PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

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1857.

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Section LVI might possibly be held to restrict them from doing so. That Section said :—

Any Chowkeydar and any Jemadar or Inspector appointed under this Act, who is convicted of neglect of duty or misconduct, shall be liable to fine to an extent not exceeding half a month's wages, or to be suspended or dismissed from his situation, or to imprisonment for any period not exceeding six months.

It might be inferred from this that a conviction was necessary before a Magistrate could dismiss an inefficient or negligent officer. He (Mr. Currie), therefore, proposed to insert a Section similar to one which had been introduced into the Calcutta Police Act. But before doing so, he should move that the words "or to be suspended or dismissed from his situation" be omitted from this Section.

Agreed to.

MR. CURRIE then moved that the following new Section be introduced after Section LVI :—

"The Magistrate may suspend or dismiss any officer appointed under this Act whom he shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same."

Agreed to.

MR. CURRIE moved that, after Section LIX, the following new Section be inserted :—

"Nothing contained in this Act shall extend to the Town of Calcutta."

Agreed to.

MR. CURRIE moved that the words "beyond the local limits of Her Majesty's Supreme Court" be omitted from the Preamble.

Agreed to.

The Council having resumed, the Bill was reported.

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

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

ABKAREE REVENUE (BENGAL)

MR. CURRIE postponed his motion (which stood in the Orders of the Day) for the third reading of the Bill "to consolidate and amend the Law relating to the Abkaree revenue in the Presidency of Fort William in Bengal."

LANDS FOR PUBLIC WORKS AND NATIVE PASSENGER SHIPS.

MR. ALLEN moved that two papers which he had received from the Governor of the Straits' Settlement containing remarks on the Bill "for the acquisition of land for public purposes," and the Bill "for the regulation of Native Passenger Ships," be severally referred to the Select Committees on those Bills.

Agreed to.

STRAITS' FERRIES.

MR. ALLEN moved that the Bill "for regulating Ferries in the Settlement of Prince of Wales' Island, Singapore, and Malacca" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Currie, and the Mover.

Agreed to.

MESSENGER.

MR. CURRIE moved that Mr. Grant be requested to take the Bill "to make better provision for the appointment and maintenance of Police Chowkeydars in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal" to the Governor General for his assent.

Agreed to.

The Council adjourned.

Saturday, November 15, 1856.

PRESENT :

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

Hon. Sir J. W. Colvile,
Hon. J. P. Grant,
Hon. B. Peacock,
C. Allen, Esq.,
D. Eliott, Esq.,
P. W. LeGeyt, Esq.,
E. Currie, Esq., and
Hon. Sir Arthur Buller.

THE CLERK presented to the Council the following Petitions :—

POLICE CHOWKEYDARS (BENGAL).

A Petition of certain Zemindars, Proprietors of landed estates, and other landowners of Bengal against the passing of the Bill "to make better provision for the appointment and maintenance of Police Chowkeydars in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal."

CATTLE TRESPASS.

A Petition of the British Indian Association against the Bill "relating to trespasses by Cattle."

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

Agreed to.

HINDOO POLYGAMY.

The Clerk also presented to the Council the following Petitions praying for the abolition of Hindoo Polygamy.

A Petition of Hindoo Inhabitants of Hooghly.

Two Petitions of Hindoo Inhabitants of East Burdwan.

SIR JAMES COLVILE moved that the above Petitions be printed.

Agreed to.

TOLLS ON THE KURRATIYA RIVER.

MR. CURRIE presented the Report of the Select Committee on the Bill "for establishing a toll on Boats and Timber passing through the Kurratiya River in the District of Bogra."

JOINT-STOCK COMPANIES.

On the Order of the Day being read for the first reading of a Bill "for the incorporation and regulation of Joint Stock Companies and other Associations, with or without limited liability of the members thereof"—

MR. PEACOCK said, it would be in the recollection of the Council that, some time ago, he had given notice that he would introduce a Bill for the purpose of enabling persons to establish themselves in partnership on the principle of limited liability. After he had given that notice, he learnt that Her Majesty's Government intended to repeal the limited liability Act of 1855, and to consolidate the law relating to Joint Stock Companies whether formed on the principle of limited or of unlimited liability. He thought that it was very desirable that, upon such a subject as the formation of Joint-Stock Companies with limited liability, the law of England and the law in India should be as nearly alike as the circumstances of the two countries would permit; so that persons forming themselves into partnerships on the principle of limited liability in England, and desirous of carrying on either the whole or a portion of their business in India, might know that the Law in both countries was substantially the same, and that they would incur no greater risk in India than they would in England. Accordingly, after consulting two or three Honorable Members, he had postponed his measure until the matter should be settled in Parliament, in order to see if the Act that might be passed there could properly be adapted to India. In the course of the last Session, an Act (19 and 20 Vic. c. 47) was passed for incorporating and regulating Joint-Stock Companies. It appeared to him that that Act was founded upon sound and correct principles, and might easily be adapted to the whole of India; and he had endeavored, as well as he could, so to adapt it.

The Bill which he now introduced, was therefore merely a modification of the English Act. The Act was divided into five parts—the first relating to the constitution of Joint-Stock Companies; the second to the management and administration of their affairs; the third to their winding up; the fourth to their registration; and the fifth to the repeal of former Acts.

With respect to the first part—the constitution of Joint-Stock Companies—any Company consisting of more than twenty Members, and having gain for its object, *must* be registered under the Act. The object of compulsory registration was that, where a Company consisted of a large number of persons, it was much more convenient, in all matters of procedure, that it should sue and be sued as a corporation than that the names of the individual members should be enumerated. The principle, therefore, of this Act was that all Joint-Stock Companies, having gain for their object, and consisting of more than twenty members, must be incorporated under the Act; otherwise, every member would be separately liable for the debts of the Company. All Companies consisting of seven and not more than twenty members, *might* be incorporated under the Act if they pleased, but it was not compulsory. A Company consisting of less than seven members, could not be incorporated under the Act.

The mode of registration provided by the Bill, was very simple. A Company would merely have to file a Memorandum of Registration, and unless such Memorandum were accompanied by Articles of Association prescribing other rules, the Company would be deemed to be bound by the regulations prescribed by Schedule B. That Schedule embodied the rules which were usually adopted by Joint-Stock Companies in their Partnership Deeds. If, however, any Company did not choose to adopt Schedule B., it would not be bound to do so. It might

adopt part of it; in which case, it must specify which of the rules it discarded: or it might frame for itself a new set of regulations altogether. Consequently, any Company consisting of more than seven members might, without any difficulty, and without any necessity for professional advice, obtain for itself an incorporation under this Act.

Even after the incorporation, the Company, by a special resolution passed by three-fourths in number and value of the shareholders, might alter its rules or increase its capital upon giving notice to the Registrar of Joint-Stock Companies.

In the Memorandum of Registration, the name of the Company must be stated, and, if the Company was formed with limited liability, the word "limited" must be the last word in its designation. If the Company desired to proceed on the principle of unlimited liability, that word would be omitted.

The Company must have an Office called the Registered Office of the Company, where all notices and communications might be served upon it. The Memorandum of Association must state the place in which the Registered Office was to be established, and must also specify the objects for which the proposed Company was to be established; the liability of the Shareholders, whether it was to be limited or unlimited; the amount of the nominal capital of the proposed Company; the number of shares into which such capital was to be divided; and the amount of each share.

The Bill imposed no restriction as to the amount of shares in a Joint-Stock Company. A Company might fix the value of its shares at any amount it pleased. They might be shares of £1, or £50, or £100 each; and it was not necessary, as it was under the old law, that any specified portion of the capital should be paid up. This was left entirely to the discretion of the Shareholders; and he thought it was a wise provision, for it would be very inconvenient to compel the Shareholders to pay up a large per-centage upon the shares when the Company at its outset might have no means of profitably employing so large an amount of capital.

In the case of Companies formed on the principle of limited liability, Shareholders never could be liable to pay towards the obligations of the Company a larger sum than the actual amount of the shares for which they subscribed.

If, for example, a man held two shares of £50 each, he would know that he never could be compelled to pay more than £100 towards the liquidation of the liabilities of the Company.

With regard, therefore, to the formation of a Joint-Stock Company under the Act, there was no unnecessary restriction whatever; but, on the contrary, persons were left free to form themselves into Companies upon such principles as they thought best adapted for their own interests.

With respect to the first part of the Act, he had not thought it necessary to make any alterations beyond such as were necessary to adapt it to the circumstances of India.

With respect to the second part—the management and administration of the affairs of Joint-Stock Companies—he had thought it advisable to make two material alterations. The first was in Section XXXIX of the English Act. It appeared to him that this Section was objectionable; and for this reason. The great object in allowing a Company to be established on the principle of limited liability was, that every one who became a member of it might know that when he subscribed a certain amount towards the partnership stock, he made himself liable for that amount, and for no more. But under this Section, if the Directors of a Joint Stock Company chose, in violation of the rules under which the Company had been registered, to carry on the business after the number of members had been reduced to less than seven, every Shareholder, whether he knew of that fact or not, would, on the failure of the business, be liable to the extent of all the property he possessed in the world for every debt of the Company contracted after the expiration of six months from the time when the number of Shareholders was reduced below seven. There might be many persons in England willing to invest their capital in partnerships in this country formed upon the principle of limited liability; but it would be a great check to such employment of capital if, under any circumstances whatever, the Shareholders could be made individually responsible for any thing beyond the amount for which they subscribed. Every shareholder ought to be assured that he never could become liable under any circumstances, to be called upon for a larger amount; and it was his (Mr. Peacock's) object that this Bill should give that assurance. If the Clause remained as in the original Act, it would be necessary for Shareholders, whether in England or else-

where, to be constantly watching the list of Shareholders to see that the number was not reduced below seven. In order to obviate this inconvenience, he had altered the original Act and thrown the responsibility for such debts upon the Directors of the Company who would know or ought to know if the number of Shareholders were reduced below seven, and not upon the Shareholders who might have no knowledge of the fact. It would go very much against the principle of this Bill to allow the Shareholders of a Joint-Stock Company with limited liability to be made liable, under any circumstances, for more than the amount which they had agreed to subscribe. The alteration which he had made on this point, however, would, of course, be a matter for future consideration by the Council.

The next material alteration which he had made was, that the Bill which he had prepared required every Joint-Stock Company to keep proper accounts, and to file a Balance Sheet once at least in every year, with the Registrar of Joint-Stock Companies, and to keep a copy of such Balance Sheet in its Registered Office. Schedule B. annexed to the original Act to which he had before referred, contained Clauses requiring accounts to be kept, and a Balance Sheet to be made out every year. The form of the Balance Sheet was given, and it was very simple. It contained a summary of the capital and liabilities, and of the property and assets of the Company. It was to be remembered, however, that the Company had the power to reject Schedule B. altogether, and that they might, if they pleased, reject that portion of it which required them to keep proper books of account and to make out an annual Balance Sheet. The English Act rendered it obligatory upon every Company to make out and forward to the Registrar of Joint-Stock Companies, an annual list of Shareholders, showing the names, addresses, and occupations of the Shareholders; the number of shares held by each of them; the amount of the nominal capital of the Company; the number of shares into which it was divided; the number of shares taken from the commencement of the Company up to the date of the list; the amount of calls made on each share; the total amount of calls that had been received; the total amount of calls unpaid; and the total amount of shares forfeited. This would enable any person, before he gave credit to a Company, to ascertain what was the original amount of the capital of the Company to which he was about to give credit, and, if any portion of such capital remained unpaid, who were the persons responsible for it. But if the whole capital were paid up, he would not have the means of ascertaining how much of it had been expended or lost, and how much was still available. It, therefore, appeared to him that it would not be too much to ask a Company, at least one which was constituted on the principle of limited liability, to file a Balance Sheet together with the annual list of shareholders. Whether it was reasonable to require that a Company which dealt on the principle of limited liability should or should not file such a Balance Sheet for the inspection of the Public, was, of course, a question which might be discussed and determined by the Council at a subsequent stage of the Bill. Under the existing Act relating to Joint-Stock Companies in India, such accounts must be filed; and therefore, the Bill which he had framed was introducing no new principle in this respect. In the Act by which the Assam Tea Company had been incorporated, there was also a Clause requiring that the Company should file a Balance Sheet annually. He did not think that it would cause any great inconvenience to compel a Company to keep proper books of account, to have their accounts audited, and to file an annual Balance Sheet; nor did he think that any honest Company could fairly object to do so. He would remark that the existing Act in India applied, not only to trading, but also to Banking and Insurance Companies. The English Act did not include Banking or Insurance Companies. In England, Banking Companies were dealt with under a distinct Act; but under the present Bill, Banking and Insurance Societies were to be subject to its provisions, though he had introduced a Clause preventing them from being established on the principle of limited liability. He confessed that he doubted the propriety of preventing Banking or Insurance Companies from dealing on the principle of limited liability if others were willing to deal with them on that principle. But inasmuch as the point had been abandoned in England, he had thought, after full consideration, that it would be better, at least until the law of limited liability had been tested and was more fully understood than at present, to follow the same course here; and he had, therefore,

Mr. Peacock

inserted a clause which provided that nothing in the Bill should permit any Banking or Insurance Company to be formed with limited liability. The propriety of that provision, however, would also be matter for future consideration by the Council.

With respect to the third part of the Bill, the winding up of Joint-Stock Companies, he had not thought it necessary to make any material alteration in the provisions of the English Act, beyond adapting them to the Courts of this Country. Under the English Act, a Company might be wound up by the Court under the following circumstances:—1st—.Whenever the Company in General Meeting had passed a Special Resolution requiring the Company to be wound-up by the Court: 2ndly.—Whenever the Company did not commence its business within a year from its incorporation, or suspended its business for the space of a whole year: 3rdly.—Whenever the shareholders were reduced in number to less than seven: 4thly.—Whenever the Company was unable to pay its debts: and 5thly.—Whenever three-fourths of the capital of the Company had been lost or become unavailable. A Company was to be deemed unable to pay its debts if, after the expiration of twenty-one days, it should neglect to pay any creditor who had a demand against it to the extent of 500 rupees, or if any judgment creditor should be unable to obtain satisfaction of a judgment or decree against the Company. In either of those cases, the creditor might apply to the Court to wind up the Company; so that every possible security was given to creditors for the recovery of their demands. In the event of a Company being wound up, it would be in the nature of a bankrupt or an insolvent trader. The Court would appoint official liquidators to collect the outstanding assets, and it would have the power to make calls on the various shareholders to an amount sufficient to pay the liabilities of the Company, except in the case of Companies with limited liability, as to which the Bill provided that no call should be made on any shareholder beyond the amount remaining unpaid on his share.

The Bill further provided that any shareholder in a Company other than a limited Company, who should have transferred his shares within three years before the commencement of the winding up, should be liable to the same extent as if he had not parted with his share; and that every shareholder in a Company enjoying the privilege of limited liability, would be liable in like manner in respect of any share which he should have transferred within the period of one year before the commencement of the winding up, so that no shareholder could derive any undue benefit from parting with shares when a Company was on the eve of insolvency. But the existing Shareholders would be bound to indemnify any former shareholder in respect of any liability which he might so incur. The original shareholder would be only a security for the payment, and he would be entitled to recover whatever he paid from the person who had taken a transfer of his share, unless any special agreement had been made on the subject.

In England, the winding up of Joint-Stock Companies was left principally to the Bankruptcy Courts in some cases, and to the Court of Chancery: in this Bill, he had vested the power in the highest Court of original civil jurisdiction in the district in which the Registered Office of the Company was situated. He had some doubts whether the power might not be conferred in all cases upon the Insolvent Court; but as such Courts existed only within the local limits of the jurisdiction of the Supreme Court, he thought that it would be better to vest it generally in the highest Civil Court of original jurisdiction in the district where the Registered Office of the Company might be situated. He thought it most probable that, for many years to come at least, there would scarcely be any Joint-Stock Company formed which would not have its Registered Office in one of the Presidency Towns. But there might be Companies whose Registered Office would be in a Mofussil district. In any such case, the Company would be wound up by the Zillah Court of that district.

After the affairs were wound up and the creditors satisfied, the Court would have power to adjust the right of the shareholders as between themselves.

With respect to the fourth part of the Bill, the Registration of Companies, he had thought it right to continue the Keeper of Records in the Supreme Court as the Registrar of Joint-Stock Companies, with power to the local Governments to appoint Registrars in such districts as they should think necessary. In England, the Board of Trade had power to appoint as many Registrars as they thought fit. In this country, the local Governments would have the same powers in this respect as the Board of Trade. But until other Registrars were appointed, the Keeper of the Records of the Supreme

Court would continue to be the Registrar of Joint-Stock Companies. Thus, there would immediately be one Registrar and one Registration Office in each Presidency Town, and others could be established from time to time as occasion might arise. He had also provided that, where the Registered Office of a Company was within a Presidency, the Company must be Registered in that Presidency; otherwise, until other provision should be made, it must be registered in the Presidency of Bengal. He thought that this was the most advisable course; for the probability was, that the greater portion of the business of a Company would be carried on in the place where its Registered Office was situate.

The fifth or repealing part was very short, because there was only the Act XLIII of 1850 to repeal. The English Act required all existing Joint-Stock Companies to register themselves within one year after the passing of the Act. He had thought it right, with reference to the circumstances under which existing Joint-Stock Companies had been organized in India, to say that they *might* adopt this Act and register themselves under it, if they liked. If they did not think fit to do so, he would leave them to be dealt with under Act XLIII of 1850. He thought it right not to alter the liabilities of shareholders by *ex post facto* legislation; and therefore no existing Company could register under this Act without a special Resolution of three-fourths in number and amount of the shareholders present at a General Meeting of the Company summoned for that purpose. With such a Resolution, any Company formed on the principle of unlimited liability might resolve to adopt the principle of limited liability, and might be registered under this Act as a limited Company. But nothing contained in the Bill would affect the existing rights of the creditors of any Company already established. The share-holders would still remain individually liable to the creditors for all the debts which the Company might have contracted before the registration under this Act.

He had now endeavored to point out to the Council what were the principal provisions of the English Act, and the extent to which he had thought necessary to alter it in order to make it applicable to this country. He thought it unnecessary to go farther into detail. But he might be permitted to state that the Act passed in England appeared to him to be founded on wise, and sound, and enlightened principles. It was founded on the principle of leaving every man to take care of his interests, instead of vainly endeavoring to protect him by means of restrictive laws, or, to use the words of the Right Honorable and learned Vice-President of the Board of Trade, by whom the English Act had been prepared and brought in,

"the principle is the freedom of contract and the right of unlimited association—the right of people to make what contracts they please on behalf of themselves, whether those contracts may appear to the Legislature beneficial or not, as long as they do not commit fraud, or otherwise act contrary to the general policy of the law."

That was a sound, wise, and liberal principle, and he did not think that a better principle could be adopted in this country for the encouragement of commercial enterprise. There was no place which opened a wider field for the profitable employment of capital than our Indian territories, and no place which would derive greater benefit from the encouragement of commercial enterprise within it. It therefore behoved the Council to take care that no unjust or unnecessary impediment should be placed or allowed to continue in the way of private enterprise or the application of private capital to works of improvement and utility. In his opinion, this Bill did not go far enough. It only dealt with partnerships consisting of seven or more Members; but it contained no provision for the protection of dormant partners in Companies consisting of less than seven Members. It appeared to him to be a grievance that no one should be able to subscribe his capital to any such partnership with the privilege of limited liability. It might often occur that a partner in a Firm composed of less than seven Members might be wholly unknown to the public, and that persons might give credit to the Firm trusting only to the visible and active Members for payment. It was sufficient if the persons trusted were liable to pay: but under the present state of the law, not only the persons trusted, but every one who risked any portion of his capital in the concern might be made liable when he was discovered, not only to the extent of the capital which he agreed to invest, but to the full extent of his property, for debts contracted with creditors who never heard of his money and never trusted to his responsibility. He (Mr. Peacock) thought that a dormant partner in any partnership ought not to be made liable beyond the amount of capital which he agreed to invest in the business. If, in such cases, the natives

of the partners who were to be liable for the debts of the Company were publicly made known, there could be no good reason why others might not employ their capital in the business upon the principle of limited liability. The Bill now before the Council applied only to Joint-Stock Companies consisting of more than seven shareholders. He intended to bring before the Council, on an early day, a Bill by which any partnership might be formed on the principle of limited liability for dormant partners.

There was, also, another class of Companies to which this Bill did not properly apply—namely, Literary, Scientific, and Benevolent Societies. The Bill applied to Companies which were formed for gain and profit. But there were many Associations here which were formed for objects wholly distinct from those of profit or trade. There was a Law both in England and in America for such Societies, which allowed them to be incorporated, without registering the names of all the Members. It appeared to him that there would be no danger in giving such a power to similar Societies here. If the Military Orphan Society, for instance, or the Asiatic Society, had to sue, or were sued, it would be very embarrassing to be required to insert the names of all the Members who were constantly fluctuating. He, therefore, intended to introduce a Bill to enable Institutions of the class to which he referred to form themselves into Companies on principles different from those laid down by the present Bill for trading corporations.

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

The Bill was read a first time.

NAWAB OF THE CARNATIC.

Mr. ELIOTT moved the first reading of a Bill "for repealing Act I of 1844" (for securing certain immunities and privileges to His Highness the Nawab of the Carnatic, his family, and retinue.) He said the immunities conferred by the Act consisted in an exemption from the civil and criminal jurisdiction of the Courts with respect to person, goods, and property. The Nawab who was reigning at the time the Act was passed, had died last year without issue, and the Honorable the Court of Directors determined that, in consequence of that event, the title and dignity of the Nawab of the Carnatic, and all the advantages annexed to it by the treaty of 1801, should be at an end. The considerations under which the late Nawab, the chief members of his family, and principal servants, were invested with the immunities conferred by Act I of 1844, therefore, no longer existed; and it was desirable that these privileges should at once cease. Even during the lifetime of that Prince, this measure was under contemplation by the Government of Madras and the Supreme Government, in consequence of the manner in which the privileges accorded by the Act were abused, and the bad faith exhibited by his Highness Mahomed Ghouse towards his creditors.

The repeal of Act I of 1844 was intended to have effect prospectively only, leaving the persons and property of all who had hitherto been protected by it still exempt from the jurisdiction of the Courts in respect of all acts done and liabilities incurred prior to the passing of the Act.

This Bill was introduced at the instance of the Madras Government with the consent of the Supreme Government.

The Bill was read a first time.

REVENUE ARREARS UNDER RYOTWAR SETTLEMENTS (FORT ST. GEORGE).

Mr. ELIOTT moved the first reading of a Bill "for declaring the Law for the recovery of arrears of revenue under Ryotwar settlements in the Madras Presidency." He said, in the year 1802, it was ordered that a permanent settlement of the Land Revenue should be introduced into the territories under the Government of Madras on the plan of the permanent settlement of the Land Revenue of Bengal, and several Regulations were prepared to give effect to that measure. The intention was to effect the permanent settlement with the ancient zemindars, wherever they were found to exist; and wherever they did not exist, to form estates to be assigned to persons who would consent to pay the assessment which was laid upon them. Regulation XXV of 1802 was the first of that series of Regulations, and it enacted—

> "an assessment shall be fixed on all lands liable to pay revenue to the Government; and in consequence of such assessment, the proprietary right of the soil shall become vested in the zemindars or other proprietors of land, and in their heirs and lawful successors for ever."

Regulation XXVII of 1802 was then passed for the purpose of regulating the

manner in which the payments to be made by the proprietors of land constituted by Act XXV of 1802 should be recovered; and another Regulation was framed to enable these proprietors to recover payments due to themselves from their ryots. The permanent settlement was introduced into Madras, but not universally; and by Section XXXVIII Regulation XXVIII of 1802, it was provided—

"that the rules laid down in the preceding Sections, for the recovery of arrears of rent or revenue due to proprietors and farmers of land shall be applicable to the Managers of estates of disqualified land-holders and of joint undivided estates, as well as to Collectors or other Public Officers holding lands in attachment, or making a khas collection on the part of Government where no settlement may have been made with any proprietor or farmer."

This Section substantially agreed with, or rather was adopted from Section XIX Regulation VII of 1799; and for many years the same construction was given to it as appeared to have been given invariably to the corresponding provision of the Bengal Law—that was to say, that arrears of revenue due by ryots holding lands under settlements made directly with Government were to be recovered by the same process as arrears due by ryots to zemindars and others on account of lands included in estates permanently settled; namely, by distraint and sale of personal property. But in the year 1829, the Court of Sudder Adawlut, on an appeal from a decree of the Provincial Court of the Western Division in a suit which had arisen in the district of Malwa where the permanent settlement had not been introduced, gave a different construction, repudiating the construction which had been adopted until then. They ruled that arrears due to Government by ryots holding lands under ryotwar settlements should be excluded from the operation of the Section; that such persons were to be considered as proprietors within the meaning of Regulation XXVII of 1802; and that arrears due by them could only be recovered by the process prescribed by that Regulation for the recovery of arrears due by zemindars and other proprietors of land holding under the Permanent Settlement, namely, by the attachment and eventual sale of their land. The arrears recoverable under Regulation XXVIII of 1802, the Court declared, were arrears of public revenue payable to the Collector or other public officer, but not under a settlement with a proprietor or farmer.

Owing to some ambiguity in the terms in which it was expressed, this Rule did not come into full operation. It was differently understood in different districts. In some districts, it was held that Regulation XXVIII of 1802 did apply to arrears under annual ryotwar settlements, and the arrears had been recovered by the sale of personal property; in others, the opposite view had been taken, and land only had been held to be liable to distraint.

Recently, the subject having come before the Board of Revenue, they consulted the Government pleader upon it, and that officer having expressed his concurrence in the ruling of the Sudder Court in 1829, it appeared to be now settled that arrears due by ryots under a ryotwar settlement could not be recovered by Collectors on account of Government by the process laid down in Regulation XXVIII of 1802.

The object of the Bill now submitted was to make the provisions of Regulation XXVIII of 1802 applicable to the recovery of such arrears, according to the construction of Section XXXVIII of that Regulation which had obtained and been acted upon till 1829; that was to say, to give the same effect to the enactment contained in that Section as was given to the corresponding enactment in Section XIX Regulation VII of 1799 in Bengal, and thus to arm the Collectors with power to distrain and sell the personal property of defaulters.

It was very unfortunate that the new Rule laid down by the Sudder Adawlut was promulgated at the same time with the very stringent orders of Government relative to the use of coercive measures, against ryots personally, for the recovery of arrears due by them. Finding that their personal property could not be distrained, the ryots had resisted payment, and the balances had become seriously large.

With reference to the construction of the Sudder Adawlut and the concurring opinion of the Government pleader, that arrears of revenue under ryotwar settlements could only be recovered by the process laid down in Regulation XXVII of 1802, that was to say by the distraint and eventual sale of the land of the defaulter, it was represented by the Board of Revenue that

"the number of landholders in the Madras Presidency paying each under ten rupees is no less than 8,84,190. The payments are usually made in six instalments or kists, averaging therefore from one to two rupees, and the lands cultivated by them have generally no saleable value."

Mr. Eliott

They dwelt on the inapplicability of the means provided in Regulation XXVII to ryotwar settlements on account of the delays and forms, which, though suitable enough in the case of extensive estates, were quite inapplicable and were mere engines of delay in the case of petty holdings of a few fields. They pointed out that, where land possessed no saleable value, the Revenue Officers, not having the power to distrain and sell personal property, were left without any legal means of collecting arrears; while they expressed their opinion that, if Collectors had that power, the mere possession of it would generally suffice without any necessity for its exercise. The Government observed that

"the law for recovering arrears under ryotwar settlements, as interpreted by the late legal adviser of Government, holds out such powerful inducements to evasions as are not to be resisted by those exposed to this temptation. It is stated by the Collector of Tinnevelly, and it is believed to be the case in other districts also, that the great majority of those who thus refuse payment, are well able to pay, but that they take advantage of the means of delay held out to them, and that, after all the tedious processes have been gone through, and their land is about to be sold, they pay the demand. The enormous consumption of time required for going through, in the case of 50,000 or 80,000 ryots in a district, all the forms prescribed for the case of a large zemindary may be conceived; the evil is a growing one, as the Board justly remark, and so tempting is the example of evading payment of a tax, that it may be fully anticipated that the difficulties of collection will be very much increased in the current year, and that the whole energies of the existing establishments will be unequal to the mere duty of going through the necessary forms of process."

The Government had for some time been disinclined to enact any temporary law on this subject, since a general revision and amendment of the Revenue Laws of the Madras Presidency was in progress. But finding that it would take a long time to to complete that work, and the present exigency being very pressing, it was now of opinion that there was an absolute necessity for the measure proposed—that was to say, for declaring the existing Law to be what it had been understood to be for so many years, before the ruling of the Sudder Adawlut in 1829, and what it was certainly intended to be at the time it was framed.

The Bill which he presented was intended to be in force only until the revised Code should be enacted, and to be among the Laws rescinded by it.

The Bill was read a first time.

ABKAREE REVENUE (BENGAL).

On the Order of the Day being read for the third reading of the Bill "to consolidate and amend the Law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal"—

MR. CURRIE said, before moving the third reading of the Bill, it was necessary that it should be re-committed.

It was not his intention to offer any further opposition to the change which had been made by the Council in the principle of the Bill when the Bill was last before it. The alterations which he now proposed to introduce, were necessary to adapt the Bill to that change. He should therefore move that the Bill be re-committed.

Motion carried.

MR. CURRIE said, Section XX of the Bill provided a pecuniary penalty for removing spirituous liquors without payment of duty: and further enacted that,

"if it shall appear to the Collector that the offence was committed with the consent or knowledge of the proprietor or manager, the license granted for the construction and working of the distillery from which such liquors have been removed or attempted to be removed may be withdrawn, and the liquors, materials, and utensils contained in such distillery, shall be liable to confiscation."

Under the change made by the Council in the latter part of the Bill, the pecuniary penalty would now be adjudicated by the Magistrate; but as the Section stood, it did not appear by whom the confiscation was to be adjudicated. He thought however that it was not necessary, nor perhaps altogether just, that, for an offence of this nature, all the contents of a distillery should be liable to confiscation. If the offence should be committed with the consent or knowledge of the proprietor or manager, it was very proper that the Collector should have power to withdraw his license; but the proper subject for confiscation would be the spirits in course of removal and the animals and conveyances used in carrying them. He should therefore move that the words

"the liquor together with the vessels containing the same. and the animals and conveyances used in carrying them, shall be liable to confiscation"

be inserted after the word "and" and before the word "if" in the 12th line of Section XX, and that the words

"and the liquors, materials, and utensils contained in such distillery shall be liable to confiscation"

at the end of the Section be left out.

The Motions were severally put and agreed to, and the Section passed.

MR. CURRIE said, he thought it right again to bring to the notice of the Council the alteration which had been made by the Select Committee in Section XL of the Bill as printed. That change involved an alteration of the existing Law which, in his judgment, not only was no improvement, but was reconcileable with no just principle. The present Law provided that, if the Collector desired to recall an Abkaree license for any cause other than the non-payment of the specified tax, or the violation of any condition of the license, he should give a month's notice, or make such compensation for default of notice as the Commissioner or Board of Revenue should direct. In lieu of that, the Select Committee had substituted the following :—

"He shall give fifteen days' previous notice and remit a sum equal to the tax for fifteen days, or if notice be not given, shall make such further compensation for default of notice as the Commissioner or Board of Revenue shall direct."

The Select Committee had made this alteration because, by the following Section, a licensed retail vendor might surrender his license within the year for which he had taken it out, on giving fifteen days' previous notice to the Collector, and paying a sum equal to the tax for fifteen days over and above the sum payable under the license. But this was in his judgment an insufficient and untenable reason, for the two cases were not similar, and the provision which was applicable to the one was not, as it seemed to him, applicable to the other. A license-holder engaged to pay a certain sum daily in consideration of the exclusive privilege of selling country spirits (this was the description of licenses here referred to) for a specific period, and the Law allowed him to be released from his liability on certain conditions. If no conditions were imposed, and no penalty exacted, this indulgence would certainly be abused. The holder would retain his license only during those months in the course of which his profits were large, and would throw it up during those months when the articles in which he dealt were in less demand—or, he might throw it up with the intention of forcing the Collector to reduce the amount of the tax. Therefore, it was necessary that he should be subject to a penalty if he resigned his license. But there was no such reason why the Collector, when he withdrew a license, should make any payment by way of compensation to the license-holder. The grant of the privilege conveyed by the license was entirely in the discretion of the Revenue Officer. The license was given for a specific period, not because it was right that that privilege should be conferred for a specific period, but because it was convenient that the tax which the license-holder was to pay for the privilege should be fixed for a certain period. The license-holder had no abstract right to the privilege, and if sufficient notice were given to him before the license was withdrawn, it was all that he was entitled to claim.

Then, again, if compensation to the license-holder were really necessary, the amount ought to be measured, not by the tax which he paid to Government, but by the profits which he derived from his trade. The tax was no measure of his profits, and therefore it could be no measure of the compensation to be awarded to him. But it did seem to him that there was no necessity whatever for giving any compensation at all, and that to give any would be to saddle the Government with a charge to which it ought not to be liable.

He, therefore, thought it his duty to move that words similar to those in the original Bill should be substituted for the words introduced by the Select Committee, with only this modification,—that the recall or cancellation of a license should be with the sanction of the Commissioner. This would make the Bill correspond exactly with the Law which now existed for the Town of Calcutta. He should move, accordingly, that the words "If the Collector desire to" before the word "recall" in the 8th line of Section XI be left out, and the words "The Collector, with the sanction of the Commissioner, may" substituted for them.

MR. ALLEN said, being one of the majority of the Select Committee who had introduced the alteration to which the Honorable Member objected, he should say a few words on the propriety of retaining it. The very question now raised by the Honorable Member had been raised by him when the Council was in Committee upon the Bill, upon which occasion, the motion which

he (Mr. Currie) proposed, was negatived after discussion. It appeared to him, therefore, that, even in point of form, it was irregular to bring forward that question again without notice, and at a time when the Bill was set down for a third reading, at which stage it was no doubt open to the mover to have it re-committed, but, according to the spirit of the Standing Orders, to have it re-committed only for the amendment of trifling errors, and not for the alteration of any principle already carried.

[Mr. ALLEN here read the amended Section.]

In any of the cases specified here, the Collector would have a right to cancel a license without awarding any compensation whatever. Until any of these cases occurred, the license-holder would stand by his bargain. Why should the other party to that bargain, the Collector, be allowed to break his agreement, except on the same conditions as the license-holder—namely, the giving of fifteen days' notice, and the payment of a sum equal to the tax for that period? The Honourable Mover of the Bill had said that, if no conditions were imposed, and no penalty exacted for the surrender of a license, the license-holder would throw up his license after he had reaped a benefit from it during the Native holidays, when the demand for country spirits and drugs was greater than during other parts of the year, and thus put the Government to inconvenience and loss. But, supposing that the Collector desired to withdraw his license just before the profitable season arrived—the *holee*, for instance, or any other native festival,—ought not the farmer to have the right to say—"My license is for a whole year, and includes holidays, as well as other days. If you take it away now, you must give me compensation."

The lease of the privilege of selling country spirits and drugs would be only for one year. If the farmer behaved ill, the Collector would, under the Act, be able to withdraw the license without any compensation. If there should arise any unforeseen circumstance to make the continuance of the license inconvenient or objectionable—such as the arrival of a Military Cantonment at the station—why should not the Collector give the license-holder compensation for the loss he would sustain by the withdrawal of his license?

Mr. CURRIE'S motion being put, the Council divided :—

Ayes 2.	*Noes* 7.
Mr. Currie.	Sir. Arthur Buller.
The Chairman.	Mr. LoGeyt.
	Mr. Allen.
	Mr. Eliott.
	Mr. Peacock.
	Mr. Grant.
	The Chief Justice.

Mr. CURRIE said that Section LX of the Bill as amended stood thus :—

"Whenever an Abkaree Officer shall arrest any person or seize any still or any liquors or drugs liable to confiscation under this Act, or enter any house, boat, or place for the purpose of searching for any such illicit articles, he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, or seizure, or search, to his official superior, and shall carry the person arrested, or the illicit articles seized, with all convenient despatch, to the Magistrate for trial or adjudication."

But by subsequent Sections, the Collector was authorized to issue warrants for search and arrest, and, in such cases, the person arrested and the articles seized were to be carried to the Collector. It was, therefore, necessary to introduce some qualifying words into this Section; and he should move that the words "unless acting under the warrant of the Collector" be inserted before the word "shall" in the 12th line.

Agreed to.

Mr. CURRIE said that the next alteration which he had to move was in the third new Section, which stood as Section LXIII. The previous Sections provided, not only for the arrest of persons offending against the Act, but also for the search and seizure of illicit articles, and it was therefore necessary to provide in this Section for the disposal of the articles that might be seized. He proposed therefore to leave out the present Section, and substitute the following in its place :—

"Whenever any person is arrested, or any articles are seized under the warrant of a Collector, the Collector, after such enquiry as he thinks necessary, shall send the person arrested or the articles seized to the Magistrate, or shall order the immediate discharge of such person or the release of such articles."

Agreed to.

Verbal amendments were made in Sections LXVIII and LXXI on the motion of Mr. Currie.

Mr. CURRIE said that the next alteration which he had to propose was in the new Section which had been introduced after Section LXXV of the Bill as amended by the Select Committee, and the object of which was to provide that offenders against

the excise law should be imprisoned in the Civil, and not in the Criminal Gaol. That Section enumerated certain offences of the nature contemplated, but the enumeration was not complete. He should move that the following Section be substituted in its place :—

"Every person who shall be imprisoned under the last preceding Section, or on account of the non-payment of any sum forfeited under this Act, if the offence of which he has been convicted be one with respect to which the information of the Collector or an Abkaree officer is required by Section LXXI, shall be confined in the Civil Jail."

Agreed to.

MR. CURRIE moved that the proviso of Section LXXVIII be left out, since the term Collector was explained to include a Superintendent of Abkaree.

The motion was carried, and the Section then passed.

MR. CURRIE said that the only other amendment which he had to move was the introduction of a Section declaring from what date the Act should take effect. As the Act transferred the cognizance of Abkaree offences from Collectors to Magistrates, some little time should be given for the making of arrangements to provide for the change.

He should therefore move that the following new Section be introduced after Section LXXXVIII :—

"This Act shall commence and have effect from and after the 1st of February 1857—"

which would be the commencement of a quarter of the official year.

The Section was agreed to.

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

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

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

MOFUSSIL MUNICIPAL LAW.

MR. CURRIE moved that a communication received by him from the Government of Bengal forwarding an extract of a Despatch from the Honorable the Court of Directors to the Government of India, be laid upon the table, and referred to the Select Committee on Mofussil Municipal Law.

Agreed to.

MR. LEGEYT moved that a communication received by him from the Government of Bombay, relative to the introduction of Act XXVI of 1850 into Wyrag, be laid upon the table and referred to the same Committee.

Agreed to.

NATIVE PASSENGER SHIPS.

MR. LEGEYT moved that a communication received by him from the Government of Bombay forwarding a copy of a letter from the Political Agent and Commandant at Aden, together with the opinion of the Honorable Company's Solicitor thereon, relative to the evils arising from the overcrowded state of vessels carrying Pilgrims from India to Judda and *vice versâ*, be laid upon the table and referred to the Select Committee on the Bill "for the regulation of Native Passenger ships."

Agreed to.

SUBURBS OF CALCUTTA, AND HOWRAH.

MR. CURRIE moved that a communication received by him from the Government of Bengal, relative to the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah," be laid upon the table and referred to the Select Committee on the Bill.

Agreed to.

FORGED ENDORSEMENTS.

MR. PEACOCK said, it would be in the recollection of the Council that a Petition had been presented at a recent Meeting from the Calcutta Bankers, praying for protection in the case of forged endorsements, similar to the protection which had been given in England. For his own part, he confessed he thought that such protection ought not to be given; and, therefore, unless some Honorable Member was prepared to bring in a Bill for giving it, he should move that the Petition, as it involved a question of considerable importance,—namely, who was to be the loser by payment on a forged endorsement—should be referred to a Select Committee consisting of the Vice President, Mr. Allen, Sir Arthur Buller, and the Mover. The protection given in England was by a clause (Section XIX) inserted in the 16th and 17th of Vic., c. 59, which was a Stamp Act.

The motion was agreed to.

MUNICIPAL ASSESSMENT (STRAITS SETTLEMENT.)

MR. ALLEN moved that a communication received by him from the Governor of the Straits Settlement relative to the Bill "for appointing Municipal Commissioners and for levying rates and taxes in the several Stations of the Settlement of Prince of Wales Island, Singapore, and Malacca," and the Bill "to comprise in one Act the provisions necessary for the assessment and collection of Municipal rates and taxes in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales Island, Singapore, and Malacca," be laid upon the table and referred to the Select Committees on those Bills.

Agreed to.

MESSENGER.

MR. CURRIE moved that Mr. Peacock be requested to take the Bill "to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal" to the Governor General for his assent.

Agreed to.

NOTICES OF MOTIONS.

MR. ELIOTT gave notice that he would, on Saturday the 22nd instant, move the second reading of the Bill "for repealing Act I of 1844."

And of the Bill "for declaring the law for the recovery of arrears of revenue under ryotwar settlements in the Madras Presidency."

The Council adjourned.

Saturday, November 22, 1856.

PRESENT:

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

Hon. Sir J. W. Colvile, C. Allen, Esq.,
Hon. Maj. Genl. J. Low, P. W. LeGeyt, Esq.,
Hon. J. P. Grant, E. Currie, Esq.,
Hon. B. Peacock, and
D. Eliott, Esq., Hon. Sir Arthur Buller.

SALES OF LAND FOR ARREARS OF REVENUE (BENGAL.)

THE CLERK presented a Petition of Rajah Sutt Shurn Ghosaul concerning the Bill "to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency."

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

Agreed to.

HINDOO POLYGAMY.

THE CLERK also presented the following Petitions praying for the abolition of Hindoo Polygamy:—

A Petition of Hindoo Inhabitants of Midnapore.

A Petition of Hindoo Inhabitants of Kamarpooker in the District of Hooghly.

MR. GRANT moved that these Petitions be printed.

Agreed to.

ESCAPE OF TRANSPORTED FELONS.

THE CLERK reported to the Council that he had received, by transfer from the Officiating Under-Secretary to the Government of India in the Home Department, a communication from the Governor of the Straits Settlement, submitting a second time the draft of an Act to facilitate the conviction of persons accused of aiding or abetting the escape of transported felons.

MR. ALLEN moved that this communication be referred to the Select Committee on the Penal Code prepared by the Indian Law Commissioners.

Agreed to.

MUNICIPAL ASSESSMENT (GENERAL.)

MR. ELIOTT presented the Report of the Select Committee on the Bill "to comprise in one Act the provisions necessary for the assessment and collection of Municipal rates and taxes in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MUNICIPAL ASSESSMENT (MADRAS.)

Also the Report of the Select Committee on the Bill "for appointing Municipal Commissioners, and for levying rates and taxes, in the Town of Madras."

MUNICIPAL ASSESSMENT (STRAITS.)

MR. ALLEN presented the Report of the Select Committee on the Bill "for appointing Municipal Commissioners, and for levying rates and taxes in the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."