# PROCEEDINGS



OF THE

# LEGISLATIVE COUNCIL OF INDIA,

FROM

**January to December 1856.**

VOL. II.

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1857.

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ment of Bombay on the subject of facilitating the transaction of business by the Bench of Justices and the Board of Conservancy at Bombay, be printed and referred to the Select Committee on the Police and Conservancy Projects of Law for the Presidency Towns.

Agreed to.

Also that a communication which he had received from the Government of Bombay relative to a new scheme of municipal taxation for that Presidency, be printed and referred to the same Committee.

Agreed to.

### CATTLE TRESPASS.

MR. CURRIE gave notice that, on Saturday next, he would move the second reading of the Bill "relating to Trespasses by Cattle."

### AMEENS (BENGAL).

Also the third reading of the Bill "to amend the law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William."

The Council adjourned.

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*Saturday, April* 12, 1856.

PRESENT :

The Hon'ble J. A. Dorin, *Vice President*, in the Chair.

Hon. Sir J. W. Colvile,
His Excellency the Commander-in-Chief,
Hon. B. Peacock,
D. Eliott, Esq.,
C. Allen, Esq.,
P. W. LeGeyt, Esq.,
E. Currie, Esq.
and
Hon. Sir A. W. Buller.

The following Messages from the Governor General were brought by Mr. Peacock, and read :—

### MESSAGE No. 73.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 5th April 1856, entitled "a Bill to amend the Law relating to Bills of Lading."

By Order of the Right Honorable the Governor General.

CECIL BEADON,
*Secretary to the Govt. of India.*

FORT WILLIAM,
*The* 11*th April* 1856.

### MESSAGE No. 74.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 5th April 1856, entitled, "a Bill to repeal the 122nd Article of War for the Native Army, and to substitute a new Article in lieu thereof."

By Order of the Right Honorable the Governor General.

CECIL BEADON,
*Secretary to the Govt. of India.*

FORT WILLIAM,
*The* 11*th April* 1856.

### MESSAGE No. 75.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 5th April 1856, entitled "a Bill for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty and of the East India Company in India."

By Order of the Right Honorable the Governor General.

CECIL BEADON,
*Secretary to the Govt. of India.*

FORT WILLIAM,
*The* 11*th April* 1856.

### MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition from certain Hindoo Inhabitants of Poonah, against the Bill "to remove all legal obstacles to the Marriage of Hindoo Widows."

Also a Petition from Hindoo Inhabitants of Tipperah against the same Bill.

Also a Petition from Hindoo Inhabitants of Hooghly in favor of the Bill.

MR. LEGEYT moved that these Petitions be printed, and referred to the Select Committee on the Bill.

Agreed to.

### EMIGRATION.

THE CLERK reported that he had received, by transfer from the Secretary to the Government of India in the Home Department, a communication from the Colonial Secretary at the Cape of Good Hope res-

pecting the Emigration of laborers from India into Natal.

### POLICE (PRESIDENCY TOWNS, &c).

MR. ELIOTT presented the Report of the Select Committee on the Bill "for regulating the Police of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales' Island, Singapore, and Malacca."

### CATTLE TRESPASS.

MR. CURRIE moved the second reading of the Bill "relating to trespasses by Cattle."

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

### AMEENS (BENGAL).

MR. CURRIE postponed the third reading of the Bill "to amend the Law respecting the employment of Ameens by the Civil Courts in the Presidency of Fort William." He said, he understood it was the wish of the Government of the North-Western Provinces to make some communication on the subject of this Bill, and, until that was received, it would be desirable to postpone the further progress of the measure.

### CONSERVANCY (PRESIDENCY TOWNS, &c).

MR. ELIOTT moved that the Council resolve itself into a Committee on the Bill "for the Conservancy and Improvement of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca;" and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Section I of the Bill was agreed to as it stood.

Section II interpreted some words and expressions used in the Bill.

SIR JAMES COLVILE said, he was not clear about one or two of the definitions. The word "street," for instance, was defined to mean "any road, street, square, court, alley, or passage, whether a thoroughfare or not." He should wish to have it made clear whether the word "street," as used in this Act, was intended to import merely the space between the two lines of houses on the sides of the public roadway, or whether it included those lines of houses. There had been a case in the Supreme Court not very long ago under the existing Conservancy Act in which that question had arisen; and it did not very clearly appear from the language of that Act which of those two interpretations was the one actually intended. He thought it would be well if those who had the conduct of this Bill would explicitly specify what they meant by the term "street."

MR. ELIOTT said, it was intended that the term should be strictly confined to the space or roadway between houses. If the subsequent Sections were looked at, it would be seen that this was obviously the sense in which it was used in the Bill; and that where houses were spoken of, they were spoken of under a distinct head.

SIR JAMES COLVILE said, it might probably be safer to make the intended meaning clear beyond all dispute by saying "the word 'street' shall mean any road, street, square, court, alley, or passage, whether a thoroughfare or not, not including any houses built on any side thereof." But if it followed on the general construction of the Bill that houses were not included, he should not press the amendment. Should it appear, on a consideration of the subsequent Sections, that the amendment ought to be introduced, he could move for the re-committal of this Section.

MR. CURRIE said, it seemed to him quite apparent, from the whole tenor of the Bill, that the term "street" did not include houses. Whenever houses were spoken of, they were spoken of as fronting the street, or being upon the street.

THE CHAIRMAN remarked that he observed Section V provided that all public streets and roads should be vested in and belong to the Commissioners. It could hardly be supposed that the Act meant to provide that houses should be vested in and belong to the Commissioners; and, therefore, it appeared to him to be evident that its intention was not to include houses in the term "street."

MR. PEACOCK said, he thought that the word was scarcely correctly defined in the Section. The definition was:—

> "The word 'street' shall mean any road, street, square, court, alley, or passage, whether a thoroughfare or not, and also the roadway over any public bridge or causeway, within such parts of the said towns and stations as shall be from time to time specially defined by the Commissioners with the sanction of the Local Government."

This definition would include a private road or passage, and probably even a garden or compound. Section IX provided that—

"the Commissioners shall cause the streets, including the footways thereof, from time to time to be properly swept and cleansed, and the dust, dirt, ashes, rubbish, and filth of every sort found thereon to be collected and removed."

The word "streets," as used in this Section, could not mean any compound or any private passage leading to a house; but by the definition which the Section now in question assigned to it, the Commissioners would be bound to cause every private compound or passage to be properly swept and cleansed. He thought that the definition ought to be amended by being made to run thus:—The word "street" shall mean any "*public* road, street, &c."

MR. CURRIE said, the word "public" might be inserted before the word "street" in the 9th Section.

SIR JAMES COLVILE said, that would be an amendment of Section IX; but there was a subsequent Section which provided that, if any private street were not kept in a certain degree of repair, and the owner refused or neglected to repair it, the Commissioners might do the work at the expense of the owner; and that, after the repair, whether by the owner or the Commissioners, the owner should be entitled to require that the street should be declared a public street, to be maintained in repair by the Commissioners out of the funds at their disposal for the purposes of the Act. For his own part, he was inclined to think that it was desirable that the consideration of the Clause in question should be postponed until the Committee should have gone through the Bill.

MR. PEACOCK said, the Honorable Member for Bengal had suggested that the word "public" should be inserted before the word "street," in Section IX. But, if the Interpretation clause did not define the word "street," a difficulty would arise with regard to other Sections. Section XXII, for instance, provided that

"every person who intends to make or lay out any new streets shall give notice thereof in writing to the Commissioners, showing the intended level and width of such street; and the level and width of every such street shall be fixed by the Commissioners."

If the word "street" was to mean a private street or passage, the Commissioners would have the power of insisting that a private passage leading to a man's house or compound should be of a level and width to be fixed and approved of by them. Why should they have such a power? It appeared to him that it would be too great an interference with private rights. The Interpretation clause said "the word 'street' shall mean a street, square, court, alley, or passage, whether a thoroughfare or not." If this definition were to stand, a private passage leading from a man's house to his godowns would be a street within the meaning of the Act; and the proprietor would be bound to make it of a certain level and width, and the Commissioners to keep it swept and cleansed.

MR. ELIOTT said, he had no objection to leave out the words "whether a thoroughfare or not."

MR. PEACOCK said, that would make no difference, unless the word "public" was inserted before the word "street."

MR. LEGEYT asked if the word "any road used by the Public" would not answer. He was informed that there were several streets in Calcutta—one, for example, in Elysium Row—leading to houses which did not belong to the Commissioners, and were not repaired by them. He did not know whether the Public had a right to have access to them; but, in point of fact, they were used by the Public.

MR. PEACOCK said, if a private street were dedicated to the Public, it became a public street; but if it were not dedicated to the Public, the owner might be required to keep it so that it should not become a nuisance to the neighborhood, but there was no reason why the Commissioners should be bound to keep a private street swept any more than the compound of a man's house. Why should such a street be swept and kept clean at the expense of the Public, when the Public had no right to use it? He would suggest that the definition be amended by the insertion of the word "public" before the word "street," or of the words "over which the Public have a right of way" after the words "whether a thoroughfare or not."

MR. ELIOTT moved the amendment last suggested by the Honorable Member, and it was agreed to.

The next clause of the Section defined the word "road" to mean—

"any road, or thoroughfare, or roadway over any public bridge or causeway, not being within the parts so specially defined"—

that is, within such parts of the Presidency Towns and Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca, as shall be, from time to time, specially defined by the Commissioners with the sanction of the local Governments.

MR. PEACOCK said, the same amend-

ment should be introduced into this definition that had been introduced into the definition of the word "street." The intention was that certain portions of the Presidency Towns and of the Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca, should be defined by the Commissioners with the sanction of the local Governments; and that, within such parts, all thoroughfares should be designated "streets," and beyond them all thoroughfares should be designated "roads." In other words, that all thoroughfares in the town-parts should be "streets," and all thoroughfares in the country-parts should be "roads." The same reason which required the amendment already made in the preceding clause of the Section, required it in this; and he should, therefore, move that the words "over which the Public have a right of way" be inserted after the word "thoroughfare."

The amendment was agreed to.

A subsequent clause defined the word "Magistrate" to mean

"any Magistrate of Police acting for the Town or Station where the matter requiring the cognizance of a Magistrate arises, or (in any case referred to the determination of two Magistrates, if there be only one Magistrate of Police acting for the Town or Station) any Justice of the Peace for such Town or Station."

MR. PEACOCK said, an offence against the Act cognizable only by two Magistrates might be committed in a town or station in which there was but one Magistrate of Police with a Justice of the Peace many miles off. In such a case, was the Justice of the Peace to go all the way with the witnesses to join the Police Magistrate, or was the Magistrate to go to the Justice of the Peace? One of the great difficulties felt in this country in the administration of justice was, the necessity which frequently occurred of dragging witnesses away from their houses to particular judicial officers at a distance. He could not see why a person who could be entrusted with the performance of the general duties of a Justice of the Peace, might not equally be entrusted with the performance of the duties created by this Act—such as adjudging a person to the payment of a fine for not trimming a hedge or fence adjoining a public road.

SIR JAMES COLVILE said, the difficulty suggested by the Honorable and learned Member would arise only in the Straits; and there, the Local Government might meet it by apportioning particular stations, and appointing the Justice of the Peace at each station a Magistrate of Police. As there was no motion before the Council, he should move the following as an amendment of the Clause under consideration:—namely, that the words "Justice of the Peace appointed to act as a" be inserted after the word "any" in the 1st line of the clause.

MR. PEACOCK said, he had not as yet seen the Police Bill; but he understood that Police Magistrates were to have additional salaries assigned to them. But the Government might not think it necessary to go to the expense of appointing Police Magistrates for the rural districts in the Straits. In that event, if an offence against this Act were committed in any part of a station where there might be a Justice of the Peace but not a Police Magistrate, the witnesses would have all the expense and inconvenience of travelling to a place in which a Magistrate of Police was to be found.

SIR JAMES COLVILE'S amendment was then put.

MR. ELIOTT said, the definition in this clause had reference to the Police Bill, in which provision was made for the appointment of Magistrates and the division of the Town or Station into Police districts, with a Magistrate to hold a Police Court in and for every such District.

(The Honorable Member then read Section XX of the Police Bill, as containing the provision to which he referred.)

The object, he said, was to commit the trial of offences against the Police and Conservancy Acts to Magistrates selected by Government, who would be paid Officers giving themselves entirely to their duty, and not to Justices casually intervening. The Magistrates, however, were to be Justices. The offences were made cognizable by Magistrates sitting singly, whereas the principle of this amendment was, that they should be cognizable only by a Justice of the Peace.

MR. PEACOCK said, he should have no objection to let this clause stand over until the Police Bill should be settled in Committee. It might be, though he did not know it would be so, that, after that Bill was settled in Committee, there would be no such Officer as a Magistrate of Police. If so, the interpretation by which the word "Magistrate" was defined to mean a "Magistrate of Police" would raise a difficulty. He should, therefore, move that the further consideration of this particular definition be postponed until after the Police Bill should be settled.

The postponement was agreed to.

The last clause of the Section defined "owner" to mean

"the person for the time being receiving the rent of the land or premises in connexion with which the word is used, whether on his own account, or as agent or trustee for any other person, or who would so receive the same if such land or premises were let to a tenant."

MR. PEACOCK said, he objected to this definition. The Bill contained Sections which subjected owners to certain penalties. By this definition, a person who merely received the rent of a house for the owner, would be liable to a penalty for not making in it an alteration required by the Commissioners, although he might have no authority from the owner to make such alteration. Why should one who had no authority to manage the property, but was appointed merely to collect the rents, be made punishable under this Act for not doing something which he might have no right to do. Not only might he have no authority from the owner to make the alteration which the Commissioners might require, but he might have no funds belonging to the owner out of which to pay for the alteration, or to pay the penalty. He might have received rent for one month and remitted it to the owner, and in the middle of the next month, after he had paid the money over, some offence might be committed against the Act; he might be ordered to pay a fine, and the owner might thereupon revoke his authority to collect the rents: in such a case, the agent, though he had not even authority to manage the property for the owner, would have to pay the fine out of his own pocket. Even as a means of facilitating service upon owners of notices by the Commissioners, he did not think the Clause necessary, because Section LXVIII specially provided that——

"Where any notice is required by this Act to be given to the owner or occupier of any building or land, such notice, addressed to the owner or occupier, as the case may require, may be served on the occupier of such building or land, or left with some adult male member or servant of his family; or if the notice cannot be so served, or if there be no occupier, may be put upon some conspicuous part of such building or land: and it shall not be necessary in any such notice to name the occupier or owner."

He should, therefore, propose to omit the Clause altogether.

MR. ELIOTT said, the Clause had been copied word for word from the English Statute, and appeared to him to be a very necessary one.

SIR JAMES COLVILE said, he, for his own part, thought that some such Clause as this was necessary. He should prefer, however, to have the definition limited to agents of absent owners, and to agents having the power of managing the property. A large portion of landed property was owned in this country by absent proprietors; and unless there was such a Clause in the Bill as he proposed, it would be impossible to get at the proprietors. If the Agent of an owner had full power of managing the property, it could be no injustice to put upon him the obligation of doing any thing that the Act would enable the Commissioners to call upon the owners to do. He, being in the receipt of the rents of the property, would always be in a position to indemnify himself for any expenses he might have to defray.

MR. PEACOCK said, this Bill contemplated owners absent in different parts of India, as well as owners absent in England; for by Section LXVIII, it was provided that, if the owner should be resident within the Town or Station, the Commissioners should send their notice to his residence by the post. If the clause in question was intended to make a person receiving rents for an owner, agent for that owner for the purpose of receiving notice or paying a penalty out of funds in his hands, he could understand it; but if it was intended to make him personally responsible for an act which he could not prevent, he certainly should object to it.

MR. ELIOTT said, when this Act came to be known, agents would not undertake the charge of receiving rents without some stipulation from the owner to meet the penalties to which it made owners liable. That would be a matter of settlement between the parties. And what would be the injustice to the agent? The Bill, on this point, only followed the example set in the Statute passed in Great Britain. What had been thought good there, it must be presumed, would be found good here; and what was tolerated there, he thought might be tolerated here.

MR. PEACOCK said, many things were inserted in English Acts without full consideration. This Act had been printed only a few days, and he, for one, had not had time to consider the precise form in which this clause might be amended; but unless it were modified so as to limit the liability of agents to cases in which they had funds belonging to the owners, and were entrusted with the management of the property, or were personally guilty, he should vote against it.

SIR JAMES COLVILE proposed that the further consideration of this clause should

be postponed until the Bill should be settled in Committee.

Agreed to.

Section III was agreed to as it stood.

MR. LEGEYT then moved the insertion of the following new Section :—

"The Commissioners may deduct from the pay of such Officers after such rate as the local Government shall direct, not being a greater rate than half an anna in every rupee; which sum, so deducted, and also the monies accruing from stoppages from the salaries of such Officers during sickness, and all fines imposed under the provisions of Sections LXXVIII, LXXXII, and CXV of this Act, shall, from time to time, be invested in such manner and in such securities as the local Government may direct, and the interest and dividends thereof shall be likewise invested as aforesaid, and accumulate so as to form a Fund to be called the 'Conservancy Superannuation Fund'; and shall be applied from time to time in payment of such superannuation or retiring allowances, or gratuities, as may be ordered by the local Government to any such servants."

The Honorable Member said, he moved this Section, because he considered it extremely desirable that such an encouragement to good conduct and reward for good and long service should be held out to the Officers of the Conservancy Department. The principle was recognised in the Police Bill, into which a similar Section, providing superannuation pension for Police Officers, had been introduced. He should mention that he had urged this provision in Select Committee, but that he had been over-ruled. Still, he thought it right to bring the question before the Council, and take its vote upon it. These Conservancy Officers had very arduous, unpleasant, and unwholesome duties to perform. They, more particularly, perhaps, than any other class of public servants, were open to temptations to neglect their duty; and they had hitherto been without the stimulus to honesty and perseverance in a right course of conduct, from the absence of the prospect of any retiring pension. He understood that there was a case now before the Government of an officer who had served 25 years in the Conservancy Department, and who had been obliged to retire in consequence of old age. He applied for a pension; but the Government replied that he was not entitled to one from the public revenue, because he was not a servant of the State; and the Commissioners could not allow him one from the Conservancy funds, because they had no money at their disposal for such a purpose. It was very possible, that, under the administration of this Act, a sufficient sum would be derived for superannuation allowances from the sources which he had indicated in his motion. He proposed that the fines which might be levied under the Sections mentioned in this motion should be applied to this purpose. These Sections were provisions for offences which it would be particularly the duty of the Conservancy Officers to look after sharply and with zeal; and it seemed to him but fair that the funds which were accumulated by their means, should be reserved as a source of pensionary support to them after their retirement from active service.

MR. ELIOTT said, the Honorable Member had already stated that this question had been fully considered by the Select Committee, and that he had been in the minority. Indeed, all the other Members had voted against him. They thought that it was too large a question fer them to enter into. It was a new question, too, whether such a fund as the Honorable Member proposed should be formed under the direction of Government for persons who were not strictly servants of Government. As to a similar provision having been inserted in the Police Bill, it was to be observed that the members of the Police Force were strictly servants of Government; that the Force was a large body; and that the amounts of the stoppages from the salaries of its members would be proportionately large, and might be expected to constitute a sufficient fund. It was unlikely that the stoppages from the salaries of the Municipal Force would be adequate, and the other sources indicated by the Honorable Member would not eke out the amount required for the purpose he desired.

MR. PEACOCK said, he thought it objectionable to make fines levied under the Act a source of increasing the pension fund for the Conservancy Officers. He did not know what class of officers was to be pensioned; but the Clause which the Honorable Member proposed would certainly give them a strong interest to get persons fined.

SIR JAMES COLVILE said, this seemed to him one of those questions which it was rather inconvenient to raise without notice. He did not know enough of the men who were in the Municipal Force, or the time they were likely to remain in it, to say that they would like to be put under stoppages in order to have such a fund put by as the Honorable Member proposed. A man might be in the Force to-day, and out of it to-morrow.

Mr. LeGeyt's motion was then put, and negatived.

Sections IV to VIII were agreed to as they stood.

Section IX was as follows :—

"The Commissioners shall cause the streets, including the footways thereof, from time to time to be properly swept and cleansed ; and the dust, dirt, ashes, rubbish, and filth of every sort found thereon, to be collected and removed."

SIR JAMES COLVILE said, he had no objection whatever to this Section ; but he hoped the Commissioners knew what they were undertaking to do. They were undertaking to cause all dust to be removed from the streets. When *bheestees* were not to be found, did they propose sweeping the streets ? That would be a great convenience to the inhabitants, but hardly so to themselves. However, if they liked the Section, he had no objection to offer to it.

The Section was put, and agreed to.

Section X provided that the Commissioners might place any number of dust-boxes, or other receptacles for dust, dirt, ashes, and rubbish, in proper and convenient situations, and might require the occupiers of houses in streets to cause all such matter as aforesaid to be deposited daily or otherwise periodically in the said receptacles.

MR. PEACOCK said, he had no objection to that part of the Section which prohibited persons from throwing dust and rubbish into the public streets ; but he saw no reason for compelling them to carry such rubbish to the public receptacles provided for the purpose, as many times in the day as the Commissioners or their officers might order. The object was to prevent occupiers from throwing such matters into the public streets, or keeping them on their premises for any length of time so as to become a nuisance. There was an express provision in Section XLI prohibiting occupiers from keeping such things on their premises above 24 hours. It appeared to him that the words to which he referred would allow too great an interference with individuals, and he should, therefore, move that they be left out.

MR. ELIOTT said, he had no objection to the amendment.

MR. PEACOCK'S amendment being put, the Council divided :—

| *Ayes* 3. | *Noes* 6. |
|---|---|
| Mr. Elliott. | Sir Arthur Buller. |
| Mr. Peacock. | Mr. Currie. |
| The Chairman. | Mr. LeGeyt. |
| | Mr. Allen. |
| | The Commander-in-Chief |
| | Sir James Colvile. |

The Amendment was negatived.

The Section was agreed to.

Section X was agreed to.

Section XI provided that whoever should deposit or permit his servant to deposit any dust, dirt, &c. in any street, public quay, &c. except in such places, and in such manner, and at such hours, as might be fixed by the Commissioners, should be liable to a fine not exceeding 10 Rupees.

SIR ARTHUR BULLER said, he wished to ask whether by this Section it was meant to make a master responsible for all deposits of rubbish by his servant ; whether, by the words "whoever permits his servants to deposit," it was meant that there must be some assent actually given by the master, or presumable from gross neglect, to make him responsible ; or whether it was intended, as he had been informed, that he should be responsible under any circumstances, whenever his servant threw rubbish into the street ? He considered that the word "permit" would not carry out such intention. He went to the Supreme Court himself at 10 and returned about 5. If in the meantime his servants threw rubbish into the street, he conceived that no Court would ever hold that he had *permitted* them to do so.

He was not just now questioning the propriety of enforcing the larger or the lighter responsibility ; but he wished to know what meaning the framers of the clause attached to the word "permit."

MR. ELIOTT said, it behoved masters to maiutain proper discipline on board their ships. The intention was to make masters responsible for not preventing their servants from offending against the Section.

MR. PEACOCK said, if a servant threw dust or dirt into the street out of his master's house, he (Mr. Peacock) thought the master ought to be responsible, even though the servant might not have acted in execution of his orders.

The Section was then put, and agreed to.

Section XII provided that whoever should cause or allow the sewerage of his house or land to be thrown upon or to run into any street or surface drain, should be liable to a penalty not exceeding 10 Rupees.

THE CHAIRMAN said, he should take the liberty of observing that this Section would impose a certain degree of hardship upon occupiers. It appeared to be a very proper provision at first sight, but it was to be remembered that there were no sewers

in the Town, and that half the houses in it were so built that the drainage must necessarily flow into the surface drains. Therefore, to fine occupiers for that would be to fine them for what they really could not help. To him, it appeared premature to legislate in this way for a Town in which there was no sewerage whatever.

Mr. LEGEYT said, he could not agree with the Honorable the Chairman. Any one who had been for any time in Calcutta, must be aware of the horrible stench which pervaded the town, and this Section was intended to remove the cause of the nuisance. The surface drain of the Town could never have been intended for the highly offensive matter that flows from cook-rooms. They were intended, he apprehended, only for rain water, and for innocuous matter from houses. This question had been a subject of discussion for years. There had been a great struggle about it in Bombay. There, as here, the surface drains received all sorts of filth, and the stench in the town was as bad as the stench here. He thought it a most wholesome provision to prevent kitchen refuse—which, he believed, became charged with the most poisonous gases after exposure to the air—from flowing into surface drains. Occupiers might avoid passing all such refuse into them by providing proper cess-pools in their premises. This would remove the cause of a public nuisance, and also contribute to their own personal comfort; for a properly-constructed cess-pool would be infinitely preferable to an open drain in front of a house containing offensive matter. Unless this were done, no system short of a complete sewerage, such as that in London or Paris, would alleviate the abominable stench which now passed through the town, to the great injury of health.

THE CHAIRMAN said, he had no intention of pressing the point; but he must say he still thought it a hardship to fine a man for allowing that to be done which he could not prevent. It was quite true that occupiers might sink cess-pools in their premises for the reception of refuse drainage; but he very much doubted whether, in crowded parts of the Town, a multiplicity of cess-pools would not be a greater nuisance than allowing house drainage to pass off by the surface drains.

MR. ELIOTT said, he agreed with the Honorable the Chairman in thinking that, in the present state of the drainage of the town, this Section was too stringent. He should, therefore, move as an amendment that the words "if there be a suitable sewer for carrying off such matter" be added to the prohibitory part of the Section.

MR. LEGEYT said, that would leave matters exactly as they now stood, because there were no such sewers in the town.

MR. ELIOTT'S amendment being put, the Council divided:—

| *Ayes* 4. | *Noes* 5. |
|---|---|
| Mr. Allen. | Sir Arthur Buller. |
| Mr. Eliott. | Mr. Currie. |
| Sir James Colvile. | Mr. LoGeyt. |
| The Chairman. | Mr. Peacock. |
| | The Commander-in-Chief. |

The amendment having been negatived—
The Section was put and agreed to.
Section XII was carried as it stood.
Section XIII provided for the removal of night-soil.

SIR ARTHUR BULLER said, the subject of this Section was not a romantic one, and he had no wish that the Council should linger upon it; but he thought it necessary to call attention to certain portions and to suggest certain amendments of the Section.

The Honorable and learned Member then entered into various details, and concluded by moving the following amendments, namely, the insertion in the 8th line, after the word "removes," of the words "or causes to be removed;" the substitution for the words in the 23rd line of the following words "or who drives or takes, or causes to be drawn or taken, any cart, &c." and the omission of all the concluding words of the Section after the word "Rupees" in the 29th line.

The Honorable Member's amendments were severally put and agreed to, and the Section was then passed.

Sections XIV to XVII were passed as they stood.

Section XVIII, which provided a penalty for injuring or disturbing "any lamp-post or lamp in any street or road, &c." was passed after the addition of the word "lamp-bracket" to the word "lamp-post."

Section XIX provided as follows:—

"The Commissioners, with the consent of the local Government, may contract, for any period not exceeding twenty years at any one time, with the owners of any gas-works, or with any other person, for the supply of gas, or oil, or other means of lighting the public streets."

MR. PEACOCK said, he objected to this Section. If passed, it would go very far to enable the Commissioners to get rid of the decision at which the Council had arrived on the question of gas-lighting.

The Honorable Mover of the Bill had referred to English Statutes as furnishing

precedents for several provisions in the Bill; but he thought it would not be possible for him to furnish any precedent whatever for giving to Municipal Commissioners the power of entering into contracts for lighting for a period of twenty years, or in other words, to the power of entering into contracts which would bind their sucessors in office and the Municipal rates for twenty years to come. He did not see why the Commissioners here should have such a power conferred upon them.

If they pleased, they might, under this Clause, enter into a contract with the Oriental Gas Company for that term to light the streets with Gas to the extent of Rupees 1,76,000 a year, which this Council had already decided they should not be at liberty to do. It would be remembered that, a short time ago, the Council had referred for consideration the Report of the Select Committee on the Lighting Bill to the Select Committee on the Municipal Bill. One of the recommendations in that Report was that a rate should be imposed upon the inhabitants sufficient to raise upwards of Rupees 1,76,000 a year for improved lighting. Upon that occasion, it was proposed that the Committee should be instructed to frame a Bill so as to provide for carrying out an improved system of lighting in accordance with the suggestions in the Report. The Council divided upon the question and it was decided by a large majority that such instructions should not be given.

If Section XIX of the Bill were retained, the Commissioners might, without any further authority whatever, enter into a contract with the Oriental Gas Company for the supply of Gas to the extent of Rupees 1,76,000 a year for the next 20 years. It did not appear from this Bill where the money for such a contract was to come from; but he supposed it was intended that it should come out of the general rates which the Commissioners had to administer. He, for one, was very averse to entrusting them with the power of entering into any such contract. If the power should be given, there could be little doubt that the Commissioners would avail themselves of it, because they supposed that their good faith was pledged to the Oriental Gas Company for the introduction of Gas-lighting in Calcutta to a considerable extent, though, judging from the papers that had been laid before the Council, he could not concur in that opinion. Before the Council allowed this Section, it ought to know what the Select Committee on the new Municipal Bill proposed, regarding the subject of rates and Gas-lighting. He did not know what provisions the Committee intended to propose in the Bill for amending Act X of 1852, or what rates they proposed to allow the Commissioners to levy. As he had observed before, there was no precedent for giving Municipal Commissioners power to enter into contracts which would be binding upon their successors for twenty years, and to pledge the rates for that period by anticipation. What was the present position of the Municipal Commissioners of Calcutta? He asked the question without intending any offence to the Commissioners. He had no doubt that they were men just as intelligent and able as any that could be appointed; but, with reference to the Calcutta Municipal Act passed in 1854, the Council would recollect that, before Act X of 1852, a majority of the Commissioners was elected by the inhabitants, but by Act X of 1852, it was provided that two of the Commissioners should be elected annually by the inhabitants, and two appointed by the Government. By Act XXVIII of 1854, so much of the preceding Act as related to the election and time of holding office by the Commissioners was repealed, and the then Commissioners were continued in office until the end of 1855, and until such further time as the Legislative Council should pass an Act for regulating the appointment of those Officers. Consequently, the present Commissioners might be fairly said to be now holding office only upon sufferance. Strictly speaking, the Legislative Council ought to have passed an Act at the end of 1855, declaring whether there should be any elective Members in the Municipal Board, or whether all the Members should be appointed by the Government. That had not been done, nor had any Act been passed for imposing any rates on the inhabitants. These matters were now under the consideration of the Select Committee on the new Municipal Bill. The schemes for improving the City would probably require larger funds to be raised than the inhabitants could afford to pay. Thirty lakhs were required for drainage and a proper supply of water:—for those objects he had no objection to allow even a larger sum, if a larger sum should be found to be necessary:—then, a lighting rate was proposed, to the extent of Rupees 1,76,000 a year: that would exceed more than a further sum of 30 lakhs: in addition to this, the Commissioners had a third scheme on foot, which was for opening a new

street, estimated at another 30 lakhs or more. These sums would give a total of 90 or 100 lakhs. How they were to be provided, he did not know. He should like to know how the Committee sitting on the new Municipal Bill proposed to raise the requisite funds, and how much they proposed to apply to the efficient drainage and ventilation of the town, before he could consent to pledge, or to allow the Commissioners to anticipate the rates at present raised by pledging them to the extent of Rupees 1,50,000 or 1,76,000 a year for the next 20 years by contracting with the Oriental Gas Company, or any other Company, for the supply of gas or oil to that amount, for lighting the City. If it should be determined by the Council, hereafter, that the Commissioners should be elected by the inhabitants, it would be exceedingly hard upon the inhabitants, who had never appointed the present elected Commissioners with the intention that they should hold office for more than one year, or have the power of binding the rates for more than one year, to find that a contract for lighting to the extent of Rs. 1,76,000 a year had been entered into, and that the rates had been appropriated to that extent for the next twenty years. He believed that the present Commisaioners, who had been elected by the inhabitants, were averse to such a contract. But the Council should oppose this Section, unless they wished to allow the Commissioners to pledge them to do that to which, on a former occasion, they had refused to pledge themselves.

On the whole, therefore, he objected to this Section altogether, and should vote against it.

MR. ELIOTT, referring to the Honorable and learned Member's observation that he would not find a precedent in the English Acts for giving to the Commissioners the power of making contracts, said he had a precedent ready for him in the volume of Statutes he held in his hand.

MR. PEACOCK observed, he had said that the English Statutes furnished no precedent for giving Municipal Commissioners the power of entering into contracts for twenty years at any one time.

MR. ELIOTT, in reply, observed that the term of the contract made no difference—that was a matter for arrangement according to circumstances. The principle was to give the Commissioners power to make such arrangements as might be necessary for the carrying out of particular objects; and the English Statute recognised that principle, for it gave Municipal Commissioners power to contract for gas-lighting. This Bill proposed to give the power of contracting for gas-works for a period not exceeding twenty years. In England, the contract would be limited to three years: but this was a difference only in a matter of detail, and was owing to the great disparity between the circumstances of the two countries. In India, gas-works required the outlay of considerable capital, and the returns of many years were needed to make the project remunerative; whereas in England, it was otherwise. This Section followed the provision of the English Act in all but the term to which the contracts were to extend. It was to be observed that the Bill contained a similar provision giving power to the Commissioners to enter into contracts for any period not exceeding 21 years for the regular supply of water. In England, the contracts allowed for this purpose were limited to three years; but that limitation had reference to the difference of circumstances in the two countries. The principle was the same in the English Statutes and in this Bill—namely, that the Commissioners should have the power of entering into contracts of such duration as might be necessary for municipal purposes.

Then, it was to be observed that the Commissioners would not enter into such contracts of themselves, but with the consent of the local Governments, who would, of course, see that they limited their engagements to the extent of the means at their disposal. If they should not have the means of providing the expenses necessary for lighting the town with gas, in addition to the other objects provided for by this Act, they would enter into no contracts for gas-lighting; and the same as to water-works: but if they should have the means, they would enter into such contracts as would enable them to carry out those objects effectually.

MR. CURRIE said, as he had introduced the Gas Bill, he should make a few observations in reply to what had fallen from the Honorable and learned Member. It certainly was never intended by the introduction of this clause, to get rid, by a side-wind, of all that had been done in the Council on the subject of Gas. As the draft had been originally drawn by the Committee who prepared the Bill, the term fixed for contracts under this Section was three years. Subsequently, a blank was left for it. The Select Committee to whom the Bill was referred, thought that this blank ought to be filled up with some specific term; and the term of

twenty years was selected, as that was the term for which the Governor General as Governor of Bengal, and afterwards the Lieutenant Governor, had promised to contract with the Oriental Gas Company. The Section gave the Commissioners no powers which they did not possess at present ; there could, he believed, be no doubt that they had at present, with the sanction of Government, power to enter into such a contract as had, in fact, been promised to the Oriental Gas Company. But it was thought right to make special provision in the Bill for such contracts. He did not know however that this Section was absolutely necessary, for there was another Section—Section CXXIV—which gave a general power to enter into contracts with any persons for the execution of any works directed or authorized by this Act to be done by them, or for any other things necessary for the purposes of this Act. Perhaps that Section would be sufficient without this ; but, at the same time, he saw no reason why this Section should not also be retained.

MR. PEACOCK said, he did not impute to the Committee a wish to do away by a side-wind with a decision of the Council ; but he did say that, if the Council allowed this Section to pass, it would give them the power of doing that which it had already decided not to do.

With regard to the observation that the Commissioners could not contract for 20 years without the consent of the local Government, he had to observe that the East India Company did not entrust to local Governments the power of executing or sanctioning a single public work to be paid with Government monies, to a greater extent than Rupees 25,000. Beyond that amount, the power to execute or sanction such works was in the Government of India ; and the Government of India could not go beyond one lakh, without the sanction of the Honorable Court of Directors. But by this Section, the Council would be giving to the Commissioners, with the sanction of the local Government, the power of contracting for a public work to be paid for out of the monies, not of the Government it was true, but out of the municipal rates, to the extent of nearly Rs. 1,76,000 a-year for 20 years. For such an amount, the check of even the Government of India would not be sufficient ; and if that check were proposed, he should equally object to the Section. The Council ought not to give a power that would be binding on the funds of the inhabitants which they would not give if binding upon the funds of the Government. At present, it was an open question whether any of the Commissioners should be elected by the inhabitants. If they were to be elected by the inhabitants, surely the Council ought not to give the present Commissioners, who merely held office on sufferance, the power to bind their successors to the extent of Rupees 1,76,000 a year for a period of 20 years, for the mere purpose of lighting the City with gas.

MR. LEGEYT said, he thought this Section more properly belonged to the new Municipal Bill, which declared who the Commissioners were to be, what their powers were to be, and what funds would be at their disposal. He, therefore, thought that the Section ought to be transferred to the Municipal Bill, and considered when that measure should come before the Council.

SIR JAMES COLVILE said, by whatever Bill the Council might ultimately provide for this question, he did not think that the contracts into which the Commissioners might enter should be limited to the period during which they might remain in office. He would, for a moment, put out of consideration the question of lighting the town with gas, and suppose that the Commissioners here, or at the other Presidencies, might wish to make provision for a due supply of water : surely, they ought to have the power of making a permanent contract for that supply. The power of the Commissioners to contract would necessarily be limited by the extent of their means. He himself had no objection to retain this Section, because he could not believe that the Commissioners would, for the sake of any predilection for gas, enter rashly into a contract for 20 years, with any Gas Company, which they might not hereafter have means to carry out ; or that they would run the risk of bringing down a storm of public indignation on their heads by devoting their present revenues to that purpose to the neglect of all measures for cleaning and draining the town. But, at the same time, as the subject of gas-lighting was still open to consideration, and must come before the Council again, with respect to the question of ways and means, he did not see any necessity for retaining this Section. Contracts for oil need hardly be contracts of twenty years' duration. He, therefore, thought that the Section had better be left out, since it was not actually necessary, and, in the eyes of some, it might have the appearance of an attempt to do by a

side-wind that which, in the present state of the question, the Council had determined should not be done directly.

MR. CURRIE said, the Bill gave the same power as to water-works by Section LXXVII. For his own part, he thought it would be better to retain Section XIX in this Bill. He understood Section XIX to be governed by Section XVII, which said

"the Commissioners, so far as the funds at their disposal will admit, shall provide lamps, lamp-posts, and such other means as they may deem necessary for lighting such of the public streets and roads as they consider to require lighting;" &c.

Of course, the same condition applied to the power given by this Section; and, that being the case, he saw no reason why the Section should not be retained.

MR. PEACOCK said, he had no objection to giving the Commissioners power to contract for water-works to a limited extent; but he agreed with the Honorable Member for Bombay in thinking that the provision, if any, ought to be inserted in the new Municipal Bill, and to be considered when that measure should come before the Council. He had no doubt that by that Bill certain amounts of the rates upon the inhabitants would be appropriated to specific objects. If the Council knew how much was to be raised for gas-lighting, and how much for drainage, and was then called upon to authorize the Commissioners to bind the rates by anticipation to a certain extent, by borrowing the money necessary for those purposes and applying it, it would know what it was about. At present, it would be legislating very much in the dark. It did not even know whether, on the passing of the Municipal Bill, there might not be a perfectly different set of Commissioners.

MR. ELIOTT said, before the Section was put, he should move that the word "one" be inserted after the word "twenty," in order that the term of contracts under the Section might agree with that fixed by Section LXXVII for water-works.

The question being put, the Council divided :—

| *Ayes 8.* | *Noes 2.* |
|---|---|
| Mr. Currie. | Sir Arthur Buller. |
| Mr. LeGeyt. | Mr. Peacock. |
| Mr. Eliott. | |
| Mr. Allen. | |
| The Commander-in-Chief. | |
| Sir James Colvile. | |

THE CHAIRMAN then put the Section as amended.

The Council divided :—

| *Ayes 4.* | *Noes 5.* |
|---|---|
| Mr. Currie. | Sir Arthur Buller. |
| Mr. Allen. | Mr. LeGeyt. |
| Mr. Eliott. | Mr. Peacock. |
| The Commander-in-Chief. | Sir James Colvile. |
| | The Chairman. |

The Section was negatived.

Sections XX and XXI were passed as they stood.

Section XXII was passed after a slight amendment.

Section XXIII provided that the erection of new huts should be under the control of the Commissioners.

It was passed after amendments which limited its operation to streets, and to parcels of ground not previously built upon.

Section XXIV provided that—

"whenever the Commissioners, upon such enquiry as they may think necessary, are satisfied that, in any existing block of huts, by reason of the manner in which the huts are huddled together, or of the state of dilapidation into which they have wholly or partially fallen, or of the want of drainage and the impracticability of scavengering, such huts are unsuitable for dwelling-places, and that the occupation thereof in their existing state and condition is attended with risk of disease to the inhabitants of the neighbourhood,"—

they may, with the consent of the local Government, require the owners of the huts, or of the ground, to execute, within a reasonable time, such works as they may deem necessary for the avoidance of such risk. In case of default on the part of the owners, or of the abandonment of the huts or ground by them, or of uncertainty or ignorance as to who the owners may be, the Commissioners, after due public notice, may sell the huts and the grounds; in which case, the proceeds shall be paid over to the owners, or, if the owners are unknown, and the title be disputed, held in deposit in the Public Treasury, pending the order of a competent Court.

MR. ELIOTT moved that the words "by report of persons of the medical profession or other competent persons" be substituted for the words "upon such enquiry as they may think necessary" in the 1st and 2nd lines of the Section.

Agreed to.

MR. ELIOTT next moved that the words "in or near any street" be inserted after the words "any existing block of huts."

Agreed to.

SIR JAMES COLVILE said, he objected to this Section. It involved the sale of the ground. He was informed, and he believed it to be the case, that the ownership

of huts in Calcutta was very often distinct from the ownership of the ground on which the huts stood. He believed that the owners of the huts were sometimes mere squatters on the ground, and in other cases had obtained a license to erect huts upon it. All that it was intended to provide against was such a conglomeration of huts as would make the place unwholesome to the occupiers and the neighborhood. That, in certain circumstances, might be a good reason for pulling down the huts, and selling the materials; but it was no reason why the ground also should be sold.

MR. PEACOCK said, he quite concurred with the Honorable and learned Chief Justice, but he confessed it was much more easy to find fault with a Section than to frame one correctly.

The Section declared that the Commissioners might order three classes of huts to be re-built, altered, repaired, or otherwise, as they might see fit; those, namely, that were huddled together, those that were in a state of dilapidation, and those that had no drainage and could not be cleaned out. Supposing that, as to the first class, the Commissioners thought that every alternate hut ought to be pulled down: the owners of those huts of course would not pull them down, because they would not be permitted to build them up again, and the land upon which they stood would not be of any use. Then, what was to be done? Would the Commissioners sell the whole block, or would they sell only those which they had ordered to be pulled down?—if so, how were the owners to be compensated for the benefit which would be conferred on the rest of the block? Then, as to the second class, suppose the Commissioners ordered the owners to put the huts into a state of repair, and that one-half the owners obeyed the order and put them into repair, but that the other half refused. Would the Commissioners sell the whole block, including the huts which had been repaired? As to the third class, want of drainage and impracticability of scavengering would be objections that might affect the whole block: the Section would authorize the Commissioners to compel the owners of the huts to drain them in any way they (the Commissioners) pleased, and, on any of the owners failing to do so, the Commissioners might sell the whole block and the whole land.

Then again, after the block was sold, how were the proceeds to be divided? Were they to be divided in proportion to the value of the respective huts, or to the value of the ground? Was there to be a partition suit, and in what Court? It might be that the owner of the land had let it out on the stipulation that huts were to be built and kept standing upon it for a certain number of years: in such a case, he could not interfere with the huts; and yet, if the owners of the huts would not pull them down when required by the Commissioners, or would not put them into any state which the Commissioners might direct, the owner of the land, who had no right to compel them to obey, would be punished by having his land sold together with the huts. He (Mr. Peacock) thought that the Section must be remodelled. He thought that the Commissioners ought to have power to compel owners or occupiers of huts to put them into a state in which they would not affect the public health; but he did not think that they ought to have the power to sell the land. The Scotch Act gave the power of pulling down; but it also provided that compensation should be made to the owners. It said, if the Society for improving the dwellings of the Poor wished such erections to be pulled down in order to improve the property, they must pay for them. In fact, the Act looked upon the improvement as a public purpose, and compelled the owners to give up the property on receiving compensation. There were many difficulties connected with the Section, and perhaps it would be more convenient if the further consideration of it were postponed.

Agreed to.

Section XXV provided that the Commissioners might require owners or occupiers of premises fronting or abutting upon private streets, to level, pave, flag, channel, and sewer such streets; and that, after this should be done, the owners of the premises should have a right to require that the streets be declared public streets, to be thenceforward kept in repair by the Commissioners; and that the streets should become public streets if the Commissioners should give notice to that effect, if the owners did not, within a certain time, object.

MR. PEACOCK said, he considered this Section objectionable. He would be told, doubtless, that it had been taken from the English Act. But in England, most of the public streets were levelled, paved, metalled, flagged, channelled, and sewered, which was not the case here. The Commissioners could not say that the public streets were levelled, paved, metalled, flagged, channelled, and sewered

to their satisfaction. There was scarcely a flag stone in the place, and the state of drainage was lamentable. Then, why should they have the power of compelling owners or occupiers to make all those improvements in their private streets, which they did not make in the public streets, and of taking the private streets to themselves after the improvements were made? That would be precisely the effect of the Section. It was true that the provision was only permissive, and it might be said that the Commissioners would not exercise the power; but where a power was given, it was intended that it should be exercised; otherwise there was no necessity for giving it.

It appeared to him that the Section should be omitted; and he should, therefore, vote against it.

The Section being put, the Council divided:—

| *Ayes 6.* | *Noes 2.* |
|---|---|
| Sir Arthur Buller. | Mr. Peacock. |
| Mr. Currie. | Sir James Colvile. |
| Mr. LeGeyt. | |
| Mr. Allen. | |
| Mr. Elliott. | |
| The Chairman. | |

The Section was passed.

Sections XXVI to XXXVII were passed as they stood.

Section XXXVII provided that the external roofs and walls of huts in or near any street, should not be made of grass, leaves, mats, or other such inflammable materials.

MR. PEACOCK asked if there were any statistics which showed that it was necessary to have this provision. He did not intend to oppose it; but he was not quite certain whether a thatched roof did not keep out the heat better than tiled roofs. If it did, it would be a great inconvenience to occupiers of huts to compel them to cover their roofs with red tiles.

MR. ELIOTT said, when Act XII of 1837 was passed, it was determined that all huts should be covered with tiles.

MR. LEGEYT said, there could be no doubt that ranges of thatched huts were very dangerous to the neighborhood in cases of fire. The natives were exceedingly careless in their use of fire; and when once one of a a range of thatched huts caught fire, there was very great difficulty in preventing injury, not only to all the rest, but to all houses in the vicinity. In 1839, it was found necessary in Bombay to prohibit, by Act XXVIII, the existence of thatched huts in certain parts of the Island; and since that time, tiled huts had been raised in those parts, and he had never heard of any such complaint as that referred to by the Honorable and learned Member to his right (Mr. Peacock): on the contrary, he believed they were found by the occupiers to be more comfortable than thatched huts.

MR. ALLEN said, there was nothing in the Section to prevent an *inner* covering of grass from being put over huts, but it must be surmounted by an outer covering of tiles. The word "external" before the word "roof" was used in the Section on purpose to allow of this being done.

After some conversation, the Section was passed as it stood.

Sections XXXVIII to XLVII were passed as they stood.

Section XLVIII provided for the cleaning and emptying of sewers, and, among other things, empowered the Commissioners to cause all or any public sewers and drains to communicate with and be emptied into the sea or any public river.

It was passed after an amendment which made this power subject to the sanction of the local Government.

Section XLIX provided for the clearing by the Commissioners of the bed of any river or stream receiving sewerage. It was passed after an amendment similar to the above.

Sections L to LIX were passed as they stood.

Section LX gave power to the Commissioners to erect or affix to buildings, pipes for the ventilation of sewers.

It was passed, after an amendment which required that such pipes should be erected so as not to occasion any nuisance or inconvenience to any house or building in the neighborhood.

Sections LXI to LXVI were passed as they stood.

Section LXVII provided for the inspection, by the Commissioners or their officers, of branch drains, whether within or without lands or buildings, and of privies and cess-pools.

It was passed, after some alteration.

Section LXVIII provided that notices under the Act to an owner or occupier might be served on the occupier or at his house; provided that, when the owner and his residence were known to the Commissioners, it would be their duty, if he be residing within the Town or Station, to have the notice served upon him or at his house; and if he be not residing within the Town or

Station, to send it by the post addressed to his residence.

MR. PEACOCK said, the latter part of this provision would hardly be sufficient. Suppose the owner were absent in England, the notice ought to be served upon his agent here.

MR. ELIOTT said, he thought that the word "owners," as used in the Section, included an agent; and, therefore, where an owner was resident in England, the notice might be served upon his local agent. The agent would receive the rents of the property, and would be an "owner" within the meaning of the Section.

MR. PEACOCK said, the Section required that, where the owner was not resident within the Town or Station, the notice should be sent to his residence by the post. He (Mr. Peacock) had no objection to an agent being made to receive notice for an owner; but he did object to his being made responsible for offences committed by the owner. As yet, it did not appear clear to him what the term "owner" in this Bill really imported; and, as he was not partial to legislating in the dark, he should propose that the further consideration of the Section be postponed. If, however, it was thought that it would be more convenient to pass the Section as it stood, and re-commit it if it should hereafter appear to require amendment, he should not object to that course.

The Section was passed, accordingly, as it stood.

Section LXIX provided that, in default of the owner or occupier executing any work ordered under this Act by the Commissioners, "the Commissioners may cause such work to be executed," and recover expenses.

It was passed, after the addition, upon the motion of Mr. Currie, of the words "whether any penalty is or is not provided for such default."

Sections LXX to LXXVI were passed as they stood.

Section LXXVII gave power to the Commissioners to contract for the supply of water, and to grant leases for that purpose for any term not exceeding twenty-one years.

MR. PEACOCK said, the same objections that applied to Section XIX applied to this Section. He should, therefore, move that it be omitted.

The Section was put, and negatived.

Sections LXXVIII to CVI were passed as they stood.

Section CVII provided that the Commissioners might cause burial and burning grounds to be surveyed and measured; and that the owner or person having control of every such place should register it at the office of the Commissioners within three months from the passing of the Act.

It was passed, after an amendment which provided that, if there be no owner or person having control of any such place, the registry should be made by order of the Commissioners.

Section CVIII provided that no vault or burial ground "shall be opened or formed after the passing of this Act," without the leave of the Commissioners.

It was passed, after the introduction of the words "otherwise than by the authority of the local Government" after the word "Act."

Sections CIX to CXV were carried as they stood.

Section CXVI was postponed on the motion of Mr. Eliott.

Section CXVII empowered the Commissioners to make bye-laws, and subjected offenders against every such bye-law to a penalty not exceeding 20 Rupees, and to a further penalty not exceeding 10 Rupees for every day, after notice of the offence from the Commissioners, during which such offence should be continued.

The Section was passed after some amendment.

Sections CXVIII to CXXI were passed as they stood.

Section CXXII was passed after amendment.

Section CXXIII was passed as it stood.

Section CXXIV gave power to the Commissioners to make contracts for the execution of any works authorized by this Act, or for any other things necessary for the purposes of this Act.

MR. CURRIE asked, if this Section ought not to go out with Sections XIX and LXXVII?

MR. ELIOTT said, it was intended to apply to small contracts for works mentioned in the Act—such as contracts for pulling down a house, making a road or sewer, or building a bridge. It appeared to him that it ought to be retained, because the Bill professed to define all the executive powers that were to be vested in the Commissioners.

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

| *Ayes* 6. | *Noes* 2. |
|---|---|
| Mr. Currie. | Sir Arthur Buller. |
| Mr. LeGeyt. | Mr. Peacock. |
| Mr. Allen. | |
| Mr. Eliott. | |
| Sir James Colvile. | |
| The Chairman. | |

The Section was passed.

Sections CXXV to CXXXI were passed as they stood.

Section CXXXII provided that, in cases of dispute, damages, costs, or expenses under the Act should be determined by two Magistrates, except in the town of Bombay, where they should be determined by the Court of Petty Sessions; and that the amount so determined might, in default of payment, be levied by distress.

MR. ELIOTT moved that the clause relating to the levy of distress should be left out of this Section, with a view to its being embodied in a subsequent one.

The amendment was agreed to, and the Section then passed.

Section CXXXIII was passed as it stood.

MR. ELIOTT here moved the following new Section:—

"If the amount of damages, costs, or expenses ascertained in the manner above described be not paid by the party liable to pay the same within seven days after demand, such amount may be recovered under a warrant from the said Magistrates or either of them, or from the Court of Petty Sessions as the case may be, by distress and sale of the goods and chattels of such party, and the overplus, arising from the sale thereof, after satisfying such amount and the cost of the distress and sale, shall be returned on demand to the party whose goods shall have been distrained."

The Section was agreed to.

Section CXXXIV provided that penalties under the Act should be summarily recovered before a Magistrate.

MR. ELIOTT said, he proposed to omit this Section, as he intended to move that part of it should be introduced into a subsequent Section, and the remainder would be provided for in the procedure part of the Police Bill.

The Section was put and negatived.

Sections CXXXV, CXXXVI, and CXXXVII, which also related to procedure for the recovery of penalties, were likewise severally negatived on the motion of Mr. Eliott, who said it was proposed to transfer them to the Police Bill.

Section CXXXVIII was passed as it stood.

Section CXXXIX provided that no distress levied under this Act should be deemed unlawful, nor should any person making it be deemed a trespasser, on account of any defect or want of form in the process; nor should such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but that—"all persons aggrieved by such defect or irregularity, may recover full satisfaction for the special damage in any Court of competent jurisdiction."

SIR ARTHUR BULLER said, the words "such defect or" in the 12th line of the Section ought to be left out. The beginning of the Section declared that no distress levied under the Act should be deemed unlawful, and that no person making it should be deemed a trespasser, on account of any defect or want of form in the process. But then the Section went on to say—"all persons aggrieved by *such defect or* irregularity, may recover full satisfaction for the special damage in any Court of competent jurisdiction."

Now, if no act was to be deemed unlawful by reason of any defect in the process, what was the special damage that could follow in consequence of such defect? He could not see that the words to which he objected would have any effect, except, indeed, that of inducing persons to bring actions for want of form in the process, which the Section itself declared should not vitiate the process, or make the person executing it a trespasser. He, therefore, moved that the words should be left out.

The amendment was agreed to, and the Section then passed.

MR. ELIOTT then moved the following new Section:—

"Every fine or penalty imposed under or by virtue of this Act, or any bye-law made in pursuance thereof, may be recovered by summary proceeding before a Magistrate upon information exhibited by order of the Commissioners."

The Section was agreed to.

Section CXL was carried as it stood.

Section CXLI provided that no penalties under this Act should be proceeded for except within three months after the commission of the offence.

MR. LEGEYT said, Act XII of 1852 contained a very wholesome provision, which, he thought, should be added to this. It was perfectly right that the commencement of an action for penalties recoverable under this Act should be limited generally, as proposed in Section CXLI; but drains were opened only once a year, and it was only then that any encroachment upon them could be discovered. He, therefore, thought that the provision in Act XII of 1852 to which he referred, should be introduced into this Bill with respect to them.

After some conversation, the further consideration of the Section was postponed.

Section CXLII was passed as it stood.

Section CXLIII provided a penalty for witnesses making default; and Section CXLIV declared that a conviction should be quashed on the merits only.

MR. ELIOTT proposed that both these Sections should be omitted, as it was intended to transfer them to the Police Bill.

The Sections were severally put and negatived.

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

"Any officer of the Commissioners or any officer of the Police may seize without warrant and detain any person who, in his presence, has committed any offence against Sections XIII, XVIII, LXXVIII, or LXXX, or against any bye-law passed by the Commissioners under Section LXXXII of this Act, and whose name or residence shall be unknown to such officer, and shall convey him forthwith before a Magistrate that he may be dealt with according to Law."

He said, this Section, or one nearly to the same effect, was in the Bill when read a second time, but it had been struck out in Select Committee. As it stood originally, there were no restrictions as to Sections, but it gave power to seize any offender against the Act in general, and it was therefore left out. He had since been considering the matter, and he thought that it would be a great defect if the Act did not provide for the immediate seizure of any one who, in view of an Officer of Conservancy or an Officer of Police, committed any of the offences indicated in the Sections which he had mentioned. Section XIII provided a penalty for the removal of night-soil at unauthorized hours, and in an improper manner: Section XVIII, for the destruction of street lamps, &c.: Section LXXVIII, for the fouling of water in public tanks, aqueducts, &c., by bathing, washing, &c.: and Section LXXX, for injuring water-works belonging to the Commissioners, or diverting or wasting water therefrom: Section LXXXII gave the Commissioners power to make bye-laws regulating the use of the water to be supplied by them, and of public bathing places. It was obvious that persons committing any of these offences would, in the great majority of cases, be strangers to the Officers of Conservancy or Police, and they would, in all probability, refuse to give their names or places of abode. If the Police or Conservancy Officers had not the power of arresting them without a warrant, they must repair to the Police for a warrant. The offenders would, in the meantime, go their own ways, and so escape scot free, and evade the Law. He, therefore, thought that it was necessary to give these Officers the power to arrest offenders in such cases without a warrant, and to convey them forthwith to a Magistrate.

SIR JAMES COLVILE said, as far as he could understand the principle upon which the Honorable Mover of the Bill had been proceeding, it was that of inserting in the Police Bill all provisions for the mode of procedure for the punishment of offences under this Act. If that principle were to be adopted, he should think that the Section now proposed should also be inserted in the Police Bill, since it subjected persons offending against this Bill to arrest without a summons or warrant. If, however, the Section were to stand at all, he thought that the clause relating to the 82nd Section of the Bill ought to be struck out, because we did not yet know what the Bye-laws under that Section would be. If therefore, the Honorable Member for Bombay pressed the new Section, he (Sir James Colvile) should move as an amendment that the clause to which he referred be omitted.

The amendment proposed by Sir James Colvile was agreed to.

SIR ARTHUR BULLER said, he must protest against the application of this new Section to the offences dealt with in the 13th Section. The arrest of unknown offenders of that description, and the conducting them and their carts and utensils through the public streets to the Magistrate, and then back again to their proper destination, would simply be an enormous aggravation of the nuisance.

The proposed Section was then put, and negatived.

MR. ELIOTT said, he had another Section to introduce; one declaring the time when the Act should come into operation. It was desirable that it should come into operation simultaneously with the Police Bill; and he should propose to insert the wanting Section after the other Bill should be settled in Committee.

The Schedule annexed to the Bill, enumerating the Laws repealed by it, was passed as it stood.

The Council resumed its sitting.

## CATTLE TRESPASS.

MR. CURRIE moved that the Bill "relating to trespasses by Cattle" be referred to a Select Committee consisting of Mr. Eliott, Mr. Allen, Mr. LeGeyt, and the Mover.

Agreed to.

## POLICE (PRESIDENCY TOWNS, &c).

MR. LEGEYT moved that a communication which he had received from the Government of Bombay relative to the Bill "for regulating the Police of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales' Island, Singapore, and Malacca," be laid on the table and referred to the Select Committee on the Bill.

Agreed to.

## NOTICE OF MOTION.

MR. ELIOTT gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee on the Bill "for regulating the Police of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales' Island, Singapore, and Malacca."

The Council adjourned.

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*Saturday, April* 19, 1856.

PRESENT:

The Honorable J. A. Dorin, *Vice-President*, in the Chair.

Hon. Sir J. W. Colvile,
His Excellency the Commander-in-Chief,
Hon. B. Peacock,
D Eliott, Esq.,
C. Allen, Esq.,
P. W. LeGeyt, Esq.,
E. Currie, Esq.,
and
Hon. Sir A.W. Buller.

## MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition from Inhabitants of Moorshedabad against the Bill "to remove all legal obstacles to the Marriage of Hindoo Widows."

Also a Petition from Hindoo Inhabitants of Mymensing against the same Bill.

Also a Petition from certain Hindoo Inhabitants of Bengal against the same Bill.

Also a Petition from Inhabitants of Baraset and its neighborhood in favor of the Bill.

SIR JAMES COLVILE moved that the above Petitions be printed and referred to the Select Committee on the Bill.

Agreed to.

## AMEENS (BENGAL).

THE CLERK reported that he had received from the Secretary to the Government of the North-Western Provinces a communication relating to the Ameens' Bill, as amended by the Select Committee.

MR. CURRIE moved that the communication be printed.

Agreed to.

## CONSERVANCY (PRESIDENCY TOWNS, &c).

THE CLERK presented a Petition from certain Inhabitants of Calcutta suggesting certain amendments in the Bill "for the Conservancy and Improvement of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince Wales Island, Singapore, and Malacca," as amended by the Select Committee.

MR. ELIOTT moved that this communication be printed.

Agreed to.

## PETTY OFFENDERS AND WITNESSES.

MR. ALLEN moved the first reading of a Bill "for enforcing the attendance of petty offenders and witnesses." He said, the Law relating to the procedure in summoning witnesses for Criminal trials was passed in 1803, and it assimilated the process which then existed for subpœnaing witnesses in Civil trials. For 50 years, that is, from 1803 to 1853, the two procedures remained the same, or nearly so. In 1853, an Act was passed prescribing the mode of procedure with regard to such witnesses in Civil trials as could not be found. The chief object of this Bill was to assimilate the Criminal mode of procedure for witnesses to the Civil mode provided by the Act of 1853. By the present Law, if a witness in a Criminal case were served with a subpœna, and did not attend, he might be fined or imprisoned; but if the subpœna could not be served upon him personally, no further process was available. He (Mr. Allen) desired, by this Bill, to enable Magistrates, when a witness in a Criminal Trial kept out of the way, to issue a warrant for his arrest, and if he could not still be found, to put up a proclamation on his door, and, upon his failure to attend after that, to order an attachment of his property. Act X of 1845 did admit of the arrest of persons charged with trivial offences; but there was no enactment authorizing a proclamation to be fixed to the door of a person charged with a trivial offence, and an attachment to be issued against his property in default of his appearance thereon, as was allowed by the Act of 1853 against witnesses in Civil suits. There appeared to be no reason why witnesses in Criminal suits should be in a better position than witnesses in Civil suits; and this Bill, which was a very short one, was intended to remedy the defect in the Law.

The Bill was read a first time.