LEGISLATIVE COUNCIL

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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858

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1858.

GUARDIANSHIP OF MINORS.

MR. CURRIE gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal."

PROCEEDINGS IN LUNACY (SUPREME COURTS); LUNATICS (MOFUSSIL); AND LUNATIC ASYLUMS.

MR. CURRIE moved that Mr. Ricketts be requested to take the Bill "to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter;" the Bill "to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature;" and the Bill "relating to Lunatic Asylums"—to the President in Council in order that they might be submitted to the Governor General for his assent.

Agreed to.

PENSIONS.

MR. PEACOCK moved that the communication from the Home Department reported this day be referred to a Select Committee consisting of the President of the Executive Council, Mr. LeGeyt, Mr. Currie, Mr. Harington, and the Mover.

Agreed to.

The Council adjouned.

Saturday, September 11, 1858.

PRESENT:

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

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

NABOB OF THE CARNATIC.

THE CLERK reported to the Council that he had received from the Foreign Department a copy of a Despatch from the Court of Directors to the Government of Madras on the subject of the affairs of the late Nabob of the Carnatic.

EMIGRATION TO ST. VINCENT.

THE CLERK also reported to the Council that he had received from the Home Department a copy of a Despatch from the Court of Directors and of its enclosures, regarding the proposed Emigration of Indian Laborers to the Colony of St. Vincent.

MR. PEACOCK moved that the above communication be printed.

Agreed to.

CONTINUANCE OF CERTAIN PRIVILEGES TO THE FAMILY, &c OF THE LATE NABOB OF THE CARNATIC.

MR. FORBES presented the Report of the Select Committee on the Bill "to continue certain privileges and immunities to the family and retainers of His late Highness the Nabob of the Carnatic."

EXCLUSIVE PRIVILEGES TO INVENTORS.

MR. PEACOCK presented the Report of the Select Committee on the Bill "for granting exclusive privileges to Inventors."

BREACHES OF CONTRACT BY WORKMEN, &c.

MR. CURRIE moved the first reading of a Bill "to provide for the punishment of Breaches of Contract by Artificers, Workmen, and Laborers in certain cases." He said, the preparation of this Bill was suggested to him by a Petition of the Calcutta Trade Association praying for a law to prevent Breaches of Contract by workmen and others, which was presented to the Council some weeks ago.

The Petitioners complained of the loss to which they were subjected by the fraudulent conduct of their workmen in wilfully failing to perform work for which they had received advances. The Petitioners represented the utter inefficacy of a civil action to afford redress in cases of this nature, and they prayed for a summary remedy by application to a Magistrate.

Now it seemed to him that taking

money in advance for the performance of any specified work, and then wilfully neglecting or refusing to perform the work for which payment had been received beforehand, was a fraud, the commission of which ought to be followed by penal consequences. He understood that all the work of the manufacturing Tradesmen in this City, Coach-makers, Cabinet-makers and others, was done by the piece—and he need not tell the Council that no piece-work was done in this country without an advance. It was the universal custom—and any manufacturer who attempted to break through it would find it impossible to obtain workmen. But if the workmen insisted on the preservation of this custom, it was but reasonable that their employers should be protected against its abuse.

He had seen some of the Petitioners on this subject, and he had a memorandum given to him shewing that five Firms alone had advances out-standing to the aggregate amount of one and a half lac. One Firm gave him a list of sums which they despaired of recovering, with the names of the defaulters, showing a loss within a year or two of Rupees 3,527.

He thought, therefore, that a case was made out for the interference of the Legislature, and he had accordingly prepared a Bill which proposed to authorize a Magistrate on complaint of the employer, and on proof of the receipt of an advance and wilful neglect on the part of the workman to fulfil his contract, to order the workman either to return the money advanced or to perform the work contracted for, as the employer should require, and, on default, to sentence him to imprisonment with hard labor for a term not exceeding three months. If the workmen were ordered to perform the work, security might also be required of him for its due performance.

These were the principal provisions of the Bill, which he had framed in great measure upon a Draft Act which was submitted by the Trades' Association to the Supreme Government in 1846. That Draft Act was intended to amend the then existing Calcutta Bye-laws bearing on the subject, and embraced a good deal more than the single offence which he had thought necessary to provide for in this Bill.

Some Members of Council would probably recollect that a somewhat similar measure was brought before the Council in 1855; and that the Select Committee on the Penal Code to whom it was referred, recommended that it should not be entertained. But the object of the Draft Act to which he alluded and which was sent up by the Madras Government, was not identical with that of the present Bill. It proposed to render liable to punishment any Clerk, workman, or servant who should desert his service without due warning or before the expiration of any specific period for which he had contracted to serve. Now it was scarcely necessary to remark that the mere abandonment of service without warning, by which the servant probably lost some arrear of wages due to him, was a very different offence from the wilful and fraudulent refusal to perform work for which payment had been made beforehand, and this latter only was the offence for which the present Bill was intended to provide.

It remained only to observe that the Bill, as he had drawn it, was limited in its operation to the Presidency Towns. Two or three considerations had influenced him in thus limiting it. The cry for relief came from a Presidency Town; the European manufacturers who were the persons that suffered from the practices which he had described resided chiefly in the Presidency Towns, and in Calcutta at least the Bill would merely restore to employers in a more effective shape the remedy which they formerly possessed under the old Calcutta Bye-laws which were repealed by the Police Act of 1852. The Mofussil law of Bengal, Regulation VII. 1819, punished the refusal to fulfil a contract of service by imprisonment and this law he understood had been found to be effective for the prevention of fraud of the description alluded to. On the whole, therefore, he had thought it advisable to restrict the Bill to the Presidency Towns. If it should be thought that its provisions or some similar provisions might advantageously have general operation, the Select Committee on the Penal Code would doubtless consider the point in connexion with the Chapter on Criminal breaches of contract of service, but in the mean time there seemed to be no sufficient reason why the remedy, which

had been so urgently called for by the manufacturers of Calcutta, should not be at once extended to the Presidency Towns.

The Bill was read a first time.

MUNICIPAL ASSESSMENT (SCINDE).

MR. LEGEYT moved the second reading of the Bill "for enabling improvements to be made in certain districts and towns in the Province of Scinde." In doing so, he begged to call the attention of the Honorable Members to Section III of the Bill. This Section was not in the original draft sent up by the Bombay Government. The Bill, as originally prepared, was so indefinitely worded that he could not venture, after what had passed on a former occasion, in March 1855, to bring it before the Council. In order, therefore, to establish the principle which this Section advocated, he had imported into the Bill some of the provisions of the Bombay Municipal Act and the Calcutta Suburbs Act. He had done so with the intention, if the Bill should be read a second time and referred to a Select Committee, that the authorities at Bombay and in Scinde might be able to propose such modifications of this Section as might be locally necessary, bearing in mind what seemed to be the established rule of the Council with regard to refusing to delegate powers of taxation to any other authority. The rest of the Bill was almost entirely as drawn up by Mr. Frere and approved of by the Bombay Government.

MR. RICKETTS said, he must say he had sundry misgivings connected with this Bill. He must allow that we were bound to receive with the greatest respect every thing that came with the authority of Mr. Frere, whose character stood equally high for ability and circumspection. The Bill also had the high authority of the Bombay Government. But still he did not see the necessity of flooding the people with such taxation as that now proposed.

We were told that the people of Scinde were altogether unlike any other people. He found it stated in paragraph 2 of Mr. Frere's letter of 13th May 1858, that the people of Scinde "are quite willing to pay any thing the Government might demand" (he wished we had fifty millions of such subjects on this side of India). In another place (paragraph 6) he observed that it was actually stated, with reference to the Land-tax and the Shop and Stall-tax, "that the facility with which these taxes are collected in Scinde is remarkable." It would therefore appear that the people of Scinde were unlike other people, for they delighted in being taxed. Supposing this to be the case, it might be very sweet, still we all knew that even sweets too long indulged in became very bitter.

Section III of the Bill provided the Funds to be levied. It first proposed to increase the land-tax by five per cent.; and on this matter he should have a word to say presently. Then came a tax on houses not exceeding five per cent. on the annual rental—then, a tax on Imports and Exports, and besides them, such additional town-duties as might be considered advisable. This tax on Imports and Exports applied to cows, calves, buffaloes, goats, kids, and other animals; but he could not understand from the Bill in what case they were to be taxed, whether on entry into the town or district, or otherwise. As the Bill stood, if these animals were carried to one town, they would pay the tax; and so also if to another. Then the Bill would not only tax people's houses, but their houses before they became houses—their timber, chunam, and other materials for building houses. Then, as to rental, the houses to be taxed were not all the large houses in towns, but every hamlet; and there could be no rental because every man owned the house in which he lived. If a house-tax be imposed, he would recommend the Council to refer to the mode in which the tax was imposed at Akyab. There the tax was assessed, not on the rental, but on each square foot occupied by the house; and he found that this plan had worked exceedingly well in Akyab.

We were told that the people of Scinde were so very willing to be taxed. But he thought he found from the correspondence that they had shown some symptoms of impatience under taxation. The inhabitants of the principal towns and hamlets forming the Mehur division of the Shikarpore Collectorate presented a petition for the introduction of Act XXVI of 1850. They no sooner had it than

they were very discontented with it, and applied to the authorities for the suspension of the Act almost as soon as it was carried into effect. Farther on, he found it represented in the correspondence that,

"instead of preparing the statistics and other information required by Government, the headmen were reported by the Deputy Magistrate to be raising all possible obstacles in the way of the Officials and to be urgent in their request that the provisions of the Act may not be carried out."

These objections, it was said, were only against the provisions of Act XXVI of 1850; but this Bill did not so much differ from that Act that we could suppose that those who were so discontented with it would be very well satisfied with the Bill.

Again, we were told "that there is still a strong inclination on the part of the inhabitants of the Mehur Deputy Collectorate for the more extended system of local taxation and Municipal management formerly proposed:" and that the purport of the petition presented in 1856 was to show that the people were only discontented with that Act, but were quite willing that such a provision as this should be introduced. It rather appeared to him that the people of the towns wished to get rid of the taxes imposed on them and throw them on the country people, and not that they were ready and willing that taxation of this nature should be imposed on them.

But suppose the Bill were allowed to go to a second reading, he would point out that the additional cess of five per cent. of the Land tax was in fact an increase of Land Revenue to the extent of five per cent. As things stood in Scinde, the limit was only what the people could pay. If additional Revenue were required, it should be demanded not for Municipal purposes but for Government. If it were given up, let it be given up as a "donation from Government," but let it be called by its right name.

It was stated that this donation would amount to six thousand two hundred and fifty Rupees per mensem. He found on calculation that that was in fact seventy-five thousand Rupees per annum, which was five per cent. on the fifteen lacs paid by Scinde.

Mr. Ricketts

He would suggest to his Honorable friend on his left (Mr. LeGeyt) that it might be advisable, instead of taxing all these separate articles and animals, to try and see if the Government would not give up a portion of the Land Revenue for Municipal purposes. It was stated that, in Scinde, the people were naturally so dirty in their habits, and their dwelling-houses so wretchedly constructed, that miasma and disease were generated with unusual rapidity, and that a widely spreading river-inundation gave rise to so many local forms of sickness and discomfort that the advantages of Municipal arrangement would be greater in Scinde than in any part of the world.

Now with such reasons as these, he thought it possible that Government might consent to give up five per cent. for Municipal purposes or, if not, to give two Rupees for every one that the people would contribute. If so, let us follow the example of the Punjab where heavy town duties were levied in every town without objection on the part of any class. These duties, with the addition from the Land Revenue, would yield a sum of not less than two hundred and twelve thousand Rupees for Municipal purposes, and this plan would be far preferable to imposing so many new taxes.

He would not say he would vote against his Honorable friend if he should attempt to carry the Bill to a second reading and to appoint a Select Committee. But he (Mr. Ricketts) thought it might be advisable to make enquiry whether the authorities at Bombay and Scinde were disposed to attend to the suggestions which he had made.

Mr. PEACOCK said, he must go farther than the Honorable Member opposite (Mr. Ricketts) in saying that he had misgivings with regard to this Bill. He had strong and grave objections to it, and he could not therefore vote in favor of the second reading.

His chief objection was to Section VI. Section I authorized the Chief Commissioner in Scinde to declare any district or town within the Province to be subject to the Act, and Section II provided that, when any town or district was declared so subject,

"the Chief Commissioner shall appoint a local Board, which shall be superintended by, and shall assist the Magistrate or any Officer sub-

ordinate to the Magistrate and especially appointed by him as Superintendent of the Board, in the Municipal administration of the district or town subject to the control hereinafter provided."

It was not stated of what kind of persons the Board was to consist: but having got that body, Section VI gave them certain powers. It provided that

"the Superintendent of the Municipal Board, acting with the consent of the Board, shall, under the general control of the Chief Commissioner, have the same powers for carrying out the provisions of this Act as are granted under Act XXVI of 1850 to the Commissioners appointed by that Act."

Now it appeared that the chief alteration of the law which this Bill proposed to make was to take away the necessity, which existed under Act XXVI of 1850, of showing that the Inhabitants were desirous of its introduction; and to limit the rates to the four kinds mentioned. It was expressly enacted by Section VI that the Superintendent might make any rules which the Commissioners were authorized to make under the Act of 1850. Now what were those rules? It appeared to him that they amounted in substance and in fact to laws, and this power we ought not to depute to a Magistrate or his Assistant even though he had the sanction of the Commissioner. To do so would be in effect to substitute the Magistrate or Assistant Magistrate for the Legislative Council, and the Commissioner for the Governor General who alone had the power to sanction laws.

The Bill did not say that the tax was to be paid by every one, but it said—

"The Funds required for the purposes of this Act shall be raised by any or all of the following methods as may be approved by the Chief Commissioner; and the Magisterial Officers in the district shall have the charge of collecting and disposing of these Funds with the advice and assistance of the Board."

It did not say upon whom the rates were to be imposed. That would be provided for by the rules. The rules to be prepared by the Commissioners under Act XXVI of 1850 were required to provide, among other things,

"the definition of the persons or property within the Town or Suburb to be taxed for raising the monies necessary for the purpose of this Act, whether by house assessment or town duties, or otherwise; the amount or rate of the taxes to be imposed; the manner of raising and collecting them, and ensuring the safety and due application of them when collected."

They were to lay down which of the landholders and which of the householders and which of the other inhabitants were to be taxed.

Then, although the amount of the rate was to be limited to five per cent., the rules as to the manner of recovery were to be left to the Magistrate. It would be in his power to say whether there should be an appeal against his decision or not. When the Legislative Council lately legislated for Municipal purposes, they laid down rules. They first passed an Act (XXV of 1856) by which general rules were fixed. Having passed that Act, they then passed the particular Acts for each Town. It might be that Act XXV of 1856 (or some of the rules which it prescribed) were not applicable to Scinde. But the authorities in Scinde might prepare such rules as they might deem fit, and submit them to the Legislative Council, who would pass them, if reasonable.

Section IV of Act XXV of 1856 defined how the annual value was to be ascertained, and then it provided for appeals. But this Bill defined nothing. Here it was left to the Magistrate's discretion whether he would levy the whole or any of the taxes. If he liked, he might impose a land-tax, a house-tax, an import and export-tax on animals and other articles, and a tax on carriages and horses. It appeared to him (Mr. Peacock) that he should not have these powers.

Then again with regard to the collection of the rates, there was a rule laid down, but he thought it a very objectionable one. The provisions of Act II of 1839, which were applied to the non-payment of fines imposed by way of punishment for offences, were made applicable to the non-payment of taxes. Accordingly, if a man could not pay a tax and no distress could be found, he might be imprisoned for two months if the amount did not exceed fifty Rupees, and for four months if it did not exceed one hundred Rupees, and for six months in any other case. The late Municipal Acts referred to by him provided for this. They gave no power to imprison;

they merely authorized distress and sale. The Bombay Municipal Act laid down no such power, then why should such a law be passed for Scinde?

Then let us see what the taxes were. The Honorable Member opposite (Mr. Ricketts) had made some very important observations on the first, the land-tax.

Then there was "a tax on houses not exceeding five per cent. on the annual rental." Act XXVI of 1850, which authorized a similar tax, could not be imposed without the consent of the inhabitants. He recollected an instance in which that Act had been put in force with the consent of two-thirds of the inhabitants, and afterwards the feeling against it was so strong that the Government withdrew it. At Vellore a very zealous Magistrate got more than two-thirds of the inhabitants to consent to the introduction of the Act. On the introduction of the Act, every man shut up his shop, and the feeling was so strong against it that the Government thought it right to withdraw it. The Court of Directors had made some very strong remarks on the subject of Act XXVI of 1850, even when introduced with the consent of the inhabitants. But it was proposed that this Act might be introduced without any consent of the inhabitants. The Court of Directors, speaking of Act XXVI of 1850, said—

"We are most anxious that the Act should not be put in force in any place where the bulk of the population has not, after full acquaintance with its object, declared unequivocally in its favor."

Again they said—

"It should be considered whether the measure should be persevered in if after experience the feeling against it be found to continue unabated."

If such were the directions which the Government had received with regard to the introduction of Act XXVI of 1850, were we to authorize the introduction of a more stringent Bill in Scinde against the wish of the Inhabitants? It was said in the annexures that the people were against the introduction of the Act of 1850. They were not better off under this than under the other law. Under this Bill there was to be, besides a land-tax and a house-tax, a tax on imports and exports, with the addition of

Mr. Peacock

such other town duties as might be considered advisable; what they were we did not know. That was to be left to the Magistrate or his Assistant with the consent of the Board under the general control of the Commissioner. The Honorable Member opposite (Mr. Ricketts) had asked where the tax on imports and exports was to be paid. It was difficult to say. According to the Bill the tax proposed was not merely a town duty, but a transit duty. Transit duties had been generally abolished. Whether intended or not, the proposed tax was nothing less than a transit duty, for it was to be charged on articles imported into or exported from the town or district. The Bill did not even say that it was to be levied on the inhabitants only or upon articles intended for consumption within the town or district. The Honorable Member for Bombay had had the Bombay Municipal Act before him, which provided that

"duties at the rates specified in the Schedule annexed to the Act, shall be levied in respect of the several things therein mentioned when imported from any place into the Town of Bombay *and intended for consumption or use therein.*"

It was only in respect of those articles which were imported into the town for consumption therein that the inhabitants of Bombay were to pay that tax: there was no export duty. But by this Bill there might be, not only import duties but duties upon exports. If a man living in a district had a cow and sent it to a market out of the district for sale, he would have to pay export duty; or if he sent it out to graze, as was suggested by the Honorable Member on his right (Sir Arthur Buller), he would be compelled to pay a tax. He might have to sell it in a district which had not been made subject to this duty. In such case he could not compete with persons who were not subject to similar duties. It was not a fair or just tax, and yet it was left to the Magistrate or his Assistant with the consent of the Board to impose it if he pleased.

He (Mr. Peacock) apprehended that town duties on articles might, in some cases, be a legitimate tax in this country, but export duty had never been proposed even for Bombay where the inhabitants were much richer than the people in Scinde. At Bombay only articles

imported for consumption were subjected to import duty, but the unfortunate people in Scinde were to be subjected to pay duty on all things which might be imported, and export duty also. He did not know if this was intended, but he spoke of the Bill as it stood. The Bill also used the general words "with the addition of such other town duties as may be considered advisable," thus leaving it to the Magistrate to impose any other duties. Now, if a tax were to be imposed, he (Mr. Peacock) thought that the Legislative Council was the authority to determine whether it was a proper tax. There might be peculiarities in Scinde which did not exist elsewhere. If so, let those who were entrusted with the administration of Scinde prepare rules adapted to such peculiarities and submit them to the Council. They must do this at some time before the law could come into operation. But why postpone to a future day what must be done at some time or another? Let the authorities in Scinde propose what taxes they pleased and make what rules they pleased, but let them be sent to the Legislative Council for approval before they become obligatory. If there were any special reasons applicable to Scinde, let them be pointed out. This, he thought, was the duty of those who had the administration of a Province. They were not vested with any legislative power and the Council were not justified in deputing such powers to them. He would read an Extract from an excellent Despatch from the Honorable Court of Directors on this subject. He had cited it once before when a somewhat similar measure was proposed by the Government of Bengal. The Bill on that occasion was thrown out, only one vote having been given in support of it. The Despatch to which he referred was sent out soon after the passing of the Charter Act of 1833, almost immediately after the powers of legislation under which this Council acted were conferred, and it was addressed to the Government of India. Referring to the Governor General in Council, they said:—

"Heretofore you have been invested with extensive powers of superintendence over the legislation of the subordinate Presidencies. But as these Presidencies have had the right of legislating for themselves, your superintendence has been exercised only on rare and particular occasions. Now, their legislative functions, with a reserve for certain excepted cases, are to be subordinate to those of the Supreme Government. The whole responsibility rests upon you; and every law which has an especial reference to the local interests of any of those Presidencies, and every general law in respect of its particular bearing and operation on such local interests, ought to be pre-considered by you with as deep and as anxious attention as if it affected only the welfare of the Presidency in which you reside. You may indeed, as we have already observed, receive from the subordinate Presidencies suggestions or drafts of laws, and these it may frequently be expedient to invite.

"But in no instance will this exempt you from the obligation of so considering every provision of the law as to make it really your own, the offspring of your own minds, after obtaining an adequate knowledge of the case. We say this, knowing as we do how easily the power of delegating a duty degenerates into the habit of neglecting it; and dreading lest, at some future period, under the form of offering projects of law, the subordinate Presidencies should be left to legislate for themselves with as little aid from the wisdom of the Supreme Government as when the power of legislating was ostensibly in their own hands.

"There are two sets of occasions, on one of which the suggestions of the subordinate Presidencies are more, on the other, less necessary.

"When provision is to be made for local peculiarities, the information of local observers is of peculiar importance, and when the law wholly or mainly relates to such peculiarities, the first draft of it will be most advantageously prepared by those who are best acquainted with them.

"The greater number of laws, however, are not of this description. They relate to general matters in which local peculiarities have subordinate concern, and in which, therefore, such peculiarities need not otherwise be consulted than by prescribing some modification of the general provisions of the law in applying them to particular cases."

It appeared to him that we were now asked to give the Magistrate the power of making rules which were in effect laws. It was in fact giving the local authorities power to make a law. As he had said before, the Magistrate must make the rules at some time or another. There could be no more difficulty in making them now than at any future period, and in his opinion they ought to be made and submitted to the Legislative Council who were the proper authority to see if they should be passed into a law.

Again, the disposal of the rates was to be left entirely to the Superintendent and the Board. The approval of the Chief

Commissioner was requisite, but still it was left to the local authorities. There was considerable discussion in the Council on a former occasion, and had it not been for that discussion, a very large sum would have been applied for lighting Calcutta with gas; and cleansing and draining would probably have been neglected for want of funds. According to this Bill, the whole might be applied to any purpose. Cleansing might be more important than lighting in some districts, wells and tanks in others, embankments in others, and market-places in others. No distinction was made between houses and lands. In England, by the Health of Towns Act a very great distinction was made in this matter. By this Bill, land in a district might be taxed five per cent. for lighting a town in the same district, and houses might be taxed for works of irrigation from which they might not receive any benefit. All property in the same district might be taxed, and the taxes applied indiscriminately, according to the discretion of the Magistrate and the Board, to any of the purposes mentioned in the Act. One of the purposes was education. If the inhabitants were to be taxed for education against their will, they might wish to have their own religion taught in their Schools. They might say let us have our own Schools and let our religion be taught there. Would the Government superintend a School of that sort? This was a very important matter. If there was any peculiar reason for taxing the people of Scinde for education, let the reasons be assigned. In Bengal the inhabitants were not taxed for education, but the Government gave up a certain portion of the general Revenues for the purpose of education, and they laid down rules for its application. The people in Scinde contributed to the general Revenues of the country, and there appeared to be no sufficient reason for taxing the people in Scinde separately for the purposes of education when the inhabitants of Calcutta and other places were not obliged to do so. If it was right, let such a tax be imposed generally throughout the whole country. But it was a grave and serious question for consideration, whether a Municipality should be compelled to pay rates for the purposes of education. The Bill was silent as to the persons to be educated. Were they to be the children of the inhabitants of the district? All this was to be left to the Magistrate and the Board.

Then there was some thing bordering on a Poor Law—"the erection and maintenance of Asylums for the support of those who are mentally or physically incapacitated from supporting themselves." Who were to be introduced into these Asylums—any wandering lunatic found in the district? Such persons should be supported at the expense of the State and not by the district. The people in Scinde were no more bound to provide for such persons than the people of Calcutta. According to the English Poor Laws (God forbid that they should be applied here), the parish had to pay for its own parishioners.

In conclusion, he observed that, whatever rules were prepared should be submitted to the Council, who, if they saw no objection, would pass them as part of the law. But he could not consent to depute to others the power of making these rules.

For these reasons he should vote against the second reading.

MR. CURRIE said, the Bill was open to some but not, he thought, to all the objections taken by the Honorable and learned Member opposite (Mr. Peacock). There was also much force in the remark made by the Honorable Member on his right (Mr. Ricketts) as to the percentage on the Government Revenue. But these were matters which a Select Committee might deal with. His own objection to the Bill arose from what had been stated by the Honorable Mover, that the taxation was imaginary and not that which had been recommended by the Chief Commissioner in Scinde; that it was merely something which the Honorable Member had thought it necessary to specify to avoid submitting an indefinite proposition for taxation.

He therefore thought it hardly advisable to entertain the Bill in its present shape; and he would suggest that it be withdrawn, and that another Bill be introduced in its stead, containing the real items of taxation which might be considered proper to be imposed, and stating definitely what powers were intended to be conferred on the Board in lieu of those so indefinitely mentioned in Section VI of the present Bill.

For th e reasons he should feel some difficulty in voting for the second reading; he should be better pleased if the Bill were withdrawn.

Mr. LEGEYT said, he was prepared for this Bill encountering some objection and opposition; and, as he had stated on the first reading, he had doubts himself as to the propriety of introducing it in the form in which it was sent from Bombay. He had therefore felt forced to introduce the details of taxation in Section III in order to obviate the manifest objection to the Draft Act on account of the indefinite powers of taxation which it conferred. They were not, as had been said, wholly imaginary, because the draft contained provision for raising the following funds:—

1st. The application of an additional cess not exceeding 5 per cent. of the land-tax, to be levied in the same manner as the land-tax.

2nd. A tax on shops or stalls.

3rd. A tax on houses.

4th. A tax on Imports and Exports or such other town duties as might be considered advisable.

5th. Tolls or taxes on carriages or beasts of burden.

6th. Such items of public Revenue as might be granted to the Municipality by Government for the purposes of this Act.

He would not go through the objections in detail, because it would be necessary for that purpose to make a reference to Scinde. But he should be glad to say a few words with regard to what fell from his Honorable friend on the right (Mr. Ricketts) regarding the land-tax.

If we were to wait until the Government came forward and said, "Here is five per cent. of the land-tax; take it and spend it on Municipal improvement," the time devoted to this subject would be wasted, and we might just as well be totally without Municipal improvement. The Government of this country for the last thirty or forty years had done nothing at all towards Municipal improvement to warrant the expectation that such would be the result, if application were now made to them for such an addition as was referred to. The records of Government teemed with most positive and absolute refusals to expend for Municipal purposes the general Revenues of the country. They had declared over and over again that what was spent on local purposes must be raised by local taxation. We were at one time better off in the Bombay Presidency in the shape of Municipal taxes. We had the Moortuffa and Vera cesses which were no doubt intended to provide for Municipal purposes, but which, before our Government had taken possession of the Peshwa's territories, had fallen into the general Revenue. These had been abolished in 1844, and ever since then attempts had been made in the Presidency of Bombay to establish Municipalities. Act XXVI of 1850 had been put in force in many towns, but did not make satisfactory progress. It had had a fair trial in Scinde, and Mr. Frere had declared his opinion to that effect and had called it "a gigantic imposture."

Some blame seemed to have been thrown upon Mr. Frere, which he did not deserve. It would appear as if he had stated that the people in Scinde delighted in taxation, and yet they were averse from it. Now this was not a fair way of interpreting Mr. Frere's statement. What Mr. Frere meant to say was, as he (Mr. LeGeyt) understood it, that the town people objected to be taxed when the country people were untaxed. They said,—"If you tax us, tax them too." They would not come forward and say, "Tax us in this particular or that particular way," but were willing to try what might be suggested to them; and in this respect they were by no means singular. In the Districts in which he had had local experience about Municipal taxes, they did not object to pay a tax; but their answer to him was, "Don't ask us: let the Government say what is required, and we will try to comply." If asked what tax they would pay, one section of the people would perhaps suggest something that would not fall on them—another section would suggest another, and this was the sort of difficulty which had been experienced wherever Act XXVI of 1850 had been tried. He could understand how they had proceeded in Scinde. The men of influence got the people not to object to the introduction of the law, and the silence of a vast number was interpreted into consent. No absolute objection had been made, but when touched by the tax, there

came mutterings of discontent which would equally happen in the case of every new tax. Moreover they were apt to doubt whether the money raised would really be spent among them for local purposes: such had been the general feeling among the people, and he believed that all the authorities in the Bombay Presidency had come to the conclusion that, unless the Government was empowered to declare that local taxation should be levied whenever the local authorities had made out a case for the necessity of local improvements, any progress in that direction was out of the question. As far as he had understood, and he hoped he was right, the principle of local taxation was not disputed by the Council. That being so, he would gladly act on the suggestion of his Honorable friend on his left (Mr. Currie) and withdraw the Bill as it now stood, and introduce another Bill with the same principles of local taxation. With this understanding, he would ask leave to withdraw this Bill.

The Bill was accordingly withdrawn.

GUARDIANSHIP OF MINORS (BENGAL).

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to III were severally passed as they stood.

Section IV provided as follows:—

"Any *near* relative or *creditor* of a Minor in respect of whose property such certificate has not been granted or, if the property consist in whole or in part of land or any *interest in land*, the Collector of the district may apply to the Civil Court to appoint a fit person to take charge of the property and person of such Minor."

MR. CURRIE proposed to omit the word "near" before relative, and to substitute the word "friend" for the word "creditor" in the beginning of the Section.

Agreed to.

Mr. LeGeyt

MR. PEACOCK proposed to insert the words " not paying Revenue to Government " after the words "interest in land." Section II said that the Civil Court should not have power over estates paying Revenue to Government and taken under the protection of the Court of Wards. Was the Collector to interfere in cases where the land paid Revenue to Government but was not in fact under the charge of the court of Wards ?

MR. CURRIE said that was intended. Section II excepted only the estates of proprietors, "*who have been or shall be* taken under the protection of the Court of Wards." If the Court of Wards could not or did not interfere, the Civil Court would have jurisdiction; and if it were desirable that the Minor's property should be provided for, application might be made to the Civil Court. It was optional with the Court of Wards to interfere or not, as it thought proper.

MR. PEACOCK asked, would that Court have the power to take charge, after other provision had been made ?

THE CHAIRMAN said, he apprehended that the intention was as the Honorable Member for Bengal had stated. The Collector was only to apply to the Court in those cases in which there was land and that land paying Revenue to Government. It was left general, no doubt, but what had the Collector to do with the matter except in respect of land paying Government Revenue ? There would be no conflict of authority, because the Court of Wards was in fact the Commissioner who acted invariably through the Collector.

MR. CURRIE said, it was but a very small portion of the land paying Revenue to Government in the possession of Minors that could come under the jurisdiction of the Court of Wards. The Court of Wards had jurisdiction only where the Minor was the sole proprietor, or where all the proprietors were Minors. If one or more of the sharers were Minors, and there were other qualified sharers, the property could not be taken charge of by the Court of Wards. This Section was intended to provide for all cases, whether the land were land paying Revenue immediately to Government or not. It was not imperative on the Collector to apply, but he might apply if he thought it proper to do so from his

knowledge of the circumstances of the proprietors. It appeared to him (Mr. Currie) that the Section was right as it stood.

MR. PEACOCK would not press his motion.

The Section, as before amended, was then agreed to.

MR. CURRIE moved the introduction of the following new Section after Section IV :—

"If the property be situate in more than one district, any such application as aforesaid shall be made to the Civil Court of the district in which the Minor has his residence."

Agreed to.

Section V provided for the Court, on application, making a summary enquiry and granting Certificate to the executor of the deceased or the near relative of the Minor.

After the insertion, on Mr. Currie's motion, of words similar to those in the Curator's Act, providing for notice of application, and fixing a day for the hearing—

MR. PEACOCK said, it appeared to him that this Section gave too great power to executors. He thought there was a wide difference between the appointment of an executor and of a Guardian for a child. Now, the executor may be a very proper person, or he may be a very improper person to act as Guardian. But, according to this Section, the executor must be appointed Guardian whether he was or not a fit person for that office. If the child had a large independent estate over which the father had no control, and the father appointed an executor for his own estate, it was not proper that he should have the guardianship. This would give the executor a preference over a relative or friend. If there were an executor, then, whether it was right or not that heshould have the guardianship, the Court would appoint him guardian; but if a relative or friend, then the Court was required to enquire whether or not he was a fit person. The executor might be a very unfit person for the office. He might be a very proper person to manage the estate, but he might be a very improper person to take charge of the child. The child might have an estate wholly unconnected with the father's; or the father might not have wished the executor to be entrusted with his child's education. Let the executor be appointed guardian if there was no objection, or if nominated guardian by the father. He (Mr. Peacock) thought that the Section must be altered or perhaps omitted altogether.

MR. CURRIE said, the fact was that in this country wills were very rare. He admitted, however, that the Section was open to the objection which had been taken to it.

MR. PEACOCK said, suppose the father was converted to Christianity, but the child was not converted, would he be put under the guardianship of the father's executor?

THE CHAIRMAN did not agree that wills were so unfreqnent an occurrence. In and about Calcutta, he thought, they were on the increase. Often the *factum* of the will was open to suspicion; but even if there was no doubt thrown upon the *factum*, as far as his experience of Hindoo executors went, it was desirable that there should be some person to see that they did their duty. The gnardian would be this person. Therefore he could not assent to the general proposition that, because a man was executor, he should also be the guardian of the child. Even with reference to the property, he thought it would be better to leave the discretion of the appointment of a guardian with the Court, controlling it only in cases, where the father by will appointed certain persons *eo nomine* to be guardians.

The further consideration of this Section was postponed, on the motion of Mr. Currie.

Section VI provided that, if a Minor's estate consisted in whole or in part of land, the Court might call upon the Collector for a report on the character and qualification of a relative desirous or willing to be entrusted with the charge of the Minor's property and person.

MR. PEACOCK said, he did not know that the Collector would have a better opportunity of judging of the character and qualification of the relative, because the Minor's estate consisted in whole or in part of land. He did not see how the Collector would know more of the relative because the father

had land. It seemed to him a *non-sequitur.* He proposed to allow the Court *in any case* to call for a report from the Collector.

MR. CURRIE said, he did not think it a *non-sequitur.* The Section had reference specially to the proprietary villages of the North-Western Provinces. In Bengal, the Collector knew little more of the Zemindars than the Judge. In the North-Western Provinces, every proprietor was well known to the Collector or to his local officer the Tehsildar, and the case was very different.

MR. HARINGTON said, the Act did not make it obligatory, but only permissive, where the Court saw it necessary or thought it desirable, to call for a report from the Collector, who had opportunities of knowing the character and qualification of the proprietors.

MR. PEACOCK said, he did not object to the Court having power to refer to the Collector, but he only objected to the power being confined to a particular case. He would leave it to the Court's discretion to exercise this power in all cases. By this Section, the Judge could not ask the Collector's opinion unless where the testator left land. He moved to omit the words " when the estate of the Minor consists in whole or in part of land or any interest in land."

MR. CURRIE objected to the proposed amendment, because then the Section would involve a palpable *non-sequitur.* The reason why the Collector might be called upon was that, where there was land, the Collector would have some knowledge of the parties. If the Minor was a proprietor of land, his relatives, it might be presumed, would be proprietors likewise.

MR. HARINGTON said that the Collector had an interest generally in *all* lands in his District.

THE CHAIRMAN said, it seemed to him that, if the amendment was carried, it would leave the power to the Court in every case where it was now given, and it would give it power in other cases. No doubt the Collector in the North-Western Provinces might often be a very proper person to guide the discretion of the Courts as to the character and qualifications of a relative. But he agreed with the Honorable and learned Member (Mr. Peacock) that he would not necessarily be able to do this because the

deceased person, or the Minor as his heir, was possessed of land. It might be that, if the estate of the proposed Guardian consisted of land, the Collector would be able to report on his qualifications to the Judge. For these reasons, he would support the amendment.

The question having been put, the Council divided :—

Ayes, 5.	*Noes*, 4.
Mr. Forbes.	Mr. Harington.
Sir Arthur Buller.	Mr. Currie.
Mr. Peacock.	Mr. LeGeyt.
Sir James Outram.	Mr. Ricketts.
The Chairman.	

So the Motion was carried.

MR. CURRIE moved that the words "or Magistrate" be added after Collector. The mention of land having been struck out, there was no longer any special reason for a reference to the Collector.

The Motion was agreed to and the Section passed.

The consideration of Section VII was postponed on the Motion of Mr. Currie.

Section VIII was passed after verbal amendments.

Section IX was passed as it stood.

MR. CURRIE moved that the words " and of the duties to be performed by the Manager and the Guardian respectively, so far as the same may be applicable," be inserted after the word "appointments" in the 10th line of Section X.

The motion was agreed to and the Section passed.

MR. CURRIE moved the introduction of the following new Section after Section X namely :—

"In all enquiries held by the Civil Court under this Act, the Court may make such order as to the payment of costs by the person on whose application the enquiry was made, or out of the estate of the Minor or otherwise, as it may think proper."

Agreed to.

Section XI was passed after verbal amendments.

Section XII was passed as it stood.

Section XIII was passed after verbal amendments.

Sections XIV to XIX were passed as they stood.

Section XX provided as follows :—

"The Public Curator and every other Administrator to whom a Certificate shall have been granted under Section VIII, shall be entitled to receive such Commission on the sums received and disbursed by him, or such other allowance, to be paid out of the Minor's Estate, as the Civil Court shall think fit."

MR. PEACOCK said, he thought there should be a limit to the amount of Commission. The Administrator General's Act and the Curator's Act allowed five per cent. Perhaps the words "not exceeding five per centum" had better be inserted after the word "Commission."

MR. CURRIE said, that a limit could not conveniently be fixed, because in some cases, where a person was appointed to take charge of a single estate, five per cent. might not be sufficient. The Section had no application, if the relative of a Minor had the administration, but only to the Public Curator or an Administrator to whom a certificate was granted under Section VIII.

THE CHAIRMAN said, the principle of commission had been abolished in the case of Executors or Administrator properly so called. Why adopt it for the Mofussil?

MR. HARINGTON said that, in the Mofussil, if persons refused to undertake the office of administrator, there was not, as in the Presidency Town, any officer to discharge the duty.

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

Section XXI was passed as it stood.

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

"For the purposes of this Act, every person shall be held to be a Minor, who has not attained the age of eighteen years."

In doing so, he said that eighteen years was the limit of minority fixed by the Court of Wards' Regulation and might also be properly adopted in this Bill.

THE CHAIRMAN said, he entertained some doubts as to whether it was advisable, as it were by a side-wind, to make a change in the law of the country. As it now stood, eighteen was by construction the time when Mohamedans attained majority. It was left in the Hedaya very vague and dependent on the physical and mental development of each person; but, he believed, the Courts had generally adopted eighteen as the age. In the case of Hindoos, it was equally clear that sixteen was the age of majority, except in the case of a Minor entitled to a Zemindary when the Court of Wards' Regulation made eighteen the age when he should be emancipated and considered to have attained majority. But he apprehended that any contract executed not relating to the Zemindary would be valid: eighteen might be a better age than sixteen; but, if altered, it would be better to do so by a law directed to that end than by a Section in a law relating to Guardians. The Section had not been published, and had therefore not elicited observations. He thought it would be better not to introduce this Section.

MR. CURRIE said that the proposed introduction of this Section was his main reason for circulating a notice of amendments. The Bill, as originally prepared, had no such provision. It was introduced at the recommendation of a Hindoo gentleman who thought it was desirable to fix the limit of Minority and who considered that the present Hindoo limit was too short. He had suggested that the limit fixed by the Court of Wards' Regulation should be adopted. He (Mr. Currie) was quite sensible of the force of the objection stated by the learned Chief Justice; and he felt that, if the Section were introduced, it would be necessary to republish the Bill. The question was an important one, and he suggested that, as the Bill would again come under consideration next Saturday, the consideration of this Section be postponed.

The further consideration of this Section was postponed accordingly.

MR. CURRIE moved that the words "It shall be lawful for the Civil Court to refer to any of the subordinate Courts of the District, any investigation or enquiry which the Civil Court is required or authorized to hold under this Act, and" at the beginning of Section XXII be left out.

The motion was agreed to and the Section passed.

Section XXIII was passed after verbal amendments.

The Preamble and Title were severally passed as they stood.

The Council resumed its sitting.

CIVIL PROCEDURE.

MR. LEGEYT said that, on further consideration, he would not make the motion (which stood in the Orders of the Day) for the republication of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter."

MR. PEACOCK gave notice that he would, on Saturday the 18th Instant, move for a Committee of the whole Council on the above Bill. He thought that some limit should be fixed up to which the consideration of the Bill in Committee should proceed next Saturday. His idea was that it should be divided into three parts, and he was about to propose as far as "appearance of the parties." But his Honorable friend on his right (Mr. Harington) suggested as far as "Written Statements" which was only two pages further on. There were so many points to be considered in the Bill that he thought Honorable Members would prefer to have notice as to how far the consideration of the Bill would probably extend.

After some conversation, it was agreed that the Committee of the whole Council should not proceed further than the head "Written Statements" on Saturday.

EXCLUSIVE PRIVILEGES TO INVENTORS.

MR. PEACOCK also gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "for granting exclusive privileges to inventors."

The Council adjourned at half-past one o'clock on the motion of Mr. Ricketts.

Saturday, September 18, 1858.

PRESENT:

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

Hon. Lieut.-Genl. Sir J. Outram,	E. Currie, Esq.,
Hon'ble H. Ricketts,	Hon. Sir A. W. Buller,
Hon'ble B. Peacock,	H. B. Harington, Esq., and
P. W. LeGeyt, Esq.,	H. Forbes, Esq.

INDIAN NAVY.

THE VICE-PRESIDENT read a message informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XII of 1844 (for better securing the observance of an exact discipline in the Indian Navy)."

ARTICLES OF WAR (NATIVE ARMY).

MR. PEACOCK moved the second reading of the Bill "to amend Act XIX of 1847 (Articles of War for the government of the Native Officers and Soldiers in the Military Service of the East India Company)."

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

GUARDIANSHIP OF MINORS (BENGAL).

On the Order of the Day for the adjourned Committee of the whole Council on the Bill "for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal" being read, the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section V provided as follows:—

"When application shall have been made to the Civil Court either by a person claiming a right to have charge of the property of a Minor, or by any relative or friend of a Minor, or by the Collector, the Court shall issue notice of the application, and fix a day for hearing the same. On the day so fixed, or as soon after as may be convenient, the Court shall enquire summarily into the circumstances, and *if it shall appear that the deceased has left a will, and that the executor or executors named therein is or are willing to undertake the trust, or, when the deceased has not left a will or the executor or executors named in any will is or are unwilling to undertake the trust, if any near relative of the Minor shall desire or be willing to administer to the estate, and the Court shall be of opinion that such relative is a fit person to be entrusted with the charge of the property and person of the Minor, the Court shall grant a certificate to such executor or executors or near relative as the case may be.*"

MR. CURRIE said, the objection taken to this Section, he believed, was that it appeared to make it imperative on the Court to make the executor