurmountable here. But, as several old and experienced Officers, including the Honorable Member for Bengal, whose opinions were undoubtedly entitled to great consideration, entertained strong objections to the introduction into the Bill before the Committee of provisions of law for the acquirement and extinction of rights by prescription, and some of those Officers believed that a law of positive prescription would not be understood by the people, and that it would be regarded by them as doing violence to their feelings, prejudices, and ideas of what was just; that, moreover, there would be great difficulty in working such a law in an equitable manner, and that no absolute necessity for its enactment at the present time had been shown to exist—he was quite willing to give way, and, allowing the motion of the Honorable Member for Bengal for striking out the first fifteen Sections of the Bill to pass without opposition, to accept the remaining Sections as a large and valuable instalment of what was required in this particular branch of our judicial system: and he was disposed the more readily to give his assent to the amendment moved by the Honorable Member for Bengal, as he observed that the Honorable and learned Member of Council on his left (Mr. Peacock) had given notice of his intention to move the introduction of a Section which, if adopted by the Committee, would, to a great extent, produce the effect contemplated by the Sections proposed to be omitted, at least in so far as real property was concerned. Under the

*Mr. Haington*

Section prepared by the Honorable and learned Member of Council, a party in possession of any real property, who should be ejected therefrom otherwise than by due course of law, would be able to maintain an action for the recovery of possession against even the owner of the property, and, should the proprietor of any real property allow any other party to hold possession of the same adversely to him for a certain period, he would lose his remedy at law, and his right and title becoming, in consequence, incapable of being asserted, they would in effect be transferred to the party whose possession was a bar. Moveable property, even if the Bill should be carried as drawn, would, he believed, rarely, if ever, be allowed to remain a sufficient length of time in the possession of any party adversely to the real owner to admit of his acquiring a title by prescription to the same; while as regarded what were called easements, in the existing state of society in the Mofussil, and in the absence of any substantive law relating to the rights of way, water, and the like, it might, perhaps, be inexpedient to declare in the present Bill that any person might acquire, by prescription, or enjoyment alone for a certain period, the right to some benefit, liberty, or privilege arising out of the immoveable property of some other person. But, to show how necessary it was, in respect of real property at least, that some rule of the nature of that proposed by the Honorable and learned Member of Council on his left should be adopted in the event of the whole of the Sections under discussion being omitted, he needed only to refer to the state of the North-Western Provinces in the early part of last year. At that period, in almost every district in those provinces above Benares, nearly half of the land-holders were stated to have lost possession of their estates, which were held by parties who had no legal right thereto; and, had it not been for the Bill introduced by him to facilitate the recovery of real property of which possession had been wrongfully taken during the late disturbances, he believed that many of the owners of the estates in question would have been unable to recover possession for the want of a law recognising a title by prescription, or

allowing a suit to be brought on the strength of a possessory title alone. He would only further remark, before resuming his seat, that the Bill before the Council, even though shorn of the Sections to which the motion of the Honorable Member for Bengal related, would still, he believed, prove a great boon to the people of this country; and he must repeat that he considered that the Honorable and learned Mover of the Bill had laid them under a great and lasting obligation to him for what he had done in this behalf.

MR. LEGEYNT said he had one question to ask of the Honorable Member for Bengal, which was, whether he had considered what effect this Bill would have, if passed without the first fifteen Sections, upon the present law in Bombay? The existing law in Bombay was very short. Regulation V. 1827, Section I, of the Bombay Code, provided as follows:—

“*First.* Whenever lands, houses hereditary offices, or other immoveable property, have been held without interruption for a longer period than thirty years, whether by any person as proprietor, or by him and his heirs, or others deriving right from him, such possession shall be received as proof of a sufficient right of property in the same.

“*Second.* But it shall be a sufficient answer to the plea of the possession for more than thirty years, that the person in possession as proprietor, or any of the persons by whom he derives his right, acquired such possession by fraudulent means, on proof whereof a suit may be entertained at any period within sixty years.

“*Third.* Provided that, if such property has been held for more than thirty years by a person or persons *bonâ fide* believing his or their title as proprietors to be good, such title shall not be affected by the fraud of a former possessor.

“*Fourth.* Nothing contained in this Section shall bar an action of damages brought within sixty years against any of the persons by whom the fraud was committed.”

When the Bill was first published, the opinions received from Bombay were not favorable to the proposed measure; perhaps it was not sufficiently understood there: but he (Mr. LeGeyt) was not prepared to say that the Bombay authorities would like a law which would abrogate the law in force there, which created a title to land by positive prescription, and had worked well in that

Presidency for thirty years. He would ask the Honorable and learned Chairman, and his Honorable and learned friend opposite (Mr. Peacock), if the effect of the Bill, should it be passed, would not be to abrogate the law as it now stood in Bombay?

THE CHAIRMAN said, he apprehended that the Bill, if passed, would leave the law at present existing in Bombay as it stood; he did not think that the law of prescription in Bombay would be affected.

MR. PEACOCK agreed with the Honorable and learned Chief Justice. The provision of the Bombay law, which had been referred to, did not enact a law of positive prescription, but only, for the most part, a rule of evidence. The words were “such possession shall be received as *proof* of a sufficient right of property;” the present Bill, if confined to the limitation of suits, would leave untouched that provision.

He would support the motion to omit the first fifteen Sections. His chief objection was to Section XIV, which provided that no person should be barred by any length of time, unless a prescriptive title had been acquired by another person, or unless the right had been extinguished by prescription.

According to the provisions of the Bill, as it at present stood, no title by prescription could be gained, unless by possession for a period of twelve years.—Suppose A, the owner of an estate, allowed B to gain possession of it. B held the possession for ten years, and then let the property to C for one year; C refused at the end of the year to give up the possession, and before B regained it, the period of twelve years, from the time of his first gaining possession, became complete. Under the operation of the 14th Section, A’s title would not be affected, nor would his right of suit be barred, since no title had been acquired by B or C. But he thought that in such a case, a plaintiff, by lying by for an indefinite period, and neglecting to bring an action to recover his rights, would find it more easy to practise a fraud, than if the action must be brought in a definite time; and it also seemed to him that a person guilty of such lachés ought to be barred from all remedy. He thought it would be far better to make this Bill merely a Statute of Limitations,

and, in addition, to propose a Section to which the Honorable Member on his right (Mr. Harington) had alluded, by which a person, after having held possession for a certain period, would be entitled to an adequate remedy by suit to recover such possession if he were unlawfully dispossessed. The title of the real owner would, in such a case, remain unaffected, and if he sued within the period limited by the Act, he must recover the property, but, unless he did so, the possessor would become for most purposes the owner of the property, although the old title was not absolutely extinguished.

This course would obviate the objections of Mr. Thomson and others, and render it unnecessary, in the case of an owner returning after a long period, and the person in possession being willing to restore the property to such owner, that this should be done by conveyance.

Sections I to XV were put and negatived.

Section XVI was the first which related to the limitation of suits.

MR. CURRIE moved the omission of the words "other than a suit for property or rights to which the above rules are applicable" in the beginning of the Section.

Agreed to.

THE CHAIRMAN moved that the words "the British territories in India," after the word "within," in the fifth line of the Section, be left out, and the words "any part of the British territories in India, in which this Act shall be in force" substituted for them.

Agreed to.

Clause 1 of Section XVI was passed as it stood.

Upon Clause 2 being proposed by the Chairman—

MR. PEACOCK moved the omission of the words "penal damages or" in the first line.

The motion was carried, and the Clause, as amended, then passed.

Upon the consideration of Clause 3—MR. PEACOCK moved that the words "otherwise became final and conclusive," at the end of the Clause, be left out, and the words "would otherwise have become final and conclusive if no such suit had been brought" be placed in their stead.

Agreed to.

*Mr. Peacock*

Clause 4 being proposed by the Chairman—

MR. PEACOCK moved that the words "final order of such Court or Officer," at the end of the Clause, be omitted, and that the words "decision, award, or order, sought to be set aside, or if an appeal shall have been preferred, from the date of the decision, award, or order of the Appellate Court" be substituted for them.

After some discussion, the motion was by leave withdrawn.

MR. PEACOCK moved that the words "order of such Court or Officer," at the end of the same Clause, be left out, and the words "decision, award, or order in the case" substituted for them.

Agreed to.

MR. PEACOCK moved the insertion of the words or "order in the case," at the end of Clause 5.

Agreed to.

Upon Clause 11 being proposed by the Chairman—

MR. PEACOCK moved that the words "at which such order shall have become final," at the end of Clause 6, be left out, and the words "of the final order in the case" substituted for them.

Agreed to.

MR. PEACOCK moved that the following new Clause be introduced after Clause 7, namely:—

"To suits brought to recover money lent, or interest, or for the breach of any contract, the period of three years from the time when the debt became due, or when the breach of contract, in respect of which the suit is brought, first took place, unless there is a written engagement to pay the money lent, or interest, or a contract in writing signed by the party to be bound thereby, or by his duly authorized agent."

The Clause was agreed to.

MR. PEACOCK moved the introduction of the following new Clause after the above, namely:—

"To suits brought to recover money lent, or interest, or for the breach of any contract in cases in which there is a written engagement or contract, and in which such engagement or contract could have been registered by virtue of any Law or Regulation in force at the time and place of the execution thereof; the period of three years from the time when the debt became due, or when the breach of contract in respect of which the action is brought, first

took place, unless such engagement or contract shall have been registered within six months from the date thereof."

The Clause was agreed to.

MR. CURRIE moved that the following new Clause be introduced after Clause 8, namely :—

"To suits for the recovery of immoveable property, or of any interest in immoveable property, to which no other provision of this Act applies—the period of twelve years from the time when the cause of action arose."

The Clause was agreed to.

The postponed Clause 10 being read by the Chairman—

MR. PEACOCK moved that the words "not being lands subject to or affected by any of the several provisions referred to in Section XXVIII of this Act," after the word "land" in the sixth line of the Clause, be left out.

Agreed to.

MR. CURRIE moved that the following proviso be added to the Clause, namely :—

"Provided that in estates permanently settled, no such suit, although brought within twelve years from the time when the title of such person first accrued, shall be maintained, if it is shown that the land has been held lakhiraj, or rent-free, from the period of the permanent settlement."

The amendment was agreed to.

The amended Clause was then put by the Chairman, and agreed to.

MR. PEACOCK moved that the postponed Clause 11 be struck off.

Agreed to.

MR. CURRIE moved that the following new Clause be introduced after Clause 11, namely :—

"To suits against a depositary, pawnee, or mortgagee of any property, moveable or immoveable, for the recovery of the same, a period of thirty years if the property be moveable, and sixty years if it be immoveable, from the time of the deposit, pawn, or mortgage; or if in the mean time an acknowledgment of the title of the depositor, pawner, or mortgagor, or of his right of redemption, shall have been given in writing, signed by the depositary, pawnee, or mortgagee, or some person claiming under him, from the date of such acknowledgment in writing."

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

MR. CURRIE moved that the following new Section be introduced after Section XVI, namely :—

"In suits for the recovery from the purchaser, or any person claiming under him, of any property purchased *bonâ fide*, and for valuable consideration from a trustee, depositary, pawnee, or mortgagee, the cause of action shall be deemed to have arisen at the date of the purchase."

The Section was agreed to.

THE CHAIRMAN moved that the following new Section be introduced after the above, namely :—

"In suits in the Courts established by Royal Charter, by a mortgagee, to recover from the mortgagor the possession of the immoveable property mortgaged, the cause of action shall be deemed to have arisen from the latest date at which any portion of principal money or interest was paid on account of such mortgage debt."

The Section was agreed to.

MR. PEACOCK moved that the words "either by a part payment on account of principal or interest or," after the word "due," in the 7th line of Section XIX, be left out. This part of the Section was in accordance with the English law, but he objected to the rule laid down by the English law respecting the effect of a part payment. That rule proceeded on the principle that a part payment operates as an acknowledgment from which a new promise to pay might be implied. It seemed to him that in this country proof of part payment should not have this effect.

After some discussion, the motion was carried.

MR. PEACOCK moved that the words "whether by part payment or by written acknowledgment," after the word "admission," in the 12th line of the Section, be left out.

Agreed to.

MR. PEACOCK moved that the words "provided that in every case in which such acknowledgment could have been registered by virtue of any Law or Regulation in force at the time and place of the signing of the acknowledgment, it shall be registered within three months from the date thereof,"



be inserted before the word "provided," in the 14th line of the Section.

Agreed to.

THE CHAIRMAN moved that the word "also" be inserted after the word "provided," in the 14th line of the Section.

Agreed to.

The Section as amended was then read by the Chairman, and passed as amended.

MR. PEACOCK moved that the following new Section be introduced after Section XX, namely :—

"If any person entitled to a right of action, shall, by means of fraud, have been kept from the knowledge of his having such right, or of the title upon which it is founded; or if any document necessary for establishing such right shall have been fraudulently concealed, the time limited for commencing the action against the person guilty of the fraud or accessory thereto, or against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be reckoned from the time when the fraud first became known to the person injuriously affected by it, or when he first had the means of producing or compelling the production of the concealed document."

The Section was agreed to.

THE CHAIRMAN moved that the words "for damages for wrong done by a concealed," after the word "suits," in the first line of Section XXI, be left out, and the words "in which the cause of action is founded on" be substituted for them.

Agreed to.

The Section as amended was then passed.

MR. PEACOCK moved that the following new Section be introduced after Section XXI, namely :—

"If, at the time when the right to bring an action first accrues, the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased, as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person, or of the legal disability of any person claiming through him."

The Section was agreed to.

MR. PEACOCK moved that the following new Section be introduced after the above :—

"The following persons shall be deemed to be under a legal disability within the meaning of the last preceding Section—married women in cases to be decided by English law, minors, idiots, and lunatics."

The Section was agreed to.

The postponed Sections XXII and XXIII were severally read by the Chairman and passed.

The postponed Section XXIV having been put by the Chairman—

MR. PEACOCK moved that the words "unless service of a summons to appear in the suit can, during the absence of such defendant, be made in any mode prescribed by Law" be added to the Section.

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

The postponed Section XXV was passed as it stood.

MR. PEACOCK moved that the following new Section be introduced after Section XXV, namely :—

"If any person shall without his consent have been dispossessed of any immovable property otherwise than by due course of law, such person, or any person claiming through him, shall, in a suit brought to recover possession of such property, be entitled to recover possession thereof, notwithstanding any other title that may be set up in such suit, provided that the suit be commenced within six months from the time of such dispossession; but nothing in this Section shall bar the person from whom such possession shall have been so recovered, or any other person instituting a suit, to establish his title to such property, and to recover possession thereof within the period limited by this Act."

He said that he had originally intended to provide only for cases of possession disturbed by force or fraud, but upon the advice of the Honorable Member for the North-Western Provinces he had made the Section general in its application, so that, upon proof of dispossession otherwise than by due course of Law, the Civil Court would entertain a suit for the recovery of the possession: if a title to the property was set up afterwards, it would not in any way be prejudiced by the decision in the possessing suit.

He (Mr. Peacock) thought that the proposed new Section would transfer to the Civil Court cases of the description which, under Act IV of 1840, were now heard by the Magistrate.

After some discussion, the Section was carried.

The postponed Sections XXVI and XXVIII were severally negatived.

MR. CURRIE moved that Section XXX be left out, and the following new Section be introduced before Section XVII, namely :—

“ In suits to avoid sub-tenures or incumbrances instituted by the purchaser of an estate sold for arrears of Government Revenue due on such estate, or by the purchaser of a putnee talook or other saleable tenure, which by virtue of such sale became freed from sub-tenures or incumbrances created by the defaulting proprietor, or by any person claiming through such purchaser, the right of action shall be deemed to have first arisen at and not before the time at which the sale to such purchaser was confirmed or otherwise became absolute.”

Agreed to.

MR. PEACOCK moved that Section XXXI be left out, and that the following new Section be substituted for it, namely :—

“ All suits that may be now pending, or that shall be instituted within the period of two years from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted after the expiration of the said period, shall be governed by this Act and by no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.”

Agreed to.

THE CHAIRMAN moved that the following new Section be introduced before Section XXXII, namely :—

“ No proceeding shall be taken to enforce any judgment, decree, or order of any Court established by Royal Charter, but within twelve years next after a present right to enforce the same shall have accrued to some persons capable of releasing the same, unless in the meantime such judgment, decree, or order shall have been duly revived, or some part of the principal money secured by such judgment, decree, or order, or some interest thereon shall have been paid, or some ac-

knowledge of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto or his agent; and in any such case no proceeding shall be brought to enforce the said judgment, decree, or order, but within twelve years after such revival, payment, or acknowledgment, or the latest of such revivals, payments, or acknowledgments, as the case may be. Provided that, for three years next after the passing of this Act, every judgment, decree, and order, which may be in force at the date of the passing of this Act, shall be governed by the Law now in force, anything herein contained notwithstanding.”

The postponed Sections XXXIV and XXXV were severally negatived.

MR. HARRINGTON moved that the words “ or place ” be inserted after the word “ province ” in the 6th line of Section XXXVI.

Agreed to.

MR. PEACOCK moved that the words “ by public notification ” be inserted after the word “ thereto ” in the 7th line of the Section.

Agreed to.

THE CHAIRMAN moved that the words “ and the Straits Settlement ” be inserted after the word “ Towns ” in the 5th line of the Section.

Agreed to.

MR. PEACOCK moved that the following words be added to the Section, namely :—

“ Whenever this Act shall be extended to any Non-Regulation Province or place by the Governor-General in Council, or by the Local Government to which such Province or place is subordinate, all suits, which within such Province or place shall be pending at the date of such notification, or shall be instituted within the period of two years from the date thereof, shall be tried and determined as if this Act had not been passed, but all suits, to which the provisions of this Act are applicable, that shall be instituted within such Province or place after the expiration of the said period, shall be governed by this Act and by no other Law of limitation, any Statute, Act, or Regulation now in force notwithstanding.”

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

MR. HARRINGTON asked the permission of the Committee to go back to Section XIX of the original Bill. That Section, as it had just been settled, contained the following proviso :—

"Provided that, in every case in which such acknowledgment could have been registered by virtue of any Law or Regulation in force at the time and place of the signing of the acknowledgment, it shall be registered within three months from the date thereof."

From a remark which had fallen from the Honorable Member for Bengal in the course of the discussion that had taken place on the motion for the introduction of this proviso, he (Mr. Harington) had been led to think that it went too far. He might instance the case of a tradesman in Calcutta applying by letter to an officer at a distant station for payment of a bill which had been some time due, and receiving a reply acknowledging the debt and containing a promise to pay. This acknowledgment and promise would not avail to exempt the claim from the operation of the law of limitation, or to give the tradesman the benefit of the rule contained in the former part of the Section, unless the reply was registered, but the officer could scarcely be expected to go through the form of registration, and the formalities required by law for registering deeds would prevent the tradesman from fulfilling the conditions of the Section as it now stood. Considering, therefore, that it would be better to omit the proviso, he begged to make a motion to that effect.

Agreed to.

Moved by the same that the word "also" after the word "provided" in the 14th line of the Section be left out.

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

MR. PEACOCK moved that the Preamble be left out, and the following new Preamble substituted for it, namely :—

"Whereas it is expedient to amend and consolidate the laws relating to the limitation of suits, it is enacted as follows."

Agreed to.

MR. PEACOCK moved that the words "for the acquirement and extinction of rights by prescription and" be left out of the Title.

The motion was carried, and the Title as amended then passed.

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

*Mr. Harington*

LEASES OF GHATWALEE LANDS  
(BEERBHOOM.)

MR. CURRIE moved that the Council resolve itself into a Committee on 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 that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

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 consideration of the Bill was postponed.

MR. PEACOCK gave notice that he would, on Saturday next, move for the re-committal of the Bill.

The Council then adjourned.

*Saturday, February 19, 1859.*

PRESENT :

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

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

RECOVERY OF RENT (BENGAL).

THE CLERK presented a petition from the British Indian Association suggesting certain amendments in the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

MR. CURRIE moved that the petition be referred to the Select Committee on the Bill.

Agreed to.