LEGISLATIVE COUNCIL

OF

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SALE OF LANDS FOR ARREARS OF REVENUE (BENGAL).

MR. GRANT gave notice that he would, on Saturday next, move the third reading of the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency."

The Council adjourned.

Saturday, April 30, 1859.

PRESENT:

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

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

BRITISH SUBJECTS.

THE CLERK reported to the Council that he had received from the Home Department a copy of a Despatch from the Secretary of State for India, relative to the rights of British subjects not in the service of Her Majesty to enter the territories under her dominion and those under the rule of the Native Princes of India.

MR. GRANT moved that this communication be printed.

Agreed to.

LAND CUSTOMS (MADRAS AND BOMBAY).

MR. PEACOCK presented the Report of the Select Committee on the Bill "to alter the rates of Duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay respectively."

ADJUDICATION OF FORFEITURES.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to provide for the adjudication of claims to property seized as forfeited."

MR. HARINGTON then moved that the Council resolve itself into a Committee on the Bill, 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 any amendment, and, the Council having resumed its sitting, was reported.

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

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

MR. HARINGTON moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

CRIMINAL PROCEDURE.

MR. CURRIE presented a joint Report from the Select Committees on the Bills for extending the jurisdiction of the Courts of Criminal Judicature, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction.

MR. LEGEYT said, he had signed the Report because he assented to the general principle of the alterations in the Bill proposed by the Select Committee. But there were some points on which he differed in opinion with the majority of the Committee, and he therefore reserved to himself the right of proposing amendments in the Bill when it should come before a Committee of the whole Council.

NABOB OF SURAT.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to amend Act XVIII of 1848 (for the Administration of the Estate of the late Nabob of Surat, and to continue privileges to his family)."

MALABAR OUTRAGES.

MR. FORBES moved the first reading of a Bill "for the suppression of Outrages in the District of Malabar, in the Presidency of Fort Saint George." He said, although the Bill, of which he was about to move the first reading, was mainly only to continue laws already in force, he should, in introducing it, trespass for a short time on the attention of the Council, partly because some Honorable Gentlemen now present were not Members of

this Council when the Acts to which he referred were passed, and partly because the earlier and more important of them was transferred to this Council on its first establishment in 1854, and, as far as he could learn from a reference to its printed proceedings for the time, was not introduced with any lengthened explanation of its purport.

The Moplas of Malabar were a race of Mahomedans active in their worldly calling, energetic in the pursuit of gain, thriving, and increasing in wealth and number; but they had always been over-bearing and intolerant, had hesitated at no violence in endeavoring to obtain their ends, and for many years past had been but too notorious for the perpetration of outrages of the most atrocious character. Prior to 1841 these outrages were the work of single fanatics, without aid or open sympathy from others; but since that year, bodies of Moplas had, in open day, attacked Hindoos of wealth and respectability, murdered them under circumstances the most horrible, burnt their houses or given them up to pillage, desecrated Hindoo temples, and had wound up their crimes by throwing away their lives in desperate resistance to the Police and the Military. These outrages had gradually become more sanguinary and more difficult of repression; greater numbers had joined in them; it had become necessary to employ larger bodies of troops, and to call in the aid of European Soldiers, when in the beginning of 1852, an outrage occurred in all respects more deplorable and formidable than any that had preceded it; men, women, and children were indiscriminately slaughtered, and the Government determined, at the recommendation of the Magistrate, the late Mr. Conolly, to appoint a Commissioner to investigate and report upon the causes of these outbreaks, and to advise the Government upon the means to be adopted for their repression.

Before he proceeded to state the result of the enquiry then held, he would give a short abstract of one or two cases of outrage, in order that the Council might clearly know the kind of crime with which they were now requested to deal.

In 1849 a party of Moplas attacked the residence of a Hindoo of high rank and importance, and seized possession of his temple situated on a commanding Hill; they numbered in all sixty-six, and held out for a period of nine days. Troops were at an early period sent against them, but the few who ventured into action were repulsed with the loss of an officer and five men. They killed several persons with cold-blooded atrocity, and holding out to the last in the hope of winning the crown of martyrdom by dying in action against those whom they considered unbelievers, were finally destroyed by a Company of European Soldiers.

In 1851 a case occurred in which the victims were mostly men of note. Four, with a servant, fell in one neighborhood, after which the criminals walked off about eight miles, and invaded the house of a man of eighty years of age, of large possessions and much consideration. He was brutally dragged out, and his body cut to pieces in the presence of his affrighted tenants. The criminals eventually amounted to nineteen; they held out for three days, repulsed a detachment of Native Infantry, but were destroyed by a party of Europeans, four of whom were killed.

In 1852 fifteen Moplas forced their way into the house of an influential landlord, butchered the whole of the inmates, consisting of fifteen persons, including women and children, and even an infant of six months, and then plundered and burnt the house, an unusually large and substantial one; they then went from place to place, burning, killing, and wounding, and finally attacked the house of another large proprietor, by whose retainers, after a contest sustained for three quarters of an hour, they were despatched.

Such was the nature of the outbreaks, into the cause of which the Government, in 1852, ordered that special enquiry should be made. The result of that enquiry was a report, in which it was stated that in about ten years prior to 1852 there had been sixteen actual outbreaks, by Moplas, in which murder had been committed or attempted. In these sixteen outbreaks forty victims were killed and sixteen wounded, most of them desperately, and always with intent to kill; sixteen others were sought for but escaped: seventeen of those killed were Brahmins, of whom

twelve perished in one house; eleven houses were burnt down, six pagodas partially destroyed, and six others injured and desecrated. The Commissioner made an elaborate enquiry, with the view of ascertaining what had led to these disastrous occurrences, and after avowing his entire disbelief of the existence of any oppression or wrong or injustice suffered by the Moplas at the hands of the Hindoos, he declared his opinion that the true incentive to them had been the most decided fanaticism. The victims or intended victims had been all Hindoos, and their slayers or intended slayers all Moplas, who had carried out their purposes with the avowed object of seeking death in arms against those whom they considered unbelievers, with the view of obtaining the joys of their fancied Paradise.

The close unity of the Moplas in all that concerned their religion, and the jealousy and hatred of the Hindoos, which were common to them, led to the greatest sympathy when any fanatical outrage was committed. One Mopla would not betray another in matters wherein the honor or advantage of his caste was concerned, and the destruction of the criminals engaged in outrage had no deterring effect, because their crime, in lieu of causing shame, brought only glory.

These were the circumstances under which Act XXIII of 1854 was passed by the Council. Its main provisions were for the forfeiture to the State of all the property that belonged to every Mopla convicted of, or killed in the commission of, a fanatical outrage, and for the burning of their bodies within the precincts of the Jail, and also for the levy, from the inhabitants of the Parish to which the perpetrator of an outrage belonged, or within which he had resided shortly before his crime, of a fine of such an amount as the Government might sanction, to be applied in the first instance to the relief of any who might have suffered in the outrage, the balance being carried to the credit of the State.

Since that Act was passed there had been but one crime such as those against which the law was pointed, and that was the murder, in 1855, of the Collector and Magistrate, Mr. Conolly, in revenge for his having been instrumental in deporting the Mopla High Priest, who had been found strongly to incite his disciples to outrage, to encourage them in crimes, and to give his sanction to and blessing on their perpetration.

On the occurrence of this murder the Act was at once enforced. The murderers, who, as usual, would not be taken alive, were shot, their bodies were burnt in the Jail, their property was confiscated, and heavy fines were collected from the inhabitants of their villages, and, although there was nothing in all this to compensate for the death of a most exemplary man and a valuable public servant, one who, while still a Collector and Magistrate in the Provinces, had been nominated to a seat in the Government, the last of a band of brothers who all but one met a violent death—and nearly all met death in the service of their country—still it was some consolation to Mr. Conolly's many friends, and he (Mr. Forbes) for one should always be proud to have been among their number, to feel that sudden death could have come to no one better prepared to meet it; it was also some satisfaction to know that the law, once energetically enforced, had not again been broken, and that means had been found to crush the spirit of fanaticism which so long filled the Province of Malabar with dread.

It was provided in Act XXIII of 1854 that it should not come into operation until the Government had proclaimed that any part of the District of Malabar was to be subject to its provisions, and as this proclamation had not been made at the time of Mr. Conolly's murder, a difficulty arose in applying the new law to that particular crime. It was shown, however, that although the required proclamation had not been issued, the Act itself had been very carefully promulgated immediately on its enactment, and that the whole population were under the full impression that the law was actually in force. As it was felt to be intolerable that so great a crime should not meet its full meed of punishment on account of a mere technicality, and that a law passed to repress these fanatical outrages should, on no real or substantial ground, be ineffectual, on the very first occasion of a necessity for its action

arising, this Council passed Act V of 1856, by which the former law was brought into operation from a date subsequent to its full and general promulgation, but prior to Mr. Conolly's death.

These Acts would expire with the present year, and it was the object of the Bill which he had now to introduce to continue them in force. The spirit of fanaticism which called them forth had not died out, it was but suppressed by the stringency of these laws, which were now, and which would be for many years to come, as essential to the peace of society as they were when first passed. All the local Officers were agreed upon the absolute necessity for the continuance of the present law, and he thought that in the few remarks that he had made, and in the papers which he should print with the Bill, the Council would find sufficient to warrant the measure which he proposed.

It had appeared to him better to repeal Acts XXIII of 1854 and V of 1856, and to re-enact their provisions in a new law, than to pass an Act to continue those Acts, and thus have three laws all upon the same subject. He had therefore followed this course in drawing the present Bill, and he had made one or two alterations in the provisions of the former Act, to which he would briefly refer.

Section II of Act XXIII of 1854 provided for the forfeiture of the property of any one convicted of an outrage, or killed in the perpetration of one; and as it was very clearly established by all the enquiry made that these outrages had been deliberately planned some time previous to their perpetration, he had thought that it was not well that those intending to commit crime should be left with power to defeat the law by an alienation of their property. He had therefore inserted, after the Section declaring forfeiture, a Section taken from Section IV of Act XXV of 1857, declaring void alienations made within twelve months previous to the perpetration of a fanatical outrage by a Mopla.

In Section VII of the old law he had made an alteration, by which he proposed to extend to the Parish wherein a fanatical crime might be perpetrated the same liability to fine to which the Parish was liable in which the criminal might reside. To justify this addition to the stringency of the laws, he needed only to quote what is written by the Session Judge of Tellicherry.

> "In the case of the sanguinary outbreak which took place in 1852, in which a substantial landholder and his entire family, fifteen persons in all, were murdered in one night, the perpetrators came from a distance, but it was well established that the murder was committed with the perfect knowledge and consent of the Mopla community generally, in the neighborhood where the crime was perpetrated, and some of them were, in fact, convicted and sentenced to lengthened terms of imprisonment as accessories."

Lastly, he had inserted a Section to make it lawful for the Magistrate to call upon the inhabitants of the Parish to which a fanatic might belong, in which he might reside, or to which, after the perpetration of a crime, he might flee, to deliver up such perpetrator, and on their failing to comply with the call so made, to assess a fine upon them in the same manner and for the same purpose as he might already fine those who, residing in the same village as the criminal, were assumed to have been cognizant of his intention to commit a crime. This provision was recommended by the Magistrate on the suggestion of a Mopla of consideration, well acquainted with his co-religionists, and well aware of what would best repress their unfortunate tendency to crime.

He had only further to say that he had not considered it expedient to fix any limit to the duration of this Act. The Legislature could at any time repeal any law which it might consider injurious. It was but too probable that a whole generation must pass away before the necessity for this law would have ceased in Malabar, and it appeared to him to be injudicious to arouse ill-feelings which might otherwise die out, by the frequent public discussion of the means to be adopted to repress them.

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

The Bill was read a first time.

Mr. Forbes

APPEALS.

MR. CURRIE moved the first reading of a Bill "to provide for the more speedy disposal of appeals in cases appealable to the Sudder Court and of applications for special appeals."

He said, the object of this Bill was to afford such relief to the Sudder Court as would enable it to dispose of the business coming before it without an increase of the number of Judges. It was introduced at the instance of the Bengal Government in accordance with a suggestion of the Supreme Government.

The great pressure of work in the Sudder Court was in the department of regular appeals. The present arrear of cases being more than the Court, at its present rate of working, could dispose of in two years, and as the institutions outnumber the decisions, the arrears would go on increasing.

The law, as it now stood, required that appeals in all suits of an amount or value exceeding five thousand Rupees should be preferred to the Sudder Court. The manner in which this limit of five thousand Rupees had been fixed was this. Formerly Principal Sudder Ameens could not try cases of an amount exceeding five thousand Rupees, and all their decisions were appealable to the Zillah Judge. In 1837 this restriction was removed, and they were empowered to try cases to any amount, but it was provided that in cases above five thousand Rupees the appeal should lie to the Sudder Court. There seemed to him to be now no cogent reason for maintaining the limit of five thousand Rupees; there was a reason why it should not exceed ten thousand Rupees, because in cases above that amount the appeal lay to the Privy Council. The Sudder Court, whom he had consulted on the subject, proposed that the limit should be ten thousand Rupees, and a similar suggestion was made by his Honorable friend opposite (Mr. Harington) when Judge of the Sudder Court at Agra in 1852, at a time when the Court seemed to have been much pressed with work. The first provision therefore of the Bill which he now introduced was that appeals in all suits decided by a Principal Sudder Ameen, not exceeding ten thousand Rupees in amount or value, should lie to the Zillah Judge. This would give a very considerable amount of relief, as more than half, he believed nearly three-fifths, of the appeals preferred annually to the Sudder Court related to suits in which the amount or value was below ten thousand Rupees.

The number of applications for special appeals, too, was very large, and it had increased much of late years. As the law now stood, a single Judge of the Sudder Court could admit a special appeal, but two concurrent voices were necessary to reject an application for special appeal. The fact was that about four-fifths of the applications were rejected, and it was therefore usual for two Judges to sit together for the disposal of these cases. Now it hardly seemed necessary for the time of two Judges to be thus occupied; the rejection of an application implied a concurrence on the part of the Appellate Court with the view taken by the Lower Court of the part in which the appeal was preferred, and for such concurrence the decision of a single Judge might be deemed sufficient.

The Court said—

> "Two Judges therefore ordinarily sit together to hear these applications, three-fourths of which are rejected for want of merits, and the Court believe that a difference of opinion, whereby one Judge would admit and the other reject, is of the rarest occurrence. The Court believe that the ends of justice would be amply met if these petitions now on the file were allowed to be determined by a single Judge. This would just double the ability of the Court to deal with these applications, and would enable the Court with seven Judges to provide for the disposal of these cases, while two benches of three Judges were also sitting."

The second provision of the Bill therefore was that all applications for Special Appeals might be heard and admitted or rejected by a single Judge of the Sudder Court. This latter would of course be only a temporary measure, and would have no effect in respect of Special Appeals to be preferred under the rules contained in the new Code of Civil Procedure.

According to that Code all Special Appeals were to be filed in the Sudder Court, and disposed of by a Bench of three Judges. It was expected that under those rules the number of

appeals and the proportion of rejections would be very much smaller than at present.

These, therefore, were the two modes in which he proposed to grant relief to the Sudder Court, namely, by allowing all appeals under ten thousand Rupees to lie to the Zillah Judge, and by allowing a single Judge to hear and dispose of applications for Special Appeals.

The Sudder Court had suggested an alteration of practice regarding some descriptions of cases on the Criminal side of the Court. But the relief which could be given by any such alterations would be inconsiderable; and in the prospect of the speedy passing of a new Code of Criminal Procedure, he did not think it advisable to adopt them.

He begged to add that he proposed to suspend the Standing Orders, with a view to the Bill being read a second time, and referred to a Select Committee to-day.

The Bill was read a first time.

MR. CURRIE moved the suspension of the Standing Orders, to enable the Bill to be read a second time.

MR. HARINGTON seconded the Motion, which was carried.

MR. CURRIE moved the second reading of the Bill.

MR. HARINGTON said, he did not rise for the purpose of offering any opposition to the Motion of the Honorable Member for Bengal for the second reading of the Bill which had just been brought in by him; but in reference to that part of the Bill, which related to the disposal of applications for the admission of Special Appeals, he wished to observe that, as under Section 387 of the new Code of Civil Procedure, which would come into operation in the Presidency of Bengal on the 1st July next, all applications for the admission of Special Appeals which were pending on that date on the files of the Sudder Courts at Calcutta and Agra would have to be disposed of according to the rules of the new Code, which differed materially from the rule proposed in the Bill of the Honorable Member for Bengal, it seemed hardly worth while to make any alteration in the existing law for the brief period that would intervene before the date from which the new Code of Civil Procedure was to take effect. If he (Mr. Harington) had rightly construed the Section of the Code of Civil Procedure to which he had referred, the relief which would be afforded to the Sudder Court at Calcutta from the operation of that part of the Bill brought in by the Honorable Member for Bengal, which declared that applications for the admission of Special Appeals might be disposed of by a single Judge of the Court, would be very trifling.

MR. CURRIE said, he was almost ashamed to say that he had omitted to refer to that provision of the Procedure Code to which his Honorable friend had alluded. He had been under the impression that all pending applications would be disposed of under the existing law. He was clearly of opinion that they ought to be so, because both the grounds of appeal and the mode of institution were changed by the Code, and it could not be advisable that applications filed under the existing law should be disposed of in the manner provided in the Code for cases to be instituted under very different conditions. If the provision of the Code on this point was as stated, he thought it would be necessary to modify it, and such modification might probably be made by the Select Committee on the present Bill.

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

MR. CURRIE moved that the Bill be referred to a Select Committee consisting of Mr. Peacock, Mr. Harington, and the Mover, with an instruction to report thereon within a month.

Agreed to.

WARRANTS OF ATTORNEY AND COGNOVITS.

SIR CHARLES JACKSON moved the second reading of the Bill "to provide for the due execution of Warrants of Attorney to confess judgment and cognovits." In doing so, he said that he thought he had already stated all that he could say in support of the Bill, when he moved the first reading. Perhaps he had not sufficiently shown that the Bill related exclusively to proceedings in the Supreme Court. That, however, would be done in Select

Committee, if the Council should allow the Bill to pass the second reading.

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

PILOT COURTS (BENGAL).

The Order of the Day being read for the third reading of the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty"—

MR. CURRIE said that, before he moved the third reading of the Bill, he thought it would be necessary to re-commit it for the purpose of making an addition to the Section (X) which was amended in Committee of whole Council at the last meeting. That Section, as it now stood, provided that, if any person summoned to attend as a juror did not attend on the day of trial, and if the parties did not consent that the trial should proceed without a full jury, the place of the absent juror should be supplied by some other person of the same profession or calling as the absent juror, who should consent to serve. Now he thought that it might frequently happen that the Judge would find it impossible at the last moment, under the restriction now prescribed, to get a person who would consent to serve as juror. To meet this contingency, it seemed to him to be proper that a proviso to the following effect should be added:—

"If the parties or either of them do not consent that the trial shall be held before the Judge and such jurors as may be in attendance, and the place of the absent juror cannot be supplied by a person consenting to serve, the trial shall be postponed to another day, and the Judge shall either re-summon the same jury, or appoint and summon another jury in the manner hereinbefore provided."

If the Council should agree with him in thinking some such addition to be necessary, he would propose the re-committal of the Bill.

Agreed to.

MR. CURRIE said, before proceeding to move the amendment to which he had referred, he would mention that on that very morning a demi-official note from the Bengal Government had been put into his hands, enclosing a letter from the Bengal Chamber of Commerce on the subject of this Bill. He did not propose to make any Motion upon the letter, but he thought it right that the letter should be read at the table. [The letter was then read by the Clerk.]

MR. CURRIE said, that the Chamber seemed to have misapprehended the provisions of the amended Bill. The composition of the jury under the Bill, as it now stood, was to be two Merchants, one Master of a Merchant Vessel, and one Pilot. He did not think it advisable or safe to adopt the suggestion of the Chamber to have only one Merchant and two Masters of Ships. The late Mr. Piddington, who had been so long President of Marine Courts, had said that the Captains of ships were very much under the influence of the Pilots, and could not be relied on for an independent verdict. Therefore he (Mr. Currie) did not think that a majority of the jury should be composed of Pilots and Masters of Ships. He thought it better to retain the provision of the Bill as it now stood.

Section X was then passed with the addition of Mr. Currie's proposed proviso; and the Council having resumed its sitting, the Bill was reported with an amendment.

MR. CURRIE moved the third reading of the Bill.

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

RECOVERY OF RENTS (BENGAL).

THE PRESIDENT read a Message from the Governor-General, giving his assent to the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal," and communicating the following remarks:—

"I have this day given my assent to a Bill to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal.

"As several assents and dissents have been recorded upon the passing of this Bill, I deem it respectful to the Legislative Council to state the reasons for which I assent to it.

"I believe that the Bill will confer a great practical benefit upon the Agricultural population of Bengal.

"I find that the Bill is objected to, not on account of the substantial alterations of the

law which it effects between Landlord and Tenant, but because it gives the original jurisdiction, in cases arising between Landlord and Tenant, to the Courts of the Revenue Officers, and takes away original jurisdiction from the regular Courts of Civil Judicature, and I find that this objection rests chiefly upon two grounds.

"1*st*.—That the number of Revenue Officers whom it will be practicable to invest with powers under the Bill will be so small that parties, and their witnesses, will be compelled to travel greater distances to obtain justice than would be necessary if the Civil Courts were allowed to retain jurisdiction in such cases.

"2*nd*.—That there is not a sufficient security that the Deputy Collectors will be qualified to try the suits in question.

"In regard to the first ground, it is by no means certain that the apprehension expressed will prove to be well founded; but were it otherwise, it would not, in my opinion, constitute a sufficient reason for throwing back wholly and for an indefinite time the operation of a measure, the substantial provisions of which will confer, in other respects, a sensible benefit upon a vast community.

"In regard to the second ground, I am satisfied that, as a class, Deputy Collectors are, by general education, by training, and by examination, quite as well qualified to try cases which arise between Landlord and Tenant as the persons who for the most part preside over the lowest class of Civil Courts in Bengal.

"Lastly, I have to observe, that no one doubts that it has long been desirable that the important questions connected with the relative rights of Landlord and Tenant dealt with in this Bill should be settled: that no objection is suggested to the nature of the settlement which the Bill contemplates; and that the Bill is a real and earnest endeavor to improve the position of the Ryots of Bengal, and to open to them a prospect of freedom and independence which they have not hitherto enjoyed, by clearly defining their rights and by placing restrictions on the power of the zemindars, such as ought long since to have been provided.

"This being so, I think that the Bill ought to pass into law, and that defects of machinery or procedure, if any should be found to exist, should be left to be remedied hereafter by a supplementary enactment.

"For these reasons I have given my assent to the Bill, and I beg leave to add the expression of my opinion, that the author of the measure, Mr. Currie, has established a lasting claim to the gratitude of the cultivators of the soil in Bengal, and to the acknowledgments of all who are interested in their well-being.

"CANNING.

"*The 29th April* 1859."

MR. GRANT moved that this Message, with the dissents and assents which had been recorded, be printed.

Agreed to.

BREACHES OF CONTRACT BY ARTIFICERS, &c.

MR. CURRIE moved that the Bill "to provide for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases" be read a third time and passed.

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

SALE OF LAND FOR ARREARS OF REVENUE (BENGAL).

MR. GRANT moved that the Bill "to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency" be read a third time and passed.

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

LIMITATION OF SUITS.

MR. HARINGTON said, before making the Motion of which he had given notice for the third reading of the Bill "to provide for the limitation of suits," he begged to move that the Bill be recommitted for the purpose of considering certain proposed amendments in it. He might mention now that, with one exception, the amendments which he wished to move were rendered necessary by the passing of the Bill relating to the recovery of arrears of rent in the Presidency of Bengal, to which the assent of His Excellency the Right Honorable the Governor-General had just been given.

Agreed to.

Clauses 2 and 3 of Section I were passed after amendments.

MR. HARINGTON moved the introduction of the following new Clause after Clause 3:—

"To suits to set aside any attachment, lease, or transfer of any land or interest in land by the Revenue Authorities for arrears of Government Revenue, or to recover any money paid under protest in satisfaction of any claim made by the Revenue Authorities on account of arrears of Revenue or demands recoverable as arrears of Revenue—one year from the date of such attachment, lease, or transfer, or of such payment, as the case may be."

He said, the new Clause proposed by him had been suggested by a remark of

one of the Members of the Sudder Board of Revenue at Allahabad, who seemed to think that suits of the nature described in the Clause could not be entertained by the Civil Courts. He (Mr. Harington) had no doubt of the competency of the Civil Courts to hear such suits, but as under the Bill as drawn a question might arise as to the period within which they should be instituted, he proposed to introduce the Clause of which he had given notice, in order to remove all doubts upon the point. The period of limitation fixed in it was the same as that allowed for the institution of suits to contest the summary awards of the Revenue Authorities in cases falling within Clause 4 of the Section. There seemed no good reason why a longer period should be allowed, much less that these cases should be left to fall within the general rule of limitation contained in Clause 15, which it had been suggested to him might be considered to be the case, unless some special provision was introduced in regard to them.

Agreed to.

After some amendments in Clauses 4, 5, and 7, the Bill was reported.

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

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

SMALL CAUSE COURTS.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I and II were passed as they stood.

MR. LEGEYT begged to move the introduction of the following new Section after Section II:—

"Provided that nothing in the preceding Section shall prevent any Court constituted under this Act from taking cognizance of any claims which the parties may be willing to submit to it, and for which an agreement of the nature indicated in Section 326 of Act VIII of 1859 may be presented to the Court."

The object of this Section was to allow parties, if they chose to do so, to submit any claims they pleased to the Small Cause Courts. He was sure that a far cheaper and more speedy decision might be expected from the small Cause Courts than from the regular Civil Courts.

MR. HARINGTON said, he believed that the Section which the Honorable Member for Bombay wished to introduce, if adopted by the Committee, would prove wholly inoperative, or very nearly so, and that he might therefore assent to the Motion without any apprehension as to the consequences. But although such was his persuasion, he felt that he must still vote against the introduction of the Section, because it proposed to give to the Courts contemplated by the Bill a jurisdiction which was foreign to the constitution of Courts of Small Causes. Under the Section proposed by the Honorable Member for Bombay, it must be obvious that the most difficult questions of law and fact might be referred for the determination of the Courts constituted under the Bill, questions of inheritance, questions of adoption, questions of mortgage, in fact any question, however intricate or complicated, and however protracted might be the enquiry to which it might give rise, and that suits of any amount or value might be brought within the cognizance of those Courts. Now he need scarcely remind the Committee that this was not the intention of the Bill. What was proposed was to provide a class of Courts for the speedy determination of simple actions of debt and the like of a limited amount or value, and he should be exceedingly sorry to see the attention of the Courts, which might be established under the Bill, diverted from the work which would properly devolve upon them, and for the performance of which they were to be specially created, to cases not heard elsewhere by Courts of Small Causes, even though the parties should agree to submit the matters in dispute between them to their decision. Then he wished to ask the Honorable Member for Bombay whether he intended to allow an appeal

in cases falling within the proposed new Section. Looking to the important and difficult questions which might be brought before the Courts under that Section, he (Mr. Harington) thought they could hardly say that no appeal should be allowed in such cases, however large the amount in dispute, or however difficult the question at issue; but the theory of the constitution of Courts of Small Causes was that the decisions passed by those Courts should be final and not open to appeal. He would only further remark that Section 142 of the new Code of Civil Procedure allowed any question of law or fact to be stated by the parties to a suit in the form of an issue, and required the Court to give judgment thereupon after taking such evidence as it might deem necessary. The proceedings under this Section would generally be very summary, and it seemed to him (Mr. Harington) that the permission given in it obviated the necessity of any rule of the nature of that proposed by the Honorable Member for Bombay, even though that rule were not open to the objections which he had mentioned.

MR. CURRIE said that, even if the Council were disposed to adopt the amendment of the Honorable Member for Bombay, the proposed Section did not seem to be expressed in terms sufficiently precise. He (Mr. Currie) was inclined himself to take the same view of the matter as had been taken by the Honorable Member for the North-Western Provinces, and not to burden Small Cause Courts with such cases.

The Motion was then put and negatived, and the Section passed as it stood.

Sections III to VIII were passed as they stood.

Section IX provided that the procedure to be observed in the trial of cases cognizable under this Act should be that prescribed by the Code of Civil Procedure.

MR. LEGEYT said that, after having given this Section full consideration, he was of opinion that it would be better to define the Sections of the Code which would be applicable to these Courts of Small Causes. If it was intended to appoint none but highly qualified Judges to preside over them, there would probably be no objection to the Section remaining as it now stood. But by a later Section of the Bill it was proposed to empower "any Executive Government of its own authority to invest any existing Court, subordinate to a District Court within the limits of its Government, with jurisdiction for the trial and final determination of suits made cognizable by Courts of Small Causes constituted under this Act, in which the amount or value in dispute shall not exceed the sum of fifty Rupees;" and it therefore seemed to him desirable that the procedure to be applied to these Courts should be defined. It would be exceedingly difficult for Officers of the class to which the Judges presiding over their existing Native Courts belonged to discriminate between what portions should and what should not apply; and it would lead to constant disputes and confusion. He would therefore much prefer if the Sections of the Code, which would be applicable, were defined, although he was not prepared with any Motion on the subject defining the Sections. The selection might be hereafter made if the Committee agreed to the alteration.

MR. HARINGTON said, the Honorable Member for Bombay, if he had understood him rightly, would have no objection to the Section under consideration as now framed, if Courts, specially constituted for the purpose, were alone to be employed to carry out the provisions of the Bill, since it might be hoped that a superior class of Judges would be appointed to those Courts; but as any existing Court might also be invested with jurisdiction to try cases under the Bill up to a certain amount, the Honorable Member thought it would be objectionable that the Courts so invested should be left to find out for themselves what Sections of the general Code of Civil Procedure were and what Sections were not applicable to the suits which would come before them in their capacity of Small Cause Judges, and he proposed, therefore, that the Sections by which those Officers were to regulate their proceedings in the trial and decision of such cases should be indicated by their numbers or defined. He (Mr. Harington) could not agree with the Honorable Member for Bombay. He could not imagine that any Judge

who was considered competent to exercise general jurisdiction under the Code of Procedure, which had recently passed into law, could experience any difficulty in distinguishing between the Sections by which it would be his duty to regulate his proceedings in cases cognizable under the Bill, supposing him to be invested with power to try such cases, and the Sections which could come into operation only in cases falling within his general jurisdiction, particularly with the copious index which was now prefixed to the Code. The point had been fully considered by the Select Committee in consequence of a suggestion which had been made by the Honorable the Lieutenant-Governor of the North-Western Provinces, but the conclusion to which the majority of the Committee came was that a separate Code of Procedure applicable only to the cases which would be cognizable under the Bill, was neither necessary nor desirable, and they had reported accordingly.

The Section was passed as it stood.

Sections X to XVII were passed as they stood.

Section XVIII provided as follows :—

"Each party shall bear his own costs, if any, consequent on the reference of a case for the opinion of the Sudder Court."

MR. LEGEYT asked, why should each party bear his own costs ? Why should not the costs follow the decision ? He would omit the Section altogether, for the Code of Civil Procedure already provided as to costs.

MR. HARINGTON said, the rule objected to by the Honorable Member for Bombay was taken from the Bill for the more easy recovery of small debts and demands as finally settled by a Committee of the whole Council. He believed a similar provision was contained in the Act which regulated the proceedings of the Courts of Small Causes in the three Presidency Towns. As the reference to the Sudder Court would probably, in most cases, be made by the Lower Court of its own motion, it appeared to him but fair that, as provided by the Section, each party should bear his own costs, if any, consequent upon such reference. If, however, the Committee thought otherwise, he was quite willing to concede the point. It was not a matter of very great importance.

After some conversation—

MR. PEACOCK moved the omission of the words "Each party shall bear his own" at the beginning of the Section, and the addition of the words "shall be costs in the suit" at the end of the Section.

The Motions were severally carried, and the Section as amended was then passed.

Section XIX provided as follows :—

"It shall be lawful for any Executive Government of its own authority to invest any existing Court, subordinate to a District Court, within the limits of its Government, with jurisdiction for the trial and final determination of suits made cognizable by Courts of Small Causes constituted under this Act, in which the amount or value in dispute shall not exceed the sum of fifty Rupees. Whenever any Court is so invested, all suits cognizable under the provisions of this Act, which shall arise within the limits of the jurisdiction of such Court, shall be heard and determined in accordance with the provisions of this Act, and all the rules contained in this Act shall be applicable to such suits."

MR. LEGEYT said, he had no intention of offering any opposition to the power which this Section proposed to confer upon the Executive Government, but to the degree of power to be vested in the Courts. No one was more sensible than himself of the advantage to be derived by restricting as much as possible appeals from decisions of Small Cause Courts. For his own part he was disposed to allow no appeals from the decisions of such Courts below five hundred Rupees, but then the Courts must be presided over by Judges who would command the confidence of the public. He had no doubt that a large proportion of suits up to fifty Rupees would hardly bear the expense of an appeal, and that it would be very desirable to prevent a waste of money in litigations of this nature; still so far as he knew the feelings of the community on this point, the people did not like the idea of giving a finality of jurisdiction to the Native Civil Courts. He could not say what gave rise to this feeling, but of this he was certain, that a measure, which would take away the right of appeal from the decisions of these tribunals as at present constituted, would be very unpopular. In referring to a

Return of the Bombay Presidency for 1849, he found that out of 91,781 suits nearly 80,000 were below fifty Rupees, leaving only 11,000 above that sum. Now if the public would not trust the Moonsiffs with final jurisdiction in all cases, he saw no objection to vesting them with final jurisdiction below the trifling amount of ten Rupees. Such suits would not bear appeals. He found from the Return to which he had already referred, that the number of suits instituted in that year below ten Rupees was 36,801, from the decisions passed on which 1,600 appeals were brought. He was fully assured that no one who went into Court for so small a sum as ten Rupees would gain much, even if he won the action; an appeal was an absurdity. He was in favor, as he had already stated, of the principle of allowing no appeal below five hundred Rupees, if only highly qualified Judges were obtained for the disposal of all these cases. But he was not one of those who thought that highly qualified Judges could be obtained, and he therefore felt compelled to move the substitution of the words "ten Rupees" for the words "fifty Rupees."

MR. PEACOCK said, he agreed to some extent in the observations which had just been made by the Honorable Member for Bombay. But he went farther, and objected on principle to the Section altogether. He thought that, when a certain class of Courts existed, they should all be bound by the same rule. If the Section were passed as it now stood, upon what principle could the Executive Government regulate the exercise of the discretion proposed to be vested in them? If the Moonsiffs were not fit to be trusted with the proposed jurisdiction, they were not fit to be trusted with the jurisdiction which they now possessed. He did not see why a summary jurisdiction under this Act should be conferred by the Executive Government upon the Moonsiff's Court in district A, but not upon the Moonsiff of the adjoining district B. Was it because they had a good Judge in the former and a bad Judge in the latter? Suppose the inhabitants of district B petitioned the Government to confer a similar jurisdiction on their district. Would the Government tell them, "you have not so good a Judge in your district as there is in district A?" If so, they might justly reply, "If our Judge is not so good as the Judge of district A, give us then a competent Judge." He thought that there should be some fixed rule. He agreed with the Honorable Member for Bombay, that there were some cases of small amount in which it would be better to give no appeal. The waste of time and money involved in such litigation would render the appeal valueless. He would therefore fix some small amount, say ten or twenty Rupees, up to which there should be no appeal. He would give final jurisdiction to that extent to all Courts. What he proposed was to make every Moonsiff's Court a final Court of original jurisdiction up to twenty Rupees, and every Zillah Judge's Court a final Court of appellate jurisdiction up to five hundred Rupees. He was corroborated in the principle of not admitting the proposed Section by the decision of the Council on the old Small Cause Courts Bill. Upon that occasion the late Honorable Member for the North-Western Provinces (Mr. Allen) had proposed an amendment which was in substance the same as the Section under consideration. The question was fully debated, and there was a majority of six votes to two against the amendment; so that the principle of allowing final jurisdiction to the Moonsiffs' Courts generally had already been approved by the Council. If, however, in consequence of the opinions which had since been received, they now thought that the Moonsiffs' Courts should not be made Small Cause Courts up to fifty Rupees, such a jurisdiction might be given them to the extent of twenty Rupees. He begged to move, therefore, that this Section be omitted, and the following be substituted for it:—

"No appeal shall lie from a decree of any existing Court subordinate to a District Court in any suit of the description contained in Section II, when the debt, damage, or demand shall not exceed twenty Rupees; but every such decree shall be final. No special appeal shall lie from any decision or order passed in regular appeal by any Court subordinate to the Sudder Court, in any suit of the nature described in Section II, when the debt, damage, or demand for which the original suit shall be instituted shall not exceed five hundred Rupees; but every such order or decision shall be final."

Mr. LeGeyt

MR. HARINGTON said, before he attempted to reply to the objections which had been urged by the Honorable and learned Member of Council (Mr. Peacock) to the Section at which they had now arrived, and to the amendment proposed by the Honorable Member for Bombay, he wished to observe that, if this Section were struck out of the Bill altogether, and no other Section put in its place, the Bill would still be quite complete in itself in so far as it authorized the establishment of Courts of Small Causes wherever they might be found necessary, defined the jurisdiction to be exercised by those Courts as regarded both the description and the amount or value of the suits to be heard by them, and prescribed the procedure to be followed in the trial and determination of such suits, and in executing the decrees which should be passed in them; and he felt satisfied that, as soon as this Bill became law, whether it stopped at the last Section which had been ordered by the Committee to stand part of the Bill, or whether it contained any further provisions, the Government would at once proceed to fulfil the obligation which would then, according to his view, devolve upon it, and would not only be prepared to give its sanction to the establishment of Courts of Small Causes, such as the Bill contemplated, at all places where the income of suits, made cognizable by those Courts, might be expected to afford sufficient employment to the Judges appointed to preside in them, but also to assign such salaries to the Judges so appointed, as would enable the local Governments to secure the services of really competent men, competent in point of integrity as well as in point of ability. It had been remarked again and again, and he thought it must be obvious to all, that the successful working of a measure of this nature must depend almost entirely upon the character of the agency employed to carry it out, and that the character of that agency again must be dependent in a great degree upon the remuneration to be received by the Officers composing it. In order to command the services of men who, from their education, character, and abilities, should be considered in all respects fitted for the exercise of the large powers which were now proposed to be conferred for the first time on the Courts of original jurisdiction in the Mofussil, ample salaries must be given. On this point he thought they were all agreed, and, looking to the extreme anxiety which had long been felt by the Government, both here and at home, for the improvement of the Judicial system in this country, and particularly for the establishment of Courts which might safely be entrusted with a summary jurisdiction for the final determination of the simpler classes of suits, he could not for a moment doubt that, as soon as this Bill passed, the Government would perform its part in the great reform contemplated by it in a large and liberal spirit. He felt that he should be doing injustice to the Government if he thought otherwise. He was well aware of the very serious pecuniary embarrassments under which, owing to recent events, the Government was, at present, unfortunately laboring; but he believed he might say that the Courts, for whose establishment this Bill made provision, would more than pay their expenses from the revenue derived from the sale of the stamp paper which would be used in their proceedings, and he certainly thought that any surplus income obtained from this source should be applied, in the first instance, to the improvement of the Courts in which it accrued, instead of being carried to account, as was now the practice, under the general head of judicial charges and receipts. It had been truly observed by a late Honorable and learned Member of this Council who, on the Motion for the second reading of the Bill, was prevented, to the great regret of all present, by a sudden attack of indisposition, from entering as fully into the subject as he had intended; that "having disposed, as he hoped satisfactorily, of the principal difficulties of procedure, they had still to deal with the more important question of the reform of the Courts. He thought that he was not wrong in calling that the more important question, for surely the interests of justice were far more substantially secured by the trustworthiness and efficiency of the functionaries by which it was administered than by any simplicity or perfection of procedure." He believed that all who heard him would agree

in these remarks. Well then, should his expectations be realized, and Courts of Small Causes presided over by competent Judges be established at the Sudder Stations of the different districts, and at or in the neighborhood of the large towns and cities in the interior, or wherever there was work for them, with a sufficient extent of jurisdiction which, while it did not place those residing at the extreme limits thereof at too great a distance from the Court, would yet embrace a considerable radius, they would have provided a class of Courts, to the constitution and composition of which he could not conceive that any reasonable objection could be taken, for the final disposal, at a single trial, and generally at a single hearing, under a simple Code of Procedure, of at least one-half—probably referring to what had had just been mentioned by the Honorable Member for Bombay—of nearly three-fourths of the entire judicial business of the country, arising beyond the local limits of her Majesty's Supreme Courts of judicature, and he thought he might say that that would not be a small reform in the judicial system of the country. Then the Act relating to the recovery of arrears of rent, for which they were indebted to the Honorable Member for Bengal, had provided a class of Courts, in so far as the Presidency of Bengal was concerned, the best suited, in the opinion of the Honorable Member and of others who thought with him, for the determination in the first instance of all suits arising between Landlord and Tenant or between Landlord and Agent. He thought he should not be guilty of any exaggeration if he estimated the average annual income of such cases in the Lower and North-Western Provinces at 100,000, so that this again was no inconsiderable reform, and here he must congratulate his Honorable friend, the Member for Bengal, on his having been present to-day, as he (Mr. Harington) had hoped he would be, when the assent of His Excellency the Governor-General was given to that great work which had been elaborated by him with so much labor, care, and ability, and which had elicited from His Excellency the high commendation that it would confer a great practical benefit upon the agricultural population of Bengal.

Mr. Harington

For some months past the Council had been engaged in considering in what way improvements could best be effected in the Civil Courts of this country. Various schemes had been proposed and a report had just been made on the subject by the Select Committees upon the Codes of Civil and Criminal Procedure prepared in England by Her Majesty's Commissioners. Whichever of these schemes was eventually adopted, he thought he might say that the Courts to be established under the Act of the Honorable Member for Bengal, and those which might be constituted under the Bill before the Council, should that Bill pass into law, would go far towards the solution of this very difficult question. But they could not stop there; they must go on until they reached the question of amalgamated Courts, that is, as he understood the matter, Courts composed partly of Judges appointed in England, and partly of Judges appointed in this country. It seemed to be the opinion in England that the Council was either unwilling or afraid to enter upon the consideration of this question; but he thought that there must be some misapprehension upon the point. No doubt Her Majesty's Commissioners proposed to establish a High Court in each of the three Presidency Towns and at Agra to take the places of the present Supreme and Sudder Courts, and in the Codes prepared by them they introduced provisions for the constitution of such Court, and for the duties to be performed by it; but in the Bills brought in by the Honorable and learned Member of Council on his left (Mr. Peacock), in which those Codes were embodied, the Chapters, which related to the High Court, were omitted, as he (Mr. Harington) understood, under orders from home, and the question of amalgamation had not yet been submitted for the consideration of the Council, or discussed by it.

He came now to the Section which was objected to by the Honorable and learned Member of Council (Mr. Peacock), and to the scheme contained therein.

He was quite ready to admit that he attached comparatively little importance to this part of the Bill. From the first he had considered the main or

primary object of the Bill to be the establishment of separate Courts of Small Causes as calculated to give greater satisfaction, as well to the Government as to the people, in the decision of the cases which would be triable by those Courts than Courts exercising both general and what was understood by Small Cause jurisdiction. The investment of existing Courts with jurisdiction to try cases under the Bill had been with him all along a secondary consideration. In framing the Bill, however, he felt that, if he confined its operation to the establishment of separate Courts of Small Causes, the jurisdiction of which could not possibly be extended to all parts of the country, he should be depriving a very large section of the community of the benefits of what was called the Small Cause system, and that the Bill would, therefore, to a certain extent, be a partial one. In saying this he begged to observe that he did not consider that the Government was bound to give exactly the same kinds of Courts to all classes of its subjects. Persons residing in desert places, or amongst a scanty population, where there was little if any trade, or at a distance from large towns, were not, in his opinion, entitled to claim Courts of the same character and in the same number as persons residing in populous places or in places where there was a large amount of trade. Equality in this respect would be impossible, nor could any Government afford it. If people chose, for their own convenience, to live in out-of-the-way spots, they must be satisfied with such Courts as the Government could give them.

But still, if a system of Courts for the trial of Small Causes was to be introduced in the Mofussil, it was obviously just and proper that it should be extended as widely as possible. He had, therefore, to consider in what manner this could best be done. Two ways presented themselves, by which the benefit of the system might be spread over a much wider extent of country, and might be made to reach a much larger number of persons than if separate Courts only in particular localities were established. The first way was that proposed in the Bill, namely, to allow the local Governments to invest any existing Courts with Small Cause jurisdiction up to a certain amount. The other way was that suggested by the Honorable and learned Member of Council, namely, to constitute every Moonsiff's Court a Court of Small Causes for the trial and determination of certain classes of suits up to ten or twenty Rupees, or even more. Now, except as to the amount, this was exactly the scheme which was proposed by the Honorable and learned Member of Council when the Bill for the more easy recovery of small debts and demands was under the consideration of the Council, and the arguments adduced by the Honorable and learned Member in favor of his proposition, and the objections urged by him to the scheme contained in the Bill were, in fact, little more than a reproduction of all that was said by him in the discussions which took place on the Bill to which he had just referred. But the Honorable and learned Member appeared to have overlooked the obstacle which had been intermediately raised up in the way of the adoption of his plan. That obstacle was the almost unanimous verdict which had been pronounced by those best competent to give an opinion on the subject, against the scheme of the Honorable and learned Member of Council, and in favor of the scheme proposed in the Bill. Amongst those who had joined in that verdict were the Governments of Madras and Bombay; the Lieutenant-Governors of Bengal and the North-Western Provinces; the Sudder Courts at Madras, Bombay, and Agra; the majority of the Sudder Court at Calcutta, and a very large majority of the Zillah Judges; and he said now, as he had said before, that surely this Council would not run counter to the opinions of all those authorities and force upon the country a scheme which had been so strongly condemned by them. It was entirely owing to this scheme having been brought forward, contrary to the advice of the original framers of the Bill for the more easy recovery of small debts and demands, that the country was not now covered or nearly covered with Courts of Small Causes, either separate Courts, or invested Courts. It was owing in a great measure to the same cause that the question of establishing Courts of Small Causes, the necessity

for which was so generally admitted, had been allowed to lie dormant for so long a period. Looking then to the effect which had been produced by the proposition of the Honorable and learned Member of Council, when formerly made, and to the very decided opposition which that proposition had met with, he (Mr. Harington) must be allowed to express his regret and surprise that the Honorable and learned Member of Council should again have brought it forward, and that, too, notwithstanding that no change of circumstances had intermediately taken place. He would not occupy the time of Honorable Members by reading the opinions to which he had referred, but he begged Honorable Members carefully to consider those opinions before they gave their vote in favor of the Honorable and learned Member's Motion. Surely the Honorable and learned Member of Council must admit that young natives, of whose antecedents they might be entirely ignorant; of whose character they might really know scarcely any thing, and of whose qualifications for the important office of Judge, all that they knew was that they had passed an examination, the written questions proposed at which were, in all probability, surreptitiously obtained by them beforehand, were not the men to be entrusted immediately on their elevation to the Bench, when in the great majority of cases they must necessarily be devoid of all judicial experience, with a final jurisdiction in about nine-tenths of the suits, which would come before their Courts, and that, too, in a country where there was neither press nor any public opinion to exercise an influence upon them. Yet such would be the case if they agreed to the amendment of the Honorable and learned Member of Council. If that amendment were carried, he (Mr. Harington) could only repeat what he said when he introduced the Bill, namely, "that they would be commencing at the wrong end; that they would be giving large powers to those who were the least fit to be entrusted with them, and that, too, over the most indigent and most helpless classes of the people, who could ill afford to lose the smallest sum, and who were the most destitute of power to complain or make known their grievances." Now the scheme contained in the Bill was open to none of these objections. Where a separate Court of Small Causes might be established, there would be no necessity for investing any existing Court, holding its sittings within the same local limits, with Small Cause jurisdiction. Where there was no such separate Court, it would be competent to the local Government to invest any existing Court with jurisdiction to try cases under the Bill not exceeding in amount or value the sum of fifty Rupees. The Sudder Courts would always be at hand to advise the local Governments as to the qualifications and merits of the Officers employed under them, and he thought they might safely trust the local Governments to extend the system to all parts of the country as fitting instruments could be found for carrying it out. But the Honorable and learned Member of Council said that the inhabitants of those places in which there was no Small Cause Court, nor any Court invested with Small Cause jurisdiction, would complain, and as he thought, with justice, that they were excluded from the benefits of the system; they would say that it was hard upon them that they should be obliged to put up with an inferior Judge, and that, because he could not be trusted, his decisions, even in cases of the smallest amount, should be open to appeal. But did the Honorable and learned Member really believe that such a complaint would ever be made? He (Mr. Harington) thought, as he had remarked on a former occasion, that those who were to be deprived of the right of appeal under the Bill would complain of the loss, not that they should hear any complaints from those who, from whatever cause, were to be left in the enjoyment of that right. What did the natives say—why, that if the right of appeal was taken away, our judicial system would be no better than that which obtained under native rule. It was this fondness for appeal, and not the dislike to it, from which it seemed so desirable to detach the natives of India. This the Bill proposed to do by degrees, or again to quote the words of the Honorable the Lieutenant-Governor of Bengal,

"Gradually to introduce into the large towns and marts, and thence, step by step, into

other places in the interior, Small Cause Courts, after the pattern of the successful Court in Calcutta, thereby weaning the natives from their attachment to judicial formalities and continuous appeal, and, by little and little, accustoming them to the use of simple, informal, and final Courts of justice, just as the natives of Calcutta had been gradually accustomed to the Calcutta Small Cause Court, until it had become with them an entirely favorite institution."

It should be borne in mind that the Bill would not take away any thing from those places to which its provisions did not extend; they would be left, as at present, only with a much better and much simpler Code of Procedure. The Honorable and learned Member of Council thought that this Council might, with equal propriety, empower the local Governments to determine to what extent every Sessions Judge should have power to punish within certain limits, as to declare from what Moonsiffs' decisions an appeal should lie, and what Moonsiffs' decisions should not be open to appeal, for such he said would be the real effect of the Section as now framed. But surely there was a great difference between Officers holding the appointment of Civil and Sessions Judge, which was never given except to old and experienced Members of the Covenanted Civil Service, and young natives entering the service of Government for the first time, of whom, as he had said, they often knew little, if any thing, at the time of their appointment, and who, in the great majority of cases, had had no judicial experience. It was to the giving to these young men indiscriminately final jurisdiction in any class of cases, that he (Mr. Harington) entertained such strong objections. The Honorable Member for Bombay, in the amendment proposed by him, did not object to the principle of allowing the Executive Governments to invest any existing Courts with Small Cause jurisdiction, but as he seemed to think that the Lower Courts could not be trusted as a body, or at any rate that they did not enjoy the confidence of the people, the Honorable Member was of opinion that, in fixing the amount or value of the suits in which that jurisdiction might be exercised, at fifty Rupees, too high a sum had been taken, and he proposed to reduce it to ten Rupees. The question therefore at issue between himself and the Honorable Member for Bombay was one merely of degree. Now it certainly did not appear to him (Mr. Harington) that there was any such difference between simple actions of debt and the like for fifty Rupees, and suits below that sum; that, if the Government were to be invested with the discretionary power contemplated in the Section at all, they could not be safely entrusted with the exercise of it to the extent proposed. He should therefore vote against the amendment of the Honorable Member for Bombay, as well as against the Motion of the Honorable and learned Member of Council.

MR. FORBES said, before the Council came to a decision, he desired to say a few words on the Motion of the Honorable Member for Bombay. The Honorable Member proposed to limit Small Cause jurisdiction to ten Rupees. But the Council were probably aware that, in Madras, District Moonsiffs had had jurisdiction to the extent of double that amount since 1816; and he would read to the Council the opinion of an Officer fully competent to speak upon the question of how far this unappellate jurisdiction had been exercised to the satisfaction of the people. Mr. Morehead (who was now a Member of the Madras Government) had said:—

"As a body I consider the District Moonsiffs intelligent and upright, and that, with few exceptions, they possess the confidence of the people. The files of their Courts are heavy, the average of appeals from their decisions is small, and in the exercise of their summary jurisdiction they have succeeded well; suits of this nature are speedily disposed of, parties do not complain of such decisions, and no representations that I am aware of have been made by the Civil Judges reflecting upon the manner in which this portion of their duties has been performed. It must moreover be borne in mind that our District Moonsiffs have exercised this summary jurisdiction since 1816, and no clamour has been raised against it, which could hardly have been the case had it been attended with evil results."

That was the opinion of a gentleman who had been thirty-five years in the Judicial Service, and for twelve or fifteen years a Judge of the Sudder Court; and it showed very clearly that the opinion expressed by the Honorable Member for Bombay, that the people would view the

grant of unappellate jurisdiction even as far as in cases of only ten Rupees in amount with great dissatisfaction, was not founded on what had been the experience in Madras during the last forty years.

He was in favor of an extension of that unappellate jurisdiction at the discretion of the Government as far as fifty Rupees, and he should vote for the Section as it stood.

MR. LEGEYT said, he should be very glad himself to see the unappellate jurisdiction increased, but he believed that, unless they got these cases decided by European Judges or by Natives of the highest character, the people would not be satisfied.

The picture drawn by the Honorable Member for the North-Western Provinces was a delightful one to contemplate, but he could form no hope that that picture would be realized by this Bill. The Honorable Member had said that it would be the duty of Government to appoint qualified Officers to preside over the Courts to be constituted under the Bill. There was no doubt that this should be so. But was there in the present day any reasonable prospect of such a result? The tendency at present was reduction everywhere.

He had in his hand a Bombay Return, where he found that in the district of Poonah 8,374 suits were decided in the year before ten Native Judicial functionaries. Of these not more than 374 were for sums above fifty Rupees, leaving 8,000 suits for sums below fifty Rupees, which would, under this Act, have to come before Small Cause Courts. That would give an average of 800 suits in the year to a Small Cause Court Judge. He saw from this return that a very industrious and hard-working Native Judge in this same district of Poonah, could only get through 600 suits, and the Sudder Ameen, who was a very able Officer, could only decide 700 or 750 suits in the year. Therefore he did not expect that, with all the preparation of the suits, the execution of decrees, &c., they could get any Small Cause Judge to decide 800 suits in the year. But even if that were possible, was there any probability of Government giving ten Small Cause Judges to each zillah? He did not know what ground there was for supposing that people at large would be willing to accept of final jurisdiction up to fifty Rupees. His object in limiting the amount to ten Rupees was that he did not see how any man in his senses could object to so small a sum not being open to appeal. Nothing would rejoice him more than to see the picture drawn by the Honorable Member for the North-Western Provinces realized throughout the length and breadth of the land, but he believed it hopeless to expect such a result.

Mr. LeGeyt then withdrew his amendment with a view to supporting the Section proposed by the Honorable and learned Member (Mr. Peacock).

MR. HARINGTON said, the Honorable Member for Bombay seemed to think it was hopeless to expect that a sufficient number of Courts would be established for the disposal of the large number of cases which would be cognizable under the provisions of the Bill, and in support of what he had stated upon this point, he instanced the fact that in the district of Poonah ten Judges were able to dispose of only 8,000 cases per annum; but the three Judges of the Small Cause Court at Calcutta disposed of upwards of 30,000 cases in the course of last year, and under the new Code of Civil Procedure, which, whatever might be thought of it in some quarters, was certainly less cumbersome in its character than the Code now in force in Bombay, he (Mr. Harington) saw no reason why the Courts, which might be established under the Bill, should not be able to dispose of nearly the same amount of work, or, at any rate, of a very much larger number of cases than was decided by the existing Courts under the present Regulations. Her Majesty's Commissioners had declared that the procedure proposed by them would be equally expeditious with that of the Courts of Small Causes at Calcutta, Madras, and Bombay, and whether the changes made in this country were to be regarded as improvements or the contrary, they certainly had not altered the character of the Code in the respect just mentioned. He was prepared to admit that the new Code threw more

upon the Judges than was the case at present, but they had a right to expect that those whose duty it would be to work the Code would not be wanting in doing what was required of them. This Council could only make laws; they could not compel obedience to them; this was the duty of the Executive Government, and they could only hope that no laxity would be permitted.

The Honorable Member for Bombay having asked to be allowed to withdraw his amendment, he (Mr. Harington) thought he might fairly claim the Honorable Member's vote against the Motion of the Honorable and learned Member of Council on his left (Mr. Peacock). The reason assigned by the Honorable Member for Bombay for proposing that the sum mentioned in the Section under discussion should be reduced from fifty to ten Rupees was that the Courts which might be invested with jurisdiction to try cases under the Bill did not as a body enjoy the confidence of the people. Such being the case, he (Mr. Harington) did not see how the Honorable Member for Bombay could consistently vote for the amendment of the Honorable and learned Member of Council, which proposed to give to all Courts indiscriminately, whoever might preside in them, a final jurisdiction in suits up to twenty Rupees.

MR. LEGEYT said, he did not know if it was necessary for him to reply to the charge of inconsistency brought against him by the Honorable Member for the North-Western Provinces. He would only say that his opinion had always been for giving final jurisdiction everywhere throughout India without distinction, in suits of very small amount or value. He should have preferred the limit to be fixed at ten Rupees; but after what had fallen from the Honorable Member for Madras, as to the results of the system obtaining in that Presidency, if the Council felt disposed to raise the limit to twenty Rupees, he would not object to it.

MR. CURRIE said, the question, as he understood it, was whether they should invest certain Courts (the Courts of Moonsiffs) indiscriminately with final jurisdiction up to twenty Rupees. He wished to say upon this question that he did not think it would be safe to give such a power to young men who, after passing a mere technical examination, were ordinarily appointed to the office of Moonsiff. In considering the jurisdiction to be conferred by the Rents Bill, he had proposed at first to give to Deputy Collectors a power of final adjudication in cases of certain amount, but on further consideration, and in deference to the opinions of several Officers of experience, he had concurred in an alteration made by the Select Committee, under which the cases in which he had proposed to give final jurisdiction, when decided by Deputy Collectors, were made appealable to the Collectors. Consistently therefore with the course which he had followed upon the occasion, he could not now vote in favor of giving final jurisdiction to Moonsiffs who, as a class, he believed to be greatly inferior to the Deputy Collectors.

MR. PEACOCK said, he wished to add a few words. The Honorable Member for Madras had admitted that for several years past Moonsiffs had exercised final jurisdiction up to twenty Rupees. He (Mr. Peacock) remembered that, when the old Small Cause Court Bill was under consideration, the question was asked, if Moonsiffs could be trusted with that jurisdiction in Madras, why should not the Moonsiffs in Bengal and Bombay be equally trusted? The Honorable Member for the North-Western Provinces said that he (Mr. Peacock) had overlooked the objections made to the passing of the former Bill. He had not done so. That Bill proposed to give final jurisdiction to the extent of fifty Rupees, whereas he now proposed to give it up to twenty Rupees. He would not press his opinion against those who thought that the Moonsiffs, as a body, were incompetent to be trusted with final jurisdiction up to fifty Rupees, but he thought that what had worked well in Madras would probably work well in the two other Presidencies. It was a fallacy to call the Courts, to be constituted under the Bill, Small Cause Courts.

He also thought that Zillah Judges should be entrusted with Small Cause jurisdiction up to five hundred Rupees.

MR. HARINGTON said, he desired to explain that he did not object to that part of the Honorable and learned Member's amendment which proposed to invest the Zillah Judges with a final appellate jurisdiction in simple actions of debt and the like, in which the amount or value in dispute did not exceed the sum of five hundred Rupees. To that part of the Honorable and learned Member's scheme it was not his intention to offer any opposition, nor had he said one syllable against it; what he objected to was the proposal to give a final jurisdiction in suits up to twenty Rupees to all Native Judges without any distinction.

MR. PEACOCK, with the leave of the Council, withdrew his amendment, and stated his intention of dividing it into two, so as to bring each forward separately. He should now content himself with merely voting against the Section under discussion. If the Moonsiffs in Madras could exercise final jurisdiction up to twenty Rupees, not only in claims for debt, but also in suits relating to land, he confessed he saw no reason why the Moonsiffs in Bengal and Bombay should not be vested with that jurisdiction in suits cognizable under this Bill.

MR. HARINGTON said, so much stress had been laid upon the fact of the whole of the Moonsiffs in the Madras Presidency having a final jurisdiction in all suits, as well for real as for personal property, up to twenty Rupees, that he considered it necessary to read to the Committee what had been said of these Officers by the Madras Sudder Court. On the 14th July 1854 the Court declared that they were not men whose honesty was unimpeachable, and in whose efficiency in the discharge of their duties every reasonable confidence might be reposed. Here they had the opinion of the highest Appellate Court at Madras in respect of the Judges in whose favor so much had been said in the course of this debate, and it must be presumed that the Sudder Court at Madras had good grounds for the opinion which they had given. But whatever might be the character of the Madras Moonsiffs, this Bill did not propose to deprive those Officers of any jurisdiction now vested in them. That would remain untouched. There was a great difference, however, between giving a new jurisdiction and taking away a jurisdiction which had been long exercised. He must repeat that the Bill would leave the residents of those places to which its provisions were not extended in the full enjoyment of all that they now possessed; while as regarded the question of appeal, he believed that if the country were canvassed, a very large majority of the people would be found voting for the continuance of the present system with its right of appeal in every case, rather than for the introduction of a system which, though it might give them a superior Judge, proposed to deprive them of a privilege to which they attached the greatest importance, and which was highly valued by them.

The question being then put that Section XIX stand part of the Bill, the Council divided—

Ayes 3.	*Noes* 4.
Mr. Forbes.	Mr. LeGeyt.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	Sir J. Outram.
	The Chairman.

So the Section was negatived.

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

"No appeal shall lie from a decree of any existing Court subordinate to a District Court in any suit of the description contained in Section II, when the debt, damage, or demand shall not exceed twenty Rupees, but every such decree shall be final."

Agreed to.

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

"Provided that the provisions of Section IX and the proviso in Section XI shall be applicable to every suit in which the decree is by this Section made final."

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

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

"No special appeal shall lie from any decision or order passed on regular appeal by

any Court subordinate to the Sudder Court in any suit of the nature described in Section II, when the debt, damages, or demand for which the original suit shall be instituted shall not exceed five hundred Rupees. But every such order or decision shall be final."

Agreed to.

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

"In every case in which a decree or decision is, by the two last preceding Sections, made final, the Court passing the final decree or decision shall have the same power to draw up a statement of the case for the opinion of the Sudder Court as is hereby vested in a Court of Small Causes, and all the provisions of this Act relative to statements drawn up by Courts of Small Causes shall be applicable to statements drawn up under the provisions of this Section."

Agreed to.

MR. LEGEYT asked leave to go back to Section V, with a view to moving an amendment, the effect of which would be highly beneficial, and would give the Bill the only chance of being universal. It would vest in Small Cause Courts the power of trying suits above twenty Rupees wherever Small Cause Courts might exist ; and with regard to the zillah of Poonah, one or two Small Cause Courts would be able to get through all the other suits between two and twenty Rupees, which he could only call rubbish. This would give a veryfair chance of Small Cause Courts being really established. Surely if a case under twenty Rupees could be decided by the Moonsiff on one side of the hedge, the same should be done by the Moonsiff on the other side also. He would ask if there was any reasonable hope of Small Cause Courts being established except at a very few places. It was all very well to say that these Courts would pay their own expenses. The sums now realized by Stamp Duties were all taken to credit, and it was perfectly illusory that any larger revenue would be derived. It should also be remembered that a large increase of establishment would be required consequent on the establishment of the Small Cause Courts. He therefore proposed that the words "for any amount exceeding twenty Rupees" be inserted after the word "Act" in line 5.

MR. HARINGTON said, the object chiefly aimed at in the present Bill was the improvement of the Courts, by which the great mass of the Civil judicial business of the country was now disposed of, or, he should rather say, the introduction of a superior class of Courts in their places, to which much larger powers might be safely confided, and it could hardly be necessary for him to tell the Committee that this object would be very partially attained if about three-fifths, or, he might perhaps say, even a larger number of the cases, for the adjudication of which it was proposed to create new Courts, were to be excluded from their cognizance, which would be the obvious effect of the amendment moved by the Honorable Member for Bombay, if he had rightly understood that amendment. They were constantly told that the Moonsiffs' Courts, by which all petty actions of debt and the like were now heard, were bad, that they were corrupt, and that they did not command the confidence of the public ; and yet when it was proposed to provide a better class of Courts for the adjudication of the greater portion of the cases now cognizable by these much abused Courts, the Honorable Member for Bombay came forward with a Motion which, if adopted, would exclude all these numerous cases from the jurisdiction of the new Courts, and leave them to be determined as at present, though with this difference, in consequence of the amendment which had just been made in the Bill on the Motion of the Honorable and learned Member of Council on his left (Mr. Peacock), that the decisions passed in them would be no longer open to appeal. But the Honorable Member for Bombay said, the cases which would be embraced by his amendment were nothing more than rubbish. If such were indeed the case ; if three-fourths of the Civil suits of the country answered the description given of them by the Honorable Member for Bombay, and it mattered little what was the character of the Judges who decided them, it certainly seemed to him (Mr. Harington) open to question whether it would not

be better to adopt the suggestion which was made not long ago by a Member of the Civil Service in the North-Western Provinces, now no more, and declare that no action for debt or damage up to a certain amount should be sustainable in any Court. The Honorable Member for Bombay seemed to think that the Government would never consent to establish Courts with high paid Judges in such numbers as would be necessary for the disposal of the great mass of petty litigation which now found its way into our Courts, and that it was only by adopting his amendment that any benefit might be expected to result from the passing of this Bill. He (Mr. Harington) had already expressed his belief that the Courts which he wished to see established, if judiciously placed, would more than cover the expense of maintaining them. He found that the fees paid into the Small Cause Court at Calcutta during the past year exceeded the cost of that Court by several thousand Rupees, and the same was the case in respect to the Moonsiffs' Courts, at least in the North-Western Provinces, though if the Courts, the establishment of which this Bill contemplated, were not to have jurisdiction in cases under twenty Rupees, and the present Moonsiffs' Courts were to be kept up for the disposal of cases below that sum, which would be necessary if the amendment of the Honorable Member for Bombay should be carried, they could scarcely expect the Government to go to the expense of establishing separate Courts of Small Causes, certainly not in any number. Should this Bill pass into law in the form in which the majority of the Select Committee had recommended that it should be passed, he (Mr. Harington) looked forward to a considerable reduction in the present number of Moonsiffs' Courts, particularly now that they had got the Act relating to the recovery of arrears of Rent in Bengal, which had been brought in by his Honorable friend opposite (Mr. Currie). He would take the District of Benares as an instance. There were now employed in that District no less than four Moonsiffs and a Principal Sudder Ameen, all of whom held their Courts in the city of Benares or within a short walk of it. He believed that a Small Cause Court presided over by a competent Judge and a single Court for the trial of suits beyond the jurisdiction of the Small Cause Court would be amply sufficient for the whole District with, of course, a suitable Appellate Court, so that in this one district alone there would be a reduction of three badly paid Courts, and so on. He was aware that under the scheme proposed by him the parties in suits relating to real property, or in which the amount or value in dispute might exceed the jurisdiction of the Small Cause Courts, would have to travel farther for justice than at present, but in such cases distance would not be of so much consequence as in petty actions of debt and the like, and the parties would not feel in the same degree the little additional expense or delay to which they would be exposed from this cause. He should vote against the Motion.

MR. LEGEYT'S Motion being put, the Council divided—

Ayes 4.	*Noes* 3.
Mr. LeGeyt.	Mr. Forbes.
Mr. Peacock.	Mr. Harington.
Sir James Outram.	Mr. Currie.
The Chairman.	

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

The Preamble and Title were passed as they stood, and the Council having resumed its sitting, the Bill was reported with amendments.

ADJUDICATION OF FORFEITURES.

MR. GRANT announced that the Governor-General had signified his assent to the Bill "to provide for the adjudication of claims to property seized as forfeited."

SALES OF LAND FOR ARREARS OF REVENUE.

MR. GRANT moved that Sir James Outram be requested to take the Bill "to improve the law relating to sales of land for arrears of revenue in the

Bengal Presidency" to the Governor-General for his assent.

Agreed to.

FRAUDULENT TRANSFERS AND SECRET TRUSTS.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for the prevention of fraudulent transfers of property and of secret trusts."

Agreed to.

LIMITATION OF SUITS.

MR. HARINGTON moved that Sir James Outram be requested to take the Bill "to provide for the limitation of suits" to the Governor-General for his assent.

Agreed to.

SMALL CAUSE COURTS.

MR. HARINGTON moved that the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter" be re-published fortwo months.

Agreed to.

PILOT COURTS (BENGAL).

MR. CURRIE moved that Sir James Outram be requested to take the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal" to the Governor-General for his assent.

Agreed to.

BREACHES OF CONTRACT BY ARTIFICERS, &c.

MR. CURRIE moved that Sir James Outram be requested to take the Bill "to provide for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases" to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, May 7, 1859.

PRESENT:

The Hon'ble Lt.-General Sir James Outram.

Hon'ble B. Peacock,	H.B. Harington, Esq.,
P. W. LeGeyt, Esq.,	H. Forbes, Esq., and Hon. Sir C. R. M. Jackson.

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

Saturday, May 14, 1859.

PRESENT:

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

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

SALE OF LAND FOR ARREARS OF REVENUE (BENGAL); PILOT COURTS (BENGAL); BREACHES OF CONTRACT BY ARTIFICERS, &c.; AND LIMITATION OF SUITS.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency"—the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty"—the Bill "for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases"—and the Bill "to provide for the Limitation of Suits."

EXCLUSIVE PRIVILEGES TO INVENTORS.

The following Message from the Governor-General in Council was also read by the Vice-President:—

MESSAGE No. 177.

With reference to the Message from the Legislative Council, No. 95, dated the 2nd October 1858, the Governor-General in Council has the honor to forward to the Legislative Council copy of a Despatch No. 3, dated the 31st March 1859, from the Right Honorable the Secretary of State for India, together with the Draft Act, therewith received, "for granting exclusive privileges to Inventors," which has received the sanction of the Crown.