Saturday, 10th March, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. I

(1854-1855)

in the district in which it is worn, the name or designation of the party by whom the wearer is employed."

The amended Section was agreed to.

The Bill as amended was then reported to the Council.

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

Motion carried, and Bill read and passed accordingly.

GOVERNMENT SAVINGS' BANKS.

MR. PEACOCK moved that the Bill "to facilitate the payment of small deposits in Government Savings' Banks to the representatives of deceased depositors" be referred to a Select Committee consisting of Mr. Eliott, Mr. Allen, and the Mover.

Agreed to.

USURY LAWS.

MR. PEACOCK moved that the Bill "for the repeal of the Usury Laws" be referred to a Select Committee consisting of Mr. Eliott, Mr. Allen, and the Mover.

Agreed to.

MESSENGER.

MR. GRANT was requested to take the Bill "relating to mesne profits and to improvements made by holders under defective titles in cases to which the English Law is applicable"—the Bill "to enable Executors, Administrators, or Representatives to sue and be sued for certain wrongs"—the Bill "to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong"—the Bill "for the better Regulation of Military Bazars in the Presidency of Fort St. George"—the Bill "to amend Regulation III of 1833 of the Bombay Regulations"—and the Bill "to amend the Law in force in the Presidency of Bombay concerning the use of badges"—to the President in Council, in order that they might be transmitted to the Governor General for his assent.

NOTICES OF MOTION.

MR. PEACOCK gave notice that, on Saturday next, he would move the second reading of the Bill "to substitute penal servitude for the punishment of transportation in respect of European convicts, and to amend the law relating to the removal of such convicts"—and the Bill "to enable the Banks of Bengal, Madras, and Bombay to transact certain business in respect of Government securities and shares in the said Banks."

The Council adjourned.

Saturday, March 10, 1855.

PRESENT:

Hon'ble J. A. Dorin, Senior Member of the Council of India, *Presiding.*

Hon. J. P. Grant, | A. J. M. Mills, Esq.
Hon. B. Peacock, | D. Eliott, Esq., and
Hon. Sir James Colvile, | C. Allen, Esq.

COPPER CURRENCY (STRAITS)

MR. GRANT presented the Report of the Select Committee on the Bill "to improve the Law relating to the Copper Currency in the Straits."

MUNICIPAL LAW (BENGAL)

MR. MILLS moved that the Bill "to modify Act XXVI of 1850, so far as it relates to places in the Bengal Division of the Presidency of Fort William," be now read a second time. In doing so, he remarked that, since the first reading of the Bill, two communications had been received respecting it—one from the Government of Bombay; the other from the Lieutenant Governor of Agra—which had been printed. Both were in favor of the principle of the Bill.

The question being proposed—

MR. GRANT said, he felt compelled to oppose the second reading of this Bill; but in opposing it, he was very far from intending to object to the principle of local taxation for local purposes. He approved of that principle, and looked forward to the enforcement and gradual extension of it, not only over Bengal, but over the whole of India, as one of the most promising means of improving the condition of the people. But the question which the Council had now to consider was not whether the principle was a correct one, but whether the Act proposed was a proper Act for the enforcement of it. He had considered the Bill with all the attention that he was able to give to it; and he could not think that it was one which it was possible for the Council to pass. He did not altogether agree with the Honorable the Lieutenant Governor of Bengal, who thought that Act XXVI of 1850 was an excellent Act whenever it

could be put into operation. He had compared it with Act X of 1842, which was framed by Mr. Amos, and which it superseded; and he must say that in all those points in which the two Acts differed, the advantage seemed to him on the side of Mr. Amos's Act. The Act, however, adopting as it does the voluntary principle, was workable, and therefore, perhaps, not open to very serious objection; for it was to be presumed that the inhabitants of no town would come forward to petition that it should be applied to their town, unless they were satisfied that it would be so carried into effect as would make it suitable and acceptable to them. But it would be quite a different thing to bring the same Act into operation upon the compulsory principle. It was hardly to be expected that an Act, framed upon the voluntary principle, should be so framed that it could be properly enforced upon the compulsory principle, without any other change in its provisions.

In dealing with this question, it was necessary carefully to examine the provisions of the Act which the Council were asked to empower the Lieutenant Governor of Bengal to put in force whenever he pleases to do so. The 2nd Section provided that the Act may be enforced in any "town or suburb" the inhabitants of which shall appear to Government to desire that measure. If the Bill before the Council were passed, the Act might be put into operation in any town or suburb in Bengal, whether the inhabitants of that place desire it or not. The first remark which arose upon considering this Act, was—What is a town? How many houses constitute a town? Was it meant that the Lieutenant Governor should be at liberty to introduce the Act into every village of Bengal which had three or four houses in it?—or was it meant that the Law Courts should be called upon, in every case, to determine whether the place to which the Act had been applied, was or was not a town? The first Act which had been passed in England upon the principle of Act XXVI of 1850, was intended for the benefit of towns; but by reason of the very difficulty to which he was referring, the word "towns" was omitted from it, and the word "parishes" was employed instead. He spoke under correction before his Honorable and learned friend to the right (Sir James Colvile,) but he believed that it had been written in works of ancient lore, that two women and a goose make a market. But how many women and how many geese make a town, no Law, ancient or modern, so far as he was aware, had yet determined.

Passing over this objection to the vagueness of the language of the Act—which, however, was a serious objection—he should proceed to examine the principal provisions of the Act.

The 2nd Section said, if it should appear that the inhabitants of any town or suburb in any of the three Presidencies, except the Presidency towns, "are desirous of making provision for making, repairing, cleansing, lighting, or watering any public streets, roads, drains, or tanks, or *for improving the said town or suburb in any other manner*, the said Governor, or Governor in Council, or Lieutenant Governor, may order this Act to be put in force within such town or suburb." The objects, therefore, to which the money of the inhabitants might be applied under the Act, were altogether unlimited; their money might be applied to all possible local purposes, without restriction. Consequently, to make the Act compulsory, would be to enable the Executive Government to pull down, at will, a whole town, and build it up again—for it would be seen that the words of the Law really went to that. It would, he considered, be extremely objectionable to give any such unlimited power.

Then, under the 6th Section, the money for carrying out the objects of the Act in each town or suburb, was to be raised by any means which a Committee consisting of the Magistrate and such of the inhabitants as the local Government chose to appoint, might select, and the local Government might approve:—that is to say, the Lieutenant Governor and the Committee nominated by him were to determine absolutely what persons and what classes of persons, what property and what description of property, should be taxed; what should be the nature of the tax; in what mode it should be levied; and to what amount it should be taken. If they chose, they might impose upon the inhabitants a house-tax of 99 per cent., or a poll-tax to any amount, or any sort of tax direct or indirect which they might fancy. So that, if the Bill brought in by the Honorable Member were passed, the Legislative Council would denude itself of the power of legislating in the matter of taxation altogether,—and would make over that power to the Lieutenant Governor of Bengal. He could not think that this would be right. He could not think that it would be right in a body whose duty

it was to make Laws, to abandon their power in the matter of raising taxes—which was surely a most important part of that duty—in order to make it over to any individual, however high his rank might be, and however certain it might appear that he and all his successors in office would exercise their functions with prudence and propriety.

The plan of Native Committees, moreover, had been tried, and found to fail. In the Municipal Board of Calcutta, at one time, the elected Native Commissioners formed the majority ; and during that period, the Law for the improvement of the town had operated so ill, such was the great—the universal dissatisfaction which it gave, that another Act had to be passed, by which the number of elected Commissioners was so reduced that the majority in the Board was made to consist of two intelligent and zealous officers of Government, thus reducing the Native Commissioners to a nullity. He remembered a circumstance which had proved to him the general dissatisfaction that intelligent people felt at projects of Law which, like this project, would place them in the power of these Native Committees. When he held the office of Secretary to the Government of Bengal, some residents of Howrah proposed to Government that Act XXVI of 1850 should be extended to that place. The Magistrate was directed to take the votes of all the inhabitants upon the question ; and while the result was still unknown, a very intelligent English gentleman, who is now a partner of a leading mercantile firm in Calcutta, paid him an official visit, to represent, on his own behalf and on behalf of other British subjects resident in Howrah, their disapproval of the measure proposed. That gentleman said that he and those he represented did not disapprove of the principle of local taxation for local purposes ; but they objected to the Act, because it provided a bad mode of enforcing that sound principle ; and their main objection was, the provision for Native Committees.

As was the duty of every Member of this Council who objected to the Bill, he had gone over very carefully the arguments which were advanced in support of it by the Lieutenant Governor of Bengal in the Minute he had recorded in January last. He was sure the Council would not reject any measure which the Lieutenant Governor might think it right to advise, without giving their minds with close attention to every thing urged by him in its support. The Lieutenant Governor admitted that a Despatch had recently

Mr. Grant.

been received in India, in which the Home Government expressed a strong opinion against making Act XXVI of 1850 compulsory. The Home Government had said —"We are most anxious that Act XXVI of 1850 should not be put into force in any place where the bulk of the population has not, after full acquaintance with its objects, declared unequivocally in its favor." It was quite evident from this that, if this Bill were passed, the Court of Directors, unless they altered their minds, would be opposed to it. The Lieutenant Governor argued that the passing of this Bill would not be a step beyond the expressed opinion of the Court ; but he (Mr. Grant) did not see how this could be. Wherever the bulk of the population declares itself in favor of Act XXVI of 1850, this Bill will be altogether unnecessary. The Lieutenant Governor said, "administered as I propose to administer it," the Law will give entire satisfaction ; but he (Mr. Grant), as a Member of the Legislative Council, was not prepared to put himself in the power of any Executive Government. The question for him was, not the wisdom of the Executive Government, but the propriety of the Law. If this Council passed a bad Law, it would not be excused, however well the Law might be administered by the Lieutenant Governor and his successors. When Act XXVI of 1850 was under discussion, the late Mr. Thomason was consulted, and he expressed opinions not favourable even to that Law. He objected strongly to the appointment of Native Commissioners, and said the Act would be much better worked by Government officers ; but he added that he was very fearful of the proposed Law altogether. He said he was afraid that the local Government might be led away by the zeal—the well-meant zeal of Magistrates, very frequently so to commit themselves, that they would be able neither to enforce their orders with prudence, nor to withdraw them with credit. If Mr. Thomason had felt that misgiving of himself, certainly he (Mr. Grant) could not be blamed if he said the Council might very fairly doubt whether the Law, in the hands of other Lieutenant Governors, might not be open to the same objections.

The Lieutenant Governor of Bengal went on, in his Minute, to take up a point which was of extreme importance—the propriety, namely, of the Legislative Council delegating the power of taxation in this unlimited manner to the Executive Government. He said :—

"Still less satisfactory to my mind, in such a case, is an argument which I have occasionally heard used against the kind of legislation I propose—that, namely, by which the Lieutenant Governor is to be authorized, at his discretion, to introduce certain measures of improvement into certain places in such a manner and degree as, in the responsible exercise of his judgment, and with the lights afforded by his personal knowledge and inquiries, he may think fit—to say that the Legislature cannot delegate its powers to another; that is to say, that it must legislate out and out in every case, on every point, for every person, place, and circumstance, and leave nothing to administrative discretion. Hitherto we have, in India, undoubtedly proceeded on quite another, and surely a wise, principle."

In reference to the early portion of this passage, he (Mr. Grant) begged to say he made no objection to the Lieutenant Governor introducing measures of improvement into any places, according to his discretion: the objection he made was to the Lieutenant Governor being vested with an absolute power of taxation. In reference to the concluding observation in the passage which he had read, he (Mr. Grant) must say that he entirely differed from the Lieutenant Governor. He denied that the Legislature of India ever had proceeded upon the principle of delegating its legislative powers to other hands—he denied that the Legislature of India ever had given to any subordinate authority whatsoever the power of taxation. The only instance which had been adduced by the Lieutenant Governor as an instance in support of his position, was the power of pardon which is vested by Law in the Executive Government. But surely, giving to the Executive the power of pardon, like giving a Court the power of passing sentence, though it was the grant of a power, was no delegation of power. There was no delegation of legislative power in one case, more than in the other. Except this, he (Mr. Grant) must say very unhappy instance, the Lieutenant Governor had produced nothing to support his case.

He had stated why he was unable to support this Bill, and why he must say "No" when the question of reading it a second time came to be put. But he entirely agreed with the promoters of the Bill in thinking that the subject to which it relates, is one of great importance; and that provisions for the local improvements which it contemplates, should be introduced for the great towns, not only in Bengal, but over the whole of India. When Act XXVI of 1850 was under discussion, the Governments of Bombay and Madras had strongly represented their wish to have some Law brought into operation for improved measures of conservancy in their large towns. The Government of the North-Western Provinces did not then send up any representation—at least, none so strong—in favor of any Law on the subject. This was not surprising. That Government had had experiences in this matter. The two most serious movements that had occurred on this side of India—the insurrection at Bareilly, and the turn-out of the whole population of Benares—originated in endeavors to enforce in the Upper Provinces a small direct tax for local purposes. Nevertheless, he (Mr. Grant) did believe that some well-considered Law, making provisions for purposes connected with the general health and convenience of the inhabitants of towns, was desirable for the North-Western Provinces, as well as for Bengal, and for the Presidencies of Bombay and Madras; and if this Bill should be thrown out, it was his intention to-day, when the proper time arrived, to move that a Select Committee be appointed to inquire and report upon the whole subject.

MR. PEACOCK said, he could not allow this Bill to pass the second reading without protesting as strongly as he was able against the principle involved in it. The measure had been urged by the Lieutenant Governor of Bengal after reflection; and it was, therefore, right that the Members of this Council should consider it with calm, careful, and anxious attention. Having given to it that attention, and endeavoured to make himself acquainted with the provisions of the Bill, it appeared to him that it was utterly at variance with the constitution of the Indian Government. The Bill proposed to allow the Lieutenant Governor of Bengal to order Act XXVI of 1850 to be brought into operation within any town or suburb within the limits of his jurisdiction, except Calcutta, whenever it should appear to him advisable to do so, without any application having been made by the inhabitants of such town or suburb to have the Act put in force therein. It, therefore, became necessary to inquire what the provisions of Act XXVI of 1850 were, which, if this Bill passed, might be forced upon the people of Bengal by the mere dictum of the Lieutenant Governor, and without allowing them to have any voice in the matter. He gave the Lieutenant Governor every credit for judgment and discretion; but the Legislative Council had a duty to perform; they had a power en-

trusted to them: and he felt that, as a Member of that Council, he should be violating his duty if he consented to delegate that power to any other person, even if he believed that other person to be more capable of exercising it than themselves. It was not the principle of assessing the inhabitants of a town without their consent for measures of conservancy, that he objected to. He was quite willing, like the Honorable Member opposite (Mr. Grant,) that a Select Committee should be appointed to consider what were the proper measures to be put in force for such a purpose, what should be the nature and amount of the rates to be levied, and how municipal and sanitary improvements should be introduced into the towns and suburbs, and, he would add, even the villages of this country, if it should appear to be necessary for the health of the inhabitants. It was for the benefit of the people that such a Law should be made; but he did think that it was the duty of the Legislative Council to exercise their own judgment as to the nature of the measure to be introduced, and as to the expediency of its introduction. He objected to this Bill, because it appeared to him to delegate to the Lieutenant Governor of Bengal, a power which Parliament intended to be exercised by the Governor General of India, and to Commissioners to be appointed by the Lieutenant Governor, a power which Parliament intended to be exercised by the Legislative Council. At present, the Act could not be put in force in any town except upon an application of the inhabitants, and when it appeared that they wished it. By the change proposed, the Act might be put in force in any town whenever the Lieutenant Governor of Bengal might think it advisable, notwithstanding it might be contrary to the wish of every inhabitant. The object of the Act was to make better provision for making, repairing, cleaning, lighting, or watching any public streets, roads, drains, or tanks, and for the prevention of nuisances in any town or suburb, or for improving the town or suburb in any other manner. The 6th Section contained the following provision:—"Whenever the Act shall come into force in any town or suburb, the Governor, or Governor in Council, or Lieutenant Governor, shall appoint the Magistrate and such number of the inhabitants thereof as to him shall appear necessary, to be Commissioners for putting the Act in force, and shall give authority to them *to prepare rules for more effectually accomplishing the purposes for which they are appointed*, which rules, when approved by the Governor or Lieutenant Governor, shall be of the same force within the town or suburb, until altered or rescinded as hereinafter provided, as if they were inserted in this Act." By the 7th Section of the Act it was enacted that the Rules to be prepared by the Commissioners should provide for, amongst other things, those following:—"the definition of the persons of property within the town or suburb, to be taxed for raising the monies necessary for the purpose of the 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"—"the definition and prohibition of nuisances within the town or suburb"—"the imposition of reasonable penalties for breach of any rule made by the Commissioners, not exceeding 50 Rupees." Thus, if the Bill under discussion were to pass, the Lieutenant Governor might put the Act into force in any town or suburb in which he might think it advisable to make provision for cleaning, lighting, or watching the streets, or for the prevention of nuisances, or for improving the town in any *other* manner; and as soon as the Act was in force, he might appoint Commissioners to make rules for, amongst other things, defining the persons of property to be taxed, the nature of the tax—whether it was to be by house assessment, town duties, or otherwise—the amount of the taxes to be imposed, and the manner of raising them: and they might impose penalties for breach of the rules, and the rules, if approved by the Lieutenant Governor, were to be of the same force as if they were part of the Act. Now, what was this but authorizing the Commissioners to make laws, and thus to perform the duty of the Legislative Council,—and to authorize the Lieutenant Governor of Bengal to give his assent to the laws so made, and thus to perform the duty entrusted to the Governor General? The proposed Bill gave the Commissioners full and unlimited power, with the sanction of the Lieutenant Governor, to impose any description of tax they pleased, to assess any amount of tax they pleased, and to enforce payment of it twice, or thrice, or even oftener in the course of a year if they pleased. If this Bill were passed for Bengal, what good reason could be assigned for refusing to extend it to the other Presidencies? And if Honorable Members would consider what a variety

of opinions might be entertained by the different local Governments of this country as to the nature and extent of the taxes which ought to be imposed for municipal purposes, and as to the persons who ought to be taxed ;—and if they would consider the still greater variety of opinions which might be entertained upon those subjects by the inhabitants of the various towns who might be appointed to be Commissioners, they would see what an anomalous system of taxation we might soon have throughout the country. The Government of Bombay might prefer one mode of taxation, the Government of Madras might prefer another. It appeared from the papers before the Council upon the subject of this Bill, that the Lieutenant Governor of the North-Western Provinces was in favor of a guarded revival of town duties, to be arranged by means of *suraes* of free deposit outside the towns, or of passes for conveyance through towns ; whilst the Lieutenant Governor of Bengal "was inclined to think that it would be well to leave it to the discretion of the Magistrate and his Committee to assess the tax in such manner as may seem best, subject, as before, to the control of the local Government. His Honor had observed that, as regards a preference for one mode of taxation for another, native opinions are by no means always in accordance with European opinions, and in such matters it may be of more importance that the Government should carry with them the feelings of the people than that the strict rules of political economy should be observed."

In his letter of the 27th of October last, the Secretary to the Government of Bengal, writing under the directions of the Lieutenant Governor, said of Dacca :—" It is proper to state that, with regard to the people of that town, their objections to coming under liability to any new tax partly arose from their extreme repugnance to the existing system of chowkeedaree tax, which they considered unjustly assessed, unequally distributed, and uneconomically managed." It did not appear, therefore, that the people of Dacca objected to municipal improvements. Their extreme repugnance was to the existing system of chowkeedaree tax, which they considered unjustly assessed, unequally distributed, and uneconomically managed. Act XXVI of 1850 provided for the distribution and managment of the taxes raised under it, by directing that the Commissioners should apply them in works necessary for the purposes of the Act, in payment of their officers and servants, and in the other expenses incident to the execution of the Act. But there was no provision in the proposed Bill which afforded any security that the same system of taxation and management to which the people of Dacca very naturally felt repugnance, would not be continued. The people of Dacca objected, as he understood, to having Act XXVI of 1850 put in force, because it provided no security against an unjust assessment, an unequal distribution, and an uneconomical management. But how was this security provided by authorizing the Lieutenant Governor to force the Act upon them without their consent ? Suppose the Commissioners chose to follow the example of Regulation XXII of 1816, under which the chowkeedaree tax was levied in Dacca, but to which the people of Dacca objected. What was there in the present Bill to prevent them ? Regulation XXII of 1816 allowed taxation by a Punchayet at a rate not lower than one anna *per mensem*, or higher than one rupee *per mensem*—a maximum which had been since raised by Act XV of 1837 to 2 rupees *per mensem*. The principle upon which assessments were levied under Regulation XXII of 1816, certainly did not appear to be just, for it was not the principle of assessing a person rateably according to the value of the house or shop which he occupied in the town ; but the amount, according to the form of the Sunnud given in the Appendix, was to be regulated with reference to the known or apparent condition and circumstances, and the value of property to be protected, of each person assessed. He would not, however, enter upon that question now, for it was one of detail, and he was objecting to the principle of the proposed Bill.

The letter from the Secretary to the Government of Bengal proceeded thus :—

"The Lieutenant Governor was satisfied that, though it was vain to expect them" [the people of Dacca] "ever to ask to be taxed for any purpose, yet they would make no objection to such a change of system as would tax them fairly, and under the direction of the Magistrate, once for all, for every municipal purpose."

But there was not a single word in the proposed Bill to show that the inhabitants were to be taxed once for all ? Regulation XXII of 1816 was still in force at the stations at which the Magistrates ordinarily

reside, and at certain stations at which Joint Magistrates are placed. These were the very places into which it was proposed by the Lieutenant Governor at first to introduce the Act. In paragraph 11 of his letter of the 27th October 1854, the Secretary to the Government of Bengal observed :—"It is not probable that, for some time to come, the Government would introduce it (referring to Act XXVI of 1850) into any but towns forming the Stations of Zillah Magistrates or independent Joint Magistrates." And yet, if Act XXVI of 1850 were introduced into any of those stations, there would be two Acts in force in the same place, and the inhabitants would be liable to pay a chowkeederee tax under Regulation XXII of 1816, and also a separate tax for cleansing and lighting under Act XXVI of 1850. This had not escaped the attention of his Honorable friend (Mr. Mills); for in his letter of the 22nd November 1854, he called the attention of the Bengal Government to the point. He said :—"With reference to the objection of the Dacca people to the existing system of chowkeedaree tax, a provision might be made for suspending the levy of a separate chowkeedaree tax wherever it might be deemed expedient to put the proposed Act, which should sanction the raising of monies sufficient for every municipal purpose, into operation." Notwithstanding the attention of the Lieutenant Governor had thus been called to the point, still no clause had been introduced into the Bill for the purpose of suspending Regulation XXII of 1816 in towns to which Act XXVI of 1850 might be applied. What was the inference to be drawn from this, but that it was the Lieutenant Governor's intention that the chowkeedaree tax should be continued at the Magistrate's stations notwithstanding Act XXVI of 1850 might be introduced for municipal purposes? If this were so, how would the objection of the people of Dacca be removed? They were willing to be taxed fairly under the direction of the Magistrate, provided they were taxed once for all for every municipal purpose—watching, lighting, cleansing, and repairing : and their willingness to be so taxed was urged as a reason for subjecting them to a new tax, to be assessed by Commissioners, without removing their liability to the tax to which they were already liable to be assessed by a Punchayet ! He (Mr. Peacock) contended that it was the duty of the Legislative Council themselves to determine the nature of every tax that was to be levied, to limit the amount to be assessed, to point out the persons who were to be liable to the assessment, and to see that such provisions were introduced into the Act as would secure to the people that the tax should be fairly, duly, and properly assessed. This duty the proposed Bill would leave to the Commissioners, subject to the approval of the Lieutenant Governor: and when it was borne in mind that the Commissioners were to consist of the Magistrate and such number of the inhabitants as the Lieutenant Governor should think necessary, he thought that he should not be imputing more than the weakness incident to human nature when he said that such of the Commissioners as were themselves inhabitants of the town would probably be in favor of levying taxes which would bear lightly upon themselves, but fall with undue severity upon others. There was nothing in this Act to prevent them from doing so.

He thought it would be better if Act XXVI of 1850 were repealed altogether. But so long as the Act stood in the Statute Book, he would never consent to remove the provision which required that, before it was extended to any town, the assent of the inhabitants should be obtained. He knew that zealous and energetic Magistrates, acting with the very best intentions, had sometimes rather overstepped the mark in endeavoring to obtain the assent of the inhabitants to the introduction of the Act ; and that, after its introduction, it had been withdrawn, in consequence of those very same inhabitants declaring themselves adverse to it. He never would consent to delegate to any one the power of imposing pecuniary burthens upon the people. He believed that he had no power to do so. The House of Commons was so jealous of allowing any interference with the power of taxation, that they not only did not delegate that power, but would not permit the House of Lords to make any alteration in a Bill by which pecuniary burthens were imposed upon the people. He would read a quotation from May on the privileges and usage of Parliament—p. 427 :—

"In Bills not confined to matters of aid or taxation, but in which pecuniary burthens are imposed upon the people, the Lords may make any amendments, provided they do not alter the intention of the Commons with regard to the amount of the rate or charge, its duration, its mode of assessment, levy, collection, appropriation, or management, or the persons who shall pay, receive, manage, or control it, or the limits within which it is proposed to be levied."

This being the usage of Parliament, let the Council now see how the proposed Bill dealt with similar matters. The amount of the tax was left to the Commissioners, subject to the approval of the Lieutenant Governor. The nature of the tax, whether it was to be by house assessment, town duties, or otherwise—left to the Commissioners, subject to the approval of the Lieutenant Governor. The manner of raising and collecting it—left to the Commissioners, subject to the approval of the Lieutenant Governor. The persons of property within the town to be taxed—left to the Commissioners, subject to the approval of the Lieutenant Governor. The manner of ensuring the safety and due application of the taxes when collected—left to the Commissioners, subject to the approval of the Lieutenant Governor. In short, everything upon which it was the bounden duty of the Legislative Council to exercise its own judgment and discretion, was proposed to be left to the judgment and discretion of the Commissioners, to be embodied in rules to be subject to the approval of the Lieutenant Governor. It might be said—"Why, in such matters should you not repose confidence in the Lieutenant Governor?" To this, he would reply—"Why, in such matters, did not the House of Commons repose confidence in the Queen in Council?" Because the constitution of the country forbade it. He considered that the power of taxation ought not to be deputed; and that the proposed Bill was in violation of the principles of the constitution of India.

According to the Standing Orders of the Legislative Council, a Bill, if it related to Bengal only, must be published for public information in the *Government Gazette* eight weeks before it could be passed: and if it related to Madras or Bombay, twelve weeks before it could be passed, in consequence of the increased length of time it would take to come before the public. There was no provision in the proposed Bill for the publication of the rules or Laws to be framed by the Commissioners before they received the approval or assent of the Lieutenant Governor. They might be framed and assented to, and come into operation before the inhabitants had the slightest notion of the nature of the tax proposed to be levied, or of the persons whom the Commissioners should fix upon as the proper persons to be assessed: whereas, if the nature of the tax, and the other matters proposed to be left to the Commissioners, were determined by the Legislative Council and inserted in the Bill, every one who objected to it would have an opportunity of presenting a petition against it, and of stating his reasons for thinking that the proposed tax would operate unequally or injuriously, and the Legislative Council would be bound to listen to his petition with all respect, and to give it their best attention.

Again, by the Charter Act of 3 and 4 William IV c. 85, every Law passed by the Indian Legislature, and assented to by the Governor General, must be laid before both Houses of Parliament, in order that they may see what the Indian Legislature has done. Such a check upon the Legislative body of India was a very wise and proper one. But if this Bill were to be passed, there would be no such check upon the Commissioners and the Lieutenant Governor. The rules which might be framed by the Commissioners, would not be laid before Parliament, but only the Act from which they derived their authority? All that would be laid before Parliament, would be the Bill passed by the Legislative Council; and that would only show that the Council had authorized the Lieutenant Governor of Bengal to enforce an Act which deputed to Commissioners the power of making rules for the taxation of the inhabitants. Now, if a Bill passed by the Legislative Council, after receiving the assent of the Governor General, must be laid before both Houses of Parliament, why should certain Commissioners appointed by the Lieutenant Governor be empowered to make rules for imposing pecuniary burthens upon the people, subject only to the assent or dissent of the Lieutenant Governor?

He would now prove that the proposed Act was wholly unconstitutional. By 3 and 4 Wm. IV, c. 85, s. 43, it was enacted that the Governor General in Council should have power to make laws and regulations for India, provided that they should not have the power of making any laws or regulations whatever which should vary any of the provisions of that Act. The Legislative Council was now the Council for that purpose. Section LIX of the Act provided that no Governor or Governor-in-Council should have the power of making or suspending any laws or regulations in any case whatever, unless in cases of urgent necessity. Could the Legislative Council, then, without violating that provision, delegate to Commissioners the power of passing laws by which the people of Bengal should be taxed, subject to the

approval of the Lieutenant Governor? Again, though the same Section enacted that no local Government should have the power of suspending laws or regulations passed by the Governor General of India in Council, Section XIV of Act XXVI of 1850 enacted that the Governor, or Governor-in-Council, or Lieutenant Governor, might at any time suspend its provisions in any town or suburb. Would not that be in violation of the principle laid down in the Charter Act?

It was his (Mr. Peacock's) opinion that any Act for municipal or sanitary purposes in India should provide for a uniform system of taxation, as far as that might be possible. It would be very anomalous to allow municipal funds to be raised by town-duties in one town, by house assessment in another, and by a tax upon trades and professions in a third. Such a tax existed at present in Bombay, but he hoped soon to see that Law repealed. It appeared to him that there ought to be one uniform principle of legislation applicable to such cases, with such modifications, if any, as local circumstances might require.

Whatever Law might be passed, it should be the act of the Legislative Council, and they should exercise their own judgment upon every important provision contained in it. This was not only his own opinion, but it had been impressed upon the Government of this country by the Hon'ble the Court of Directors, in their Despatch to the Governor General of India in Council, No. 44 of 1834, in the Public Department, para. 33. That Despatch entered fully into the duties of the Government of India with respect to matters of legislation; and whether for the soundness of the advice and instruction contained in it, or for the liberal and enlightened principles which it inculcated, it was well worthy of being studied attentively by every Member of the Legislative Council. He would read an extract from it:—

"Heretofore you (referring to the Governor General of India in Council) 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

Mr. Peacock.

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 a general Act for municipal and sanitary purposes should be framed by the Legislative Council: and if it should be found inconvenient to extend it at once to every town, or if local peculiarities should require a modification of the general system in applying it to any particular town, there was one very easy mode of providing for the case. A precedent would be found in the plan which was adopted in the Health of Towns Act in England. That Act was a general one, framed with a view to its being applied from time to time to districts to be formed for the purpose; and with the exception of one Section, it could not be applied to any town or district until after an inquiry on the spot by a Superintending Inspector. If after inquiry by the Inspector, upon petition by one-tenth of the inhabitants, it appeared to the General Board of Health that the Act should be put in force in a district having the same boundaries as those of the city or town from which the petition proceeded, it might be put in force by an order of the Queen in Council. But if the inquiry was made without any petition from the inhabitants,

(as it might be in certain cases) the Act could not be put in force without the sanction of Parliament. The Legislature did not leave it to the Board of Health or even to the Queen in Council to say who should be the persons assessed, what should be the property assessed, what should be the nature of the tax imposed, what should be the maximum and what the minimun rate, how often the tax should be levied in one year, and other questions of that kind. The Legislature itself provided for all these matters; and then it enacted that, upon the application of one-tenth of the inhabitants, it might be put in force in any town by the order of the Queen in Council; but that, without such an application, it could not be extended to any town without the sanction of Parliament. There could be no difficulty in adopting a similar method here. Let the Legislative Council pass a general Act; let it consider what would be a just mode of rating the inhabitants, and at how much they should be rated; let it direct that there should not be more than a certain number of rates in any one year, and insert provisions to protect the people from unjust assessments;—and then he hoped there would be no such objections made as were now urged by the people of Dacca, who, as he had observed before, objected, not to being taxed for municipal purposes, but to being taxed unfairly and unjustly. When the Honorable Member opposite (Mr. Grant) proposed a Select Committee for considering a general municipal Act for India, he should be happy to vote for it, in order that an Act might be passed after full inquiry into all the matters which it was necessary to provide for. But if the Council were to legislate in the dark, as it was now asked to do, and to give local Commissioners the power of making such rules as they might think fit, it would be violating the duty entrusted to itself.

No one could have a greater regard than himself for the Honorable Member who had introduced the Bill now before the Council. He had derived great assistance from his Honorable friend's experience and advice, and he was sure his Honorable friend would be the last man to shrink from altering his opinion if he was satisfied that it was not correct. The Council would not have the advantage of the Honorable Member's assistance long; and he (Mr. Peacock) should deeply regret if almost the last vote which he should record in that Council, should be one in favor of an Act which he (Mr. Peacock) sincerely and conscientiously believed to be in violation of the constitution provided for this country by the Imperial Parliament.

SIR JAMES COLVILE said, he almost regretted that the discussion on this measure had been postponed for his convenience to this day, since his avocations elsewhere had prevented him from giving to the subject the consideration which it deserved, and the postponement had deprived the Council of the opportunity of hearing the views of the Honorable Member who lately represented the Government of Bombay, and who, if present, might have thought it consistent with his duty to support the Bill. He could unfeignedly say that he had come with the utmost reluctance to the conclusion that he must give his vote against his Honorable friend opposite (Mr. Mills,) not only on the personal grounds which had been touched upon by his Honorable and learned friend opposite (Mr. Peacock,) but also because he was not indisposed to that which he understood to be the real object for which the Bill was conceived—*viz.*, that of cleansing the people in spite of themselves. Considering the circumstances of this country; the apathy of the people; its indifference to all that related to public health or cleanliness; its indisposition to be taxed for such purposes; considering too, the fact (of which probably his Honorable friend the Mover of the Bill had had ample experience) that even in this town, into which some partial and imperfect measures for sanitary improvement had been introduced, those who have the conduct of such measures are more apt to meet with opposition than support; considering, he said, the disgraceful state of our large towns as revealed in some of the papers before him, and the hopelessness of expecting that improvement would originate from a people such as he had described,—he felt that, by some authority or other, those provisions for sanitary improvement which were essential to the physical and moral welfare of the inhabitants of those places, should be introduced without their expressed consent. But there, his agreement with his Honorable friend (Mr. Mills) ended. His Bill, in terms, authorized the Lieutenant Governor to introduce, wherever he should think fit, the provisions of Act XXVI of 1850. Now, looking at that Act, he must say that, if he had had the honor of a seat in the Legislature which passed it, he could not have supported it. He fully concurred in most of the objections which had been so ably taken to its provisions by his Honorable

friend to his left (Mr. Grant) and his Honorable and learned friend opposite (Mr. Peacock.) It had been said that its provisions were not so good as those of Act X of 1842, which it repealed. How that might be, he could not say, for he had not compared the two. But in one particular, he thought Act XXVI of 1850 an improvement on the earlier Act, and that there had been a necessity for making the change in the Law effected by its 2nd Section. For it might be recollected, that a question had arisen, and was seriously discussed, though it had never been formally decided, whether, when Act X of 1842 had been introduced into a certain town by Government in the *boná fide* belief that the consent of the requisite proportion of the inhabitants had been fully obtained and given, a Member of the dissentient minority might not raise and try in a Court of Law the question whether the conclusion of the Government had been correct in fact; and, therefore, whether the Act had been properly introduced. He (Sir James Colvile,) as Advocate General, had had to defend the Magistrate of Serampore in certain actions of trespass wherein that question was the only issue to be tried. That state of the Law was certainly unsatisfactory, and required amendment. He thought, however, that the Legislature ought not to have delegated, even with the consent of a majority of the inhabitants of a place, powers of taxation so wide as those given by the 7th Section of Act XXVI of 1850 to a body of Commissioners selected by the Executive Government. But that objection to the Act would apply with ten-fold force, if the obligation to ascertain the sense of the inhabitants were removed.

He would wish to speak with unfeigned respect of any paper which emanated from the Lieutenant Governor of Bengal, because it was the production, not only of one holding a high and responsible office, but of a very able and intelligent man. But he must refuse his assent to much of the reasoning contained in the Minute which had been already referred to. If the Lieutenant Governor meant that the system of Government which "had been extolled as the sagest of our methods of rule" involved the delegation to the Executive of functions which properly belonged to the Legislative power, all he (Sir James Colvile) could say was, that he had not met with the extollers. He thought his Honorable friend on his left (Mr. Grant) was not quite accurate in saying that there had been no such delegation. He could not, at the moment, refer to them; but he thought there were several Acts in the Statute Book in which the Governor General in Council in his legislative capacity, had delegated considerable powers to the Governor General in Council in his executive capacity; and he knew that many, including his Honorable and learned friend the Chief Justice, who was not then present, were so far from extolling, that they strongly objected even to that species of delegation.

Again, the Lieutenant Governor seemed to think that the objection implied an unreasonable distrust of the Executive Government. Why, what was the ground-work and foundation of all constitutional Governments but distrust of the executive power, and a desire to keep it within certain limits? The people said to their rulers—"We will not, because we may meet with a happy accident like Alexander, run the risk of falling into the hands of a Paul." He was aware that this kind of reasoning hardly applied to a responsible officer like a Lieutenant Governor, who was liable, any day, to be removed by the Home Government. Many might think it as forced as he (Sir James Colvile) had ventured to think the argument which his Honorable and learned friend had deduced from the jealousy with which the House of Commons regarded any interference by the House of Lords with a Money Bill. That jealousy depended upon the constitutional principle that the people can only be taxed by their representatives; and if any body were to ask that Council—"Where is your element of popular representation?"—he did not know what answer could be made to the question. But if general principles would not determine it, he would consider the present question with reference to the peculiar constitution of the Council, and the circumstances of the country. Whatever were the circumstances of British India, it must be admitted to be at least a dependency of a free country. All power that was exercised in it, was derived from, was exercised under the sanction of, the Imperial Parliament. Parliament had thought fit to delegate to the Council the power of making Laws, and, with it, the power of taxation. Other bodies and other persons, it had clothed with executive functions. Could it be said that the Council could, at will, delegate those powers with which it was intrusted, to any of these other bodies or individuals, who, as his Honorable and learned friend opposite had well shown, would not exercise them subject to the precise checks and control

which Parliament had wisely imposed upon that Council? His Honorable friend on his left (Mr. Grant) had already remarked on the singular infelicity of the Lieutenant Governor's reference to the power of pardon. In all civilized communities, so far as he was aware, the prerogative of mercy was an attribute of the Executive Authority. The only exception that occurred to him was, possibly, Praise-God-Barebone's Parliament, and some of the other Parliaments, that sat during the Commonwealth; and, certainly, the readers of Burton's Diary were not likely to come to the conclusion that it was desirable to intrust the determination of individual cases to a deliberative assembly.

But how had Parliament itself proceeded when it delegated a power of taxation even in this country? He would refer the Council to the enactment which introduced taxation for local purposes into the Presidency towns. (The Honorable Member read part of 33 Geo. III, c. 52, s. 158.) Here it would be seen that, not only were the purposes for which the tax was to be raised defined with a considerable degree of certainty, but the nature of the tax was specified, and its amount limited to 5 per cent. on the annual value of the property assessed, subject to the power given to the Governor General in Council and to Governors in Council—all these being legislative bodies—on special and urgent occasions to raise the tax to 7½ per cent. And if Parliament, in the plenitude of its power, proceeded thus cautiously, would that Council be justified in authorizing the local and Executive Government to create at will in any town a body chosen by itself, which, with a Magistrate more or less capable at its head, would have power to raise, for purposes but partially defined, taxes unlimited in amount, and wholly undefined in their nature? For, his Honorable friends who had already spoken, had well shown that under Act XXVI of 1850, this Lieutenant Governor might impose one kind of tax, and that Lieutenant Governor indulge his predilection for another. He thought that the Lieutenant Governor did not quite fairly state the question when he said it was whether the Lieutenant Governor might introduce, at his discretion, a *certain* measure of taxation. He (Sir James Colvile,) with his views of the necessity of legislating on this subject, would not pledge himself not to give to the local Governments a discretion to be exercised within *certain* limits. But the power of taxation now sought to be delegated, was any thing but *certain*. It was uncertain in all its elements.

Therefore, repeating his regret at differing widely from his Honorable friend (Mr. Mills,) and his conviction that both he, who had introduced the Bill, and the Bengal Government, which had suggested it, were alike sincerely anxious to promote by it the welfare and improvement of the people, he must nevertheless vote against the second reading.

MR. GRANT, in explanation, said, when he spoke of the previous practice of the Government of India, he meant to say that he was not aware of any instance in which the Indian Legislature had delegated to any subordinate authority such a power as the power *of taxation*.

MR. MILLS said, when he moved the first reading of this Bill, he did not anticipate that it would meet with the strong opposition that had now been made against it. He would state briefly the special grounds upon which he had proposed the measure. When town duties were levied throughout all the Presidencies, a portion of the funds was appropriated to sanitary purposes. After the town duties were abolished in the Bengal Presidency, Act X of 1842, which applied only to Bengal, was passed. Act XIX of 1844 abolished town duties within the Presidency of Bombay, and a correspondence then took place between the Government of Bombay and the Supreme Government of India as to the necessity of providing funds for municipal purposes. In 1845, the Madras Government also addressed the Government of India on the subject of making Act X of 1842 of the Bengal Code, with certain modifications, applicable to the chief towns of that Presidency. The subject was fully considered; and the Government of India recorded a resolution to the effect that the Indian Legislature would be prepared to enter upon the consideration of any proposition for carrying out municipal arrangements in the Madras and Bombay Presidencies based on the voluntary principle. Act X of 1842 was based on the principle that when people desire their place of abode to be more cleanly and better kept, they should themselves provide for those purposes, the voice of two-thirds of the number of householders in any town being held to be evidence of the desire of the inhabitants for the attainment of such objects at their own expense. That Act was almost a dead letter, the attempt to put it in force having proved more or less nugatory. It was introduced in

only one town. There, the inhabitants refused to pay the tax ; and, on the Joint Magistrate proceeding to enforce the Law by attachment and sale of property, he was prosecuted in the Supreme Court for trespass ; and the result was, that Government dissolved the Municipal Committee. In 1850, the Act now under discussion was passed. It differred from Act X of 1842 in this respect —that it allowed the Executive Government to enforce the Act when the application for doing so appeared to be according to the wishes of the inhabitants, and that it provided that the municipal funds should be raised by town duties, house assessment, or otherwise ; whereas the earlier Act provided that they should be raised by a direct tax. In four small insignificant towns only, were applications made for introducing the Act. The Lieutenant Governor of Bengal, having visited the principal towns, and had ocular proof of what the inhabitants of Howrah, Dacca, Mozufferpore, Chuprah, and other places suffer from the excessive filthiness of their towns, had proposed to modify the existing law, and sent to him the sketch of a Bill. He (the Lieutenant Governor) proposed to put Act XXVI of 1850 in force wherever he might find it expedient, even if the inhabitants did not apply for its introduction. The Bill merely gave this power, allowing the people to take part in the assessment and management of the funds as heretofore.

It was now said that the principle of the Bill was unconstitutional. He had attentively considered the question, and he must say that, notwithstanding the objections which had been so earnestly and forcibly urged, he still thought and would maintain that the principle was a sound one, and was consistent with good policy, especially in this country. The correct principle of public law was for the Legislature to give the power of taxing the property of the community to the Executive by Law, leaving all questions regarding the amount of imposts and their management to the Executive. He gave this not as his own opinion, but would read to the Council a passage from Bowyer's Commentaries on Universal Public Law :—

"The State has rights over the citizens who compose it, and their property, so far as the public welfare necessarily requires. This right is the chief part of what is commonly called *jus eminens*, or superior right. It is that right which the entire body has over the Members and whatever belongs to them, and which, being for the common good, is superior to the private rights of individuals belonging to their private interest. This *jus eminens* is called by writers on Public Law *dominium eminens*, when it regards property. It is the right of the State or the sovereign power over property within it when necessity or the public good requires. This is the true foundation of the right of taxation. That right has indeed been placed by some writers on the ground of consent of individuals to part with a portion of their property for the public good. But this theory is an instance of the error which attributes to consent or contract obligations which arise from natural equity."

And the learned author, in the conclusion of the chapter, stated—"We may conclude that the power of taxing the community for the public want is of an anomalous nature, though frequently exercised by the enactment of Laws ; but the actual levying of imposts, and their management, properly belongs, on legal principles, to the executive.

When Act XXVI of 1850 was brought before the Council of India, the late Mr. Bethune also recommended the compulsory principle. He said :—

"It seems that the Government of India informed the Madras Government in December 1847, that the extension of Act X of 1842 to the Presidency of Madras on any other than the voluntary plan would be inconsistent with the principle on which it is framed. That is quite true : but I should be very glad if I could induce the Government of India to re-consider the principle on which it is passed, and to remodel the Act on a more widely extended basis." "In matters of this kind, I have always been of opinion that Government ought not to leave it to the option of the inhabitants of a particular town, whether these improvements are, or are not, to be made, which are conducive to the health and comfort, not only of the usual inhabitants, but of every one having occasion to resort to the town. I have contended for this even in England, and think that the reasons for that opinion apply with still greater force in India."

"The first mischievous precedent, which I remember, of this sort of undecided legislation in England, occurred in 1830, when the inhabitants of any parish in England were allowed to adopt the powers of the Act then passed for watching and lighting their parish.

"This was intended to obviate the necessity of the numerous applications to Parliament for private Acts. The desuetude into which all the old divisions of the country had fallen, especially in the south of England, and the absolute and disgraceful want of any official information as to the real condition and circumstances of any part of the country, which prevailed in 1830, in some degree justify that Act. For, although it was wanted for towns and not for parishes, no legal definition existed of that which, in popular language, constituted a town, and local jealousy was too strong to

Mr. Mills.

allow the Executive Government to mark out the boundaries of the towns in which it was wanted, even had they possessed any knowledge on the subject, which they did not. But the case is far different in India. With a staff of Government officers in every district of the country, the Government has the best means of knowing where these provisions are required, and has the undoubted power of fixing the limits within which they should be put in force. It seems extravagant to require the previous assent of two-thirds of the householders.

"In the Public Health Act, passed this last Session in England, although the voluntary principle is not quite got rid of, its mischief is very much mitigated by the provision that an inquiry may be instituted on the petition of the rate-payers, and if the Report of the Commissioners is in favor of applying the Act, that is done without any further concurrence of the inhabitants."

This proposal, the Government of India did not agree to; but it determined to carry out the voluntary principle, modified as it was by Act XXVI of 1850.

With regard to the Public Health Act, to which the Honorable Member on his right (Mr. Peacock) had referred, it was thus spoken of in a work on Local Self-Government by Toulmin Smith :—

"The so-called Public Health Act has carried this system of abrogating responsible legislative authority farther than any preceding measure. There is no country in Europe in which a more despotic measure, probably none in which so despotic a one, was ever dared to be put forth under the name of Law. It is a measure which reflects equal dishonour on the Ministers who proposed it, the Parliament which passed it, and the people which was so lost to self-respect and moral independence as to allow it to be passed. This Act pretends,—among many other direct violations of the fundamental Laws of the land,—to empower a Crown-appointed and irresponsible Board to issue, for any place in England or Wales, such provisions, regulations, conditions, and restrictions, with respect to the application and execution of this Act, or any part thereof, and with respect to any Local Act, and the repeal, alterations, extension, or future execution of the same, and in all respects whatsoever, as they may think necessary!! It would indeed be difficult to go further than this in abrogating the functions of a Representative Body and all the characteristics of free Institutions."

Now, if an Act of this arbitrary nature was found necessary in England, how much more necessary was it to confer large powers for municipal reform upon the local Governments of this country, where the people were so apathetic, especially in all that concerned public health. He had read the above passage only to show the tendency of English legislation as it bore upon the question under discussion. He would also add that he read in the papers received by the last mail, that a Bill had been read in Parliament for amending the Public Health Act, and one of its provisions invested the Board with compulsory power to apply the Act in any place where it appeared, from the last return of the Registrar General, that the number of deaths exceeded, on an average, the proportion of 23 to 1,000. He agreed with the Lieutenant Governor when he said that, for a long while to come, the only safe way of governing our vast and widely-differing dominions in the East would be to give large powers to selected individuals, and trust to their discretion for the time, manner, and degree of their use and application.

The Honorable Member opposite (Mr. Grant) had said, he was aware of no instance in which the Government of India had delegated to the Executive Government the power of taxation. It was true that the Government of India had not done this; but it had, in many instances, given to the Executive Government the power of determining what amount of tax should be levied, and how it should be levied. The amount of the land tax in temporarily settled estates, for example, was left to the Executive Government—the mode in which the Chowkeedaree Tax should be levied was left, with certain limitations, to the Executive Government—the amount of compensation to be given to proprietors for houses taken up for public purposes, was left to the Executive Government.

He trusted that he had succeeded in showing that the principle of Act XXVI of 1850, which alone was under discussion, was not so unconstitutional as it was represented to be. He would not enter into the matters of detail in the Act, but he had no objection to re-consider them in Committee. He maintained that the principle upon which the Bill was founded, was, in his judgment, a correct principle, and in accordance with sound policy.

MR. MILLS' motion that the Bill be read a second time, was then put.

Aye 1.	*Noes* 6.
Mr. Mills.	Mr. Allen. Mr. Eliott. Sir James Colvile. Mr. Peacock. Mr. Grant. The President.

Majority negativing the Motion—5.

PENAL SERVITUDE.

MR. PEACOCK moved that the Bill "to substitute penal servitude for the punishment of transportation in respect of European convicts, and to amend the Law relating to the removal of such convicts" be now read a second time.

Motion carried, and Bill read a second time accordingly.

BANKS OF BENGAL, MADRAS, AND BOMBAY.

MR. PEACOCK next moved that the Bill "to enable the Banks of Bengal, Madras, and Bombay to transact certain business in respect of Government Securities and shares in the said Banks" be now read a second time.

Motion carried, and Bill read a second time accordingly.

PENAL SERVITUDE.

MR. PEACOCK then moved that the Bill "to substitute penal servitude for the punishment of transportation in respect of European convicts, and to amend the Law relating to the removal of such convicts" be referred to a Select Committee consisting of Sir Lawrence Peel, General Low, Mr. Grant, Sir James Colvile, and the Mover.

Agreed to.

BANKS OF BENGAL, MADRAS, AND BOMBAY.

MR. PEACOCK next moved that the Bill "to enable the Banks of Bengal, Madras, and Bombay to transact certain business in respect of Government Securities and shares in the said Banks" be referred to a Select Committee consisting of Mr. Eliott, Mr. Allen, and the Mover.

Agreed to.

MUNICIPAL LAW.

MR. GRANT moved that a Select Committee be appointed to report upon the question of Municipal Laws for the conservancy of towns in the territories under the Government of the East India Company, consisting of Mr. Peacock, Mr. Eliott, Mr. Mills, Mr. Allen, and the Mover.

Agreed to.

The Council adjourned.

Saturday, March 17, 1855.

PRESENT :

The Hon'ble J. A. Dorin, Senior Member of the Council of India, *Presiding.*

Hon. J. P. Grant, A. J. M. Mills, Esq.,
Hon. B. Peacock, D. Eliott, Esq., and
Hon. Sir James Colvile, C. Allen, Esq.

USURY LAWS.

THE CLERK presented a Petition from the Bengal Chamber of Commerce, suggesting, in amendment of Section V of the Bill for the repeal of the Usury Laws, the addition of words making compound interest recoverable if the original contract provided that, when interest became due, it should become principal.

MR. PEACOCK moved that the Petition be printed, and referred to the Select Committee on the Bill.

Agreed to.

CALCUTTA CANALS.

THE CLERK presented a Petition signed by certain Members of the Indigo Planters' Association, on behalf of themselves and the Association, complaining of the unjust levy of tolls on the Calcutta Canals. The Petitioners stated that they were advised that this injustice arises from the unprecise and flexible import of the word "remain"—"remain in the Canal," as used in Act II of 1836, under which the tolls are levied ; and that it might be corrected by giving a definition to this word which should confine it to cases for which demurrage might justly be payable. The Petitioners prayed the Council to take the subject into their consideration, and to pass such declaratory Acts, and take such other measures, as may be sufficient to remedy the evils complained of, and especially to keep the demurrage rates and tolls within just and proper limits, and on approved principles.

MR. MILLS inquired if the Petitioners had sent a copy of their Memorial to the Government of Bengal ?

THE CLERK said that annexed to the Petition was a letter to the Bengal Government, and that he was aware of no further communication.

MR. PEACOCK said, he was not in a position to make any motion on this occasion in regard to the Petition, because he scarcely recollected the wording of Act II of 1836.