Saturday, 19th May, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. I

(1854-1855)

been directed by His Lordship to transmit for the use of the Legislative Council a volume of "Rules, Orders, and Forms of Proceedings of the House of Commons relating to Public Business;" for which His Lordship was indebted to the courtesy of the Speaker of the House of Commons.

MAJOR GENERAL LOW moved that the thanks of the Council be offered to His Lordship.

Agreed to.

REPORTS OF SELECT COMMITTEES.

MR. ELIOTT presented the Report of the Select Committee upon the Bill "to amend the Law relating to District Moonsiffs in the Presidency of Fort St. George."

Also the Report of the Select Committee on the Bill "for the establishment and maintenance of boundary-marks in the Presidency of Fort St. George."

LANDS FOR PUBLIC WORKS (BOMBAY.)

MR. LEGEYT postponed the second reading of the Bill "to empower the Government of Bombay to take lands and buildings within the Presidency of Bombay for purposes of public utility." He said there were some papers connected with the Bill which required to be printed, but which were not ready yet.

EMIGRATION TO ST. LUCIA AND GRENADA.

Mr. PEACOCK moved that the Bill "relating to the emigration of Native laborers to the British Colonies of St. Lucia and Grenada" be referred to a Select Committee consisting of General Low, Mr. Allen, and the Mover.

Agreed to.

MOFUSSIL MUNICIPAL LAW.

MR. ELIOTT moved that a communication which he had received from the Government of Fort St. George, forwarding a copy of a Correspondence between that Government and the Government of Bengal on the subject of modifying Act XXVI of 1850, be laid on the table, and referred to the Select Committee appointed to consider and report upon the question of Municipal improvements for the conservancy of towns in the territories under the Governmen of the East India Company.

Agreed to.

NOTICES OF MOTION.

MR. LEGEYT gave notice that, on Saturday next, he would move the first reading of a Bill "to amend Act XXVIII of 1839" so far as it relates to buildings within the Fort of Bombay.

MR. ELIOTT gave notice that, on Saturday next, he would move the second reading of the Bill "to Amend Act VI of 1844."

The Council adjourned.

Saturday, May 19, 1855.

PRESENT:

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

Hon. J. P. Grant, D. Eliott, Esq.,
Hon. B. Peacock, C. Allen, Esq., and
Hon. Sir James Colvile, P. W. LeGeyt, Esq.

NEW MEMBER (BENGAL).

THE CLERK reported to the Council that he had received a communication from the Under-Secretary to the Government of Bengal, intimating that the Lieutenant Governor had nominated Mr. Edward Currie to be a Member of the Legislative Council of India.

MR. CURRIE was duly sworn, and took his seat as a Member.

PORTS AND PORT-DUES.

MR. GRANT presented the Report of the Select Committee on the Bill for the Regulation of Ports and Port-dues.

BUILDINGS (BOMBAY).

MR LEGEYT moved that a Bill "to amend Act No. XXVIII of 1839," be now read a first time. The object of the Bill was to enable the Government of Bombay to allow buildings within the walls of the Fort of Bombay to be erected above a height of 50 feet from the surface of the street. By Section VII of the present Bombay Building Act,—*viz.* XXVIII of 1839,—no building within the Fort walls was allowed to be erected higher than 50 feet above the surface of the street. This restriction had been found to be practically inconvenient; and the present Bill had been framed with the view of authorizing the Governor in Council at Bombay to dispense with it in such cases as he might think fit.

HE (Mr. LeGeyt) should mention for the information of Honorable Members not acquainted with the nature of the Fort of Bombay, that, although it was called a Fort, and was surrounded with ramparts, and had a garrison within, yet it was in fact also a populous town, which contained nearly 100,000 inhabitants, independently of the Military; and the ground on which the houses were built, was private property, and very valuable. In 1839, it was found necessary to frame rules for regulating buildings in the Island of Bombay, and among other things it was provided that persons might not erect houses within the Fort of a greater height than 50 feet.

He believed that that restriction, which is to be found in the 7th Section of Act No. XXVIII of 1839, had not been strictly attended to; and recently, the Directors of the Bank of Bombay, being about to build a house within the Fort, found that the site would not be sufficient for their purpose, unless they were allowed to carry the building above 50 feet from the surface of the street. They applied to the Government for permission to do this; but the Advocate General advised the Government that, under Act XXVIII of 1839, it had no power to give that permission, and that the Directors, if they erected a building to the height they proposed, would be liable to have an information laid against them, and to be subjected to the penalties laid down in the Act.

Under these circumstances, the Government of Bombay was desirous of being enabled to grant permission to parties, when they thought fit, to extend buildings within the Fort beyond 50 feet from the surface of the street. The Government of Bombay had asked him to alter the present Law so as to provide for this purpose; but he thought it would be better to pass a separate enactment, which should also have retrospective effect, in order to protect parties who had already violated Section VII of Act XXVIII of 1839, from penalties being enforced against them; and he had framed this Bill accordingly. The only reason for imposing the restriction, must have been one that had reference to the town being a military town and garrison. But the Governor, who was also Commander-in-Chief of the Fort and Garrison, had decided that it was proper to dispense with the restriction; and all grounds for apprehending any inconvenience in a military point of view from the proposed measure, need not be entertained.

With this statement of objects and reasons he should move the first reading of the Bill.

Bill read a first time accordingly.

LANDS FOR PUBLIC WORKS (BOMBAY.)

MR. LEGEYT moved the second reading of the Bill "to empower the Government of Bombay to take lands and buildings within the Presidency of Bombay for purposes of public utility."

MR. ALLEN said, he had a few observations to offer upon this Bill. He objected to it. He by no means objected to give power to the Bombay Government to take lands and buildings for public purposes. That power was given to the other Presidencies, and there was no reason why a similar power should not be given to Bombay. But the question appeared to him to be whether this Council should take for that purpose the Bill which was before the Council, and which had been read a first time, or whether it should take Act XX of 1852, which had been passed for Madras, and *mutatis mutandis* re-enact that Act for Bombay. He had always thought, and was of the same opinion still, that, as a general rule, one Code of Law should be applied to all the Presidencies; and that when any Honorable Member representing a particular Presidency asked for a separate Act for that Presidency, he should show cause why the Acts upon the same subject in force in other parts of the territories were not applicable, and ought not to be made to apply to it. If this was necessary as a general rule, it was more specially necessary in this case; for, in the commencement of last year, the Supreme Government had suggested to the Government of Bombay to adopt that course, the latter Government having, at the end of 1853, sent up a Bill to empower it to take lands and buildings for public purposes, which did not correspond with the existing enactments for Bengal and Madras. The Government of Bombay had thought proper not to adopt that suggestion of the Supreme Government, but had sent up the former Bill with some few alterations in it. He looked in vain for any special reasons why the Legislature should be asked to give to Bombay a separate Act. The Honorable Member for Bombay said, because the Government of Bombay wished it; and the Government of Bombay said they wished it because M.. Howard, the Remembnancer of Legal Affairs in that Presidency, preferred it. Therefore, from first to last, he (Mr.

Allen) must go to Mr. Howard's letter, and search for the reasons why it was proposed to enact this Bill for Bombay, instead of extending Act XX of 1852 (the Madras Act) to Bombay. Mr. Howard's letter appeared in pages 4 and 5 of the papers sent up with the Bill. From paragraph 1 to paragraph 9 of that letter, he (Mr. Allen) saw no reasons assigned for preferring this Bill to the existing Act for Madras. Paragraphs 10 and 11 did assign certain reasons. In paragraph 10, Mr. Howard said—

"With great deference, I think Act XX of 1852 creates a more elaborate machinery than is needed for, or suitable to the interests that are likely to come into question under it or the persons who, in most cases, will be the arbitrators."

Now, he (Mr. Allen) did not himself see how Act XX of 1852 did create a machinery more elaborate than was necessary or suitable. The machinery in both cases, was —arbitrators. It was very true that more power was given to arbitrators in Madras than was proposed by this Bill to be given to arbitrators in Bombay ; and that arbitrators in Madras were appointed in a way different from that which was proposed in this Bill for arbitrators in Bombay ; but the machinery in both cases was the same—namely, arbitrators ; and so far from that provided by Act XX of 1852 being needlessly elaborate, it appeared to him to be more simple than that suggested in this Bill ; for whereas arbitrators in Madras decided almost all questions connected with the property in dispute, arbitrators in Bombay would, by this Bill, have power to decide solely the question of value, leaving questions of title to be determined by the Courts. Therefore, the machinery for deciding both the questions in dispute, namely value and title, was more elaborate under this Bill than it was under Act XX of 1852.

He would now proceed to paragraph 11 of Mr. Howard's letter :—

"Section VI of Act XX of 1852," Mr. Howard said, "provides that the 'points in dispute' shall be referred to arbitration ; yet the 13th, 14th, and 16th Sections seem to imply that, if a dispute arises, the entire amount of compensation to be paid, shall be settled by the arbitrators. I should think, in practice, the clauses of Act XX of 1852 would be found to be inconveniently complex for the patells and other people of that class, who may have to act under them."

Now, with regard to the first part of this paragraph, he (Mr. Allen) had looked into Act XX of 1852 ; and he confessed he was utterly at a loss to comprehend what Mr. Howard meant. If his words meant anything, they meant that Section VI of the Act was irreconcilable with Sections XIII, XIV, and XVI. As he read the Act however, Section VI was not in any way irreconcilable with them. It said that "points in dispute" should be referred to arbitration ; and the "points in dispute" would be, the several interests of different parties claiming the land, the value of the land or the amount of compensation to be given by Government, and the way, or the different shares in which, that value should be paid over to the several claimants. These would be "the points in dispute," which Section VI said should be referred to arbitration. Then Sections XIII, XIV, and XVI said precisely the same thing. They provided that the arbitrators should fix the value of the land, the manner in which the value was to be paid, and the shares of total value which each claimant was to receive. When a person fixed the manner in which several interests in a piece of land should be paid for, and the share each interest should receive, he fixed the value of the several interests themselves. To his (Mr. Allen's) mind, no satisfactory reasons had been shown for preferring the introduction of a new Act to the adoption of the old one. If both were equally good, he should still have preferred the old Act. But in reality in every one of the various points in which this Bill differed from the Act, the Bill was inferior to the Act. Mr. Howard, in his letter replying to the Supreme Government, said that the draft Act which he sent up had been amended as regards the compulsory production of evidence in accordance with the suggestions of the Supreme Government ; and in consequence, Mr. Howard had imported into his Bill Section XII of Act XX of 1852. But such was his (Mr. Allen's) perverse nature that, if he had disregarded any portion of the Supreme Government's suggestions—if he had omitted any portion of Act XX from the Bill, it would have been that very Section, which Mr. Howard had imported ; for it was the one which gave power to the Collector to search houses for documents and title-deeds. Mr. Howard, in his letter, specially said, if the amended draft which he sent up with it was to be the basis of the law for Bombay, questions of value alone would be the subject of arbitration, and not the interests of adverse claimants. If that were so, what possible object could there have been for the intro-

duction into the draft of such very stringent clauses for searching houses for title-deeds ?

He now came to the provisions of the Bill presented ; and the first remark which occurred to him here was, that, whereas the Madras Act provided that the Government officer shall, in the first instance, endeavor to secure and acquire land by private purchase, this Bill contained no such provision. The next point was, that the Madras Act particularly directed that the ground to be taken should be marked out with boundaries, and measured. This Bill contained no such provision. It might be said, these provisions might be introduced into the Bill in Select Committee ; but it was curious that, when the attention of the framers of the Bill was directed to the Madras Act by the Supreme Government, they did not observe them, and did not introduce them then.

He now came to the most important differences of all—namely, those provisions which defined the subjects that were to be referred to arbitration. By the Madras Act, every dispute which might arise, or was existing at the time the Act came into operation, in regard to lands or buildings required to be taken, was referred to arbitration. By the Bill before the Council, the power of the arbitrators was specifically limited to questions of value only, thus leaving the different parties who claimed adverse interests in the property to go hither and thither to the several Courts, and enter into suits to get a decree. On that point, it might at first be supposed that the Bombay Code did not recognize arbitrations for the decision of Civil suits. But by Regulation VII of 1827 of the Bombay Code, all Civil suits may be referred to arbitration ; and again, by Regulation X of 1827, all disputes regarding village boundaries might be referred to arbitration. So the principle of thus settling disputes about land was recognized there as well as at Madras. Why, then, should not these poor men, whose lands were taken from them for the public benefit against their will, have their conflicting claims to those lands determined by the inexpensive and expeditious mode of arbitration—as in Madras, where the plan had been found to answer—instead of being left to recover their shares of the compensation money by decrees of Courts, the value of the property being detained in deposit until such time as they could get a decision on their half-a-dozen suits ?

Then, in the same piece of land, two or three persons might claim an interest. By the seventh Section of this Bill, each claimant would have a separate arbitration, instead of all the claimants having one arbitration, as in Madras.

Again ; by this Bill, if an offer of compensation should be rejected, four arbitrators must be appointed—two by the Government, and two by the claimant of the land or building to be taken. The Madras Act required that, immediately after their appointment, the arbitrators should appoint an umpire. This Bill, although the attention of those who framed it had specially been directed to that point, required that the arbitrators should first go and try to settle the dispute without an umpire, declare their inability to do so, get heated in argument, and then proceed to name an umpire. The Section on the subject was Section VII, which, after declaring when and how the four arbitrators should be appointed, said—

"The award of the majority shall be final as to the amount of compensation to be paid as the value of the interest the subject of arbitration ; but in case the majority of the said arbitrators should be unable to agree upon the amount of compensation, they shall be at liberty to appoint an umpire ; and the award of the majority of the said arbitrators and umpire shall then be final. But in the event of the said arbitrators being unable to elect an umpire, &c."

Why allow these men first to embitter their minds one against the other, and then try and elect an umpire ? Why not follow the Madras Act, and appoint an umpire in the first instance ?

He now came to a provision which had been pointed out by the Supreme Government as objectionable, and which was remarked upon by Mr. Howard, in his letter, —namely, the mode of fixing the amount of compensation money in case of difference of opinion on the part of the arbitrators, whether as regards the appointment of an umpire, or as regards the amount of compensation. The same Section went on to prescribe the mode. It said—

"But in the event of the arbitrators being unable to agree upon an umpire, or in the event of the majority of the arbitrators and umpire being unable to agree upon an award, each of the said arbitrators and the umpire, as the case may be, shall state in writing the value, in his opinion, of the interest the subject of compensation : and the amount to be paid as compensation for the same, shall be the average of the several sums so stated by the said arbitrators and the umpire, if one has been appointed."

Surely, that was a very erroneous mode of settling the matter. Was it, or was it

not, in human nature that those men who had been appointed by the claimant and acted in his favor, should put an inordinately high value upon the property ; and that those who had been appointed by, and were in the interest of Government, should put an inordinately low one ? The effect of the Section would very possibly be that the average value, so taken, would be higher than the highest amount which any single arbitrator would have named, if he had supposed that his award would take effect, and not be made subject to this arbitrary and ill-devised mode of procedure.

Another Section adverted to by Mr. Howard in his letter, was Section XI, which said—

> " If land required to be taken under this Act be occupied by, or be held in support of any public Dhurrumsala, Temple, or Mosque, or similar institution, the value thereof shall be ascertained by Punchayet, as in the last preceding Clause directed ; and the amount thereof shall be disposed of for the interest of such owner."

That is to say, that the trustees or managers of such temples should not appoint the arbitrators, but that the Government should appoint them. He (Mr. Allen) could not see why this should be. Mr. Howard seemed to think that there would be difficulty in finding out who the real managers were ; but he (Mr. Allen) was unable to see in what the difficulty would consist. If they were two or three in number, or belonged to a brotherhood, provision might be made for that, as in the Madras Act. It was the Section itself that raised a real difficulty. For when the punchayet should have settled the amount of compensation to be paid, who would there be to receive the money ? Because, if the Government could not find out who should have the right to appoint arbitrators on behalf of the temple, it could not find out who should have the right to receive the money on behalf of the temple. To escape from this difficulty, the Bill said that the Government shall dispose of the money for the benefit of the institution. Now, it had been the endeavor of the British Government, for many years past, to withdraw its support from all religious edifices, to leave each religion to itself, and not to maintain any one religion against the others. Why, then, this provision in the Bill, which might force the Government to go in, and perform *poojah* worship, for aught he knew, in these Dhurrumsallas and temples ? The object was only to get rid of the difficulty of saying who should receive the compensation money on behalf of the temple.

In the next place, whenever claims should be set up to any land required to be taken, it appeared that, under Section XII, none of the claimants themselves would be allowed to appoint Arbitrators to determine the value of the interest in dispute, but that the Government would arbitrarily select four men of its own, without any reference to the contending parties, and leave it to them to decide what the value was. This was far worse than making the Collector of the district the sole arbitrator ; for the Collector would be a man of education and integrity, and would have a character to support ; whereas four men selected indiscriminately, would make it a point to decide as favorably for the Government as possible.

Section XV made the Government officer (or Collector) liable to damages in a Civil action by any person claiming to be entitled to any land taken under the Act, and whose title or interest was unknown to, or rejected as insufficient by him. The right to sue was subject to certain provisos. These were so numerous that, probably, the Section would never apply ; but still, the effect would be that the Collector, seeing that he was liable to be sued for compensation as above, would do nothing but retain in deposit the money paid by Government for the land ; so that, instead of settling the conflicting claims within one month, as under the Madras Act, he would leave the whole question open until the parties could obtain a decree from the Courts by means of a regular or summary suit.

Upon the whole, therefore, if the motion proposed were pressed, he should consider it his duty to oppose the second reading of the Bill.

THE PRESIDENT observed, there had been a slight error in point of form. The Honorable Member for the North-Western Provinces had spoken upon the motion of the Honorable Member for Bombay before it had been proposed from the Chair ; and he (the President) must now beg that the Council would allow it to be assumed that the Motion had been so proposed.

MR. ELIOTT said, he had intended to make some observations upon the Bill, but the Honorable Member opposite (Mr. Allen) had really anticipated all that he had to say. He should, therefore, content himself with expressing his concurrence gene-

rally in the Honorable Member's remarks, and would vote against the Bill. The rejection of the Bill, he observed, need not retard the object of the Government of Bombay, for the Honorable Member for Bombay might very easily bring in another Bill on the model of Act XX of 1852 for Madras, which he (Mr. Eliott) considered to be decidedly better than the Bill now submitted.

One point in which the Madras Act differed from that under consideration, ought to be noticed. The Madras Act did not contemplate its provisions being called into exercise except where there was a hindrance to the immediate acquisition of the land wanted for a public purpose, by purchase, that is by private bargain with the parties interested; whereas the Bill before the Council seemed to intend that the process laid down in it should be the usual process. The Government of Madras had always been opposed to a resort to the Act, until negotiations had been tried and had failed. The local Officers were always disposed to take the short cut of the Act; but Government had maintained that the Act was only to be had recourse to in the last resort. And this he (Mr. Eliott) thought was right.

For his own part, he really could not see the complexity in Act XX of 1852 of which Mr. Howard spoke. One of the provisions inserted in this Bill was, he thought, more complex than any or all the provisions of the Madras Act—that, namely, which prescribed the mode of settling the amount of compensation to be paid where a majority of the arbitrators and the umpire could not agree upon an award. The Madras Act prescribed that, in case of a difference of opinion, the umpire should decide; and surely, that was the easiest and most reasonable mode. What, otherwise, was an umpire for?

MR. PEACOCK said, having been a Member of the Council of India at the time when the letter of Mr. Plowden was written to the Government of Bombay, he would offer a few observations upon the proposed Bill.

He thought it was very desirable that the laws of the several Presidencies upon any subject should be as nearly alike as the circumstances of each Presidency would permit.

There appeared to him to be no reason why the Law for taking lands and buildings for public purposes, should be different in the Presidency of Bombay from those which were in operation for the same purpose in the Presidencies of Bengal and Madras. When the attention of the Government of Bombay was called to this point, the Government was requested to consider whether Act XX of 1852 and Act I of 1854 might not be so altered as to be adapted to the Presidency of Bombay. The former of those Acts had been settled by his Honorable predecessor Sir Charles Jackson, and, with some slight exceptions, which had been remedied by Act I of 1854, he believed it had been found to answer the purposes for which it was intended. Mr. Howard, however, in his letter, in reference to this suggestion, stated that,

> "with great deference, he thought Act XX of 1852 created a more elaborate machinery than was needed for, or suitable to, the interests that were likely to come into question under it, or the persons who, in most cases, would be the arbitrators."

He did not, however, state in what respects he considered it too elaborate, nor that the circumstances of Bombay were so far different from the circumstances of Madras that an Act which was suited to the one was not adapted to the other. If Act XX of 1852 was too elaborate for Bombay, there appeared to be no reason why it was not too elaborate for Madras; and if so, it ought to be altered. It seemed to him (Mr. Peacock) that it would be better to provide for both Presidencies alike. If Mr. Howard had pointed out any circumstances in Bombay which differed materially from the circumstances in Madras, it would have been the duty of the Legislative Council to adapt Act XX of 1852 to them, but not to give to Bombay an Act framed upon an entirely new principle. He (Mr. Peacock) did not believe that there was a single Member of this Council who would shrink from any labour that might be necessary for the due discharge of his duties; but if the Council were to provide a separate Act for each Presidency upon every particular subject, there would be three-fold labour, and a great waste of the public time, independently of the objection of the want of uniformity of legislation.

The Honorable Member opposite (Mr. Allen) had shown such conclusive reasons against some of the provisions of the proposed Bill, that he (Mr. Peacock) felt convinced it would be far better that the Bill should be at once thrown out. Let the Council look at what might be the effect of Section VII. By that Section, if the amount of compensation offered by Government should

be rejected, four arbitrators must be appointed—two by the Government, and two by the owner of the property, or his agent. If the owner should refuse or neglect to name his arbitrators, the Government were to appoint four. Now, that was wholly unnecessary ; for, if the owner should neglect to name his arbitrators, the two appointed by Government ought to be sufficient. But suppose the Government should appoint two, and the owner two, the four arbitrators so appointed, if they could not agree, were to appoint an umpire ; and the award of the majority of the arbitrators and the umpire was to be final ; but if the majority could not agree upon an award, each arbitrator and the umpire was to state in writing his own estimate of the value, and the average of the several sums so stated was to be the amount of compensation to be paid. Now, he (Mr. Peacock) had some experience in these matters, and he had generally found that when arbitrators were appointed by the parties interested, they generally looked to the interests of those by whom they were appointed, instead of considering themselves in the position of Judges bound to act impartially for the benefit of all parties concerned in their award. He regretted to say that this was the case not only with arbitrators, but also very frequently with witnesses who were called to speak to the value of property in these cases, and who considered themselves, not so much witnesses as advocates for the persons by whom they were employed to make the valuation. He was present at an inquiry upon one occasion when the value of a small piece of land required for a Railway was in dispute, and he heard a Surveyor in one of the largest practices in London, who was called by the owner to prove the value, swear that he believed in his conscience that piece of land was worth £50,000 ; whereas a much larger piece of land adjoining, and in no respect inferior to it, had just before been sold for £1,500—and this notwithstanding the claimant himself had been present competing for the purchase, and had allowed the land to be bought by another person. The jury in that case assessed the value of the land at £3,500. He mentioned this to show that arbitrators, and even witnesses, were in the habit of persuading themselves that, because they were appointed or employed by a particular person, they must necessarily advocate the interests of that person, at the expense of their own consciences. By Section VII of this Bill, there were to be four arbitrators—two to be appointed by the Government, and two by the claimant. If the Government arbitrators should not agree with the claimant's arbitrators, each was to state in writing the amount of compensation which in his opinion ought to be given, and the average of the sums so stated, was to be the amount to be paid. Under such a plan, what would be the result? Why, the claimant's arbitrators *must* have it all their own way. Because, either of them would only have to set down a sum twice as large as that which he wished the claimant to receive, and the arbitrators appointed by Government could not help themselves even if they set down "*naught.*" In that way, the claimant would probably obtain more than either of his arbitrators would wish, for each of them might adopt the same course unknown to the other. No one could prove what was the real opinion of the arbitrator, and there would be no means of punishing him.

Then, there was the Section by which land held for the support of mosques or temples, was to be valued by a punchayet to be appointed by the Government officer, and in the selection of which the trustees or managers of the temple were to have no voice. Why should this be ? Lands held for the support of a temple or a mosque were in the nature of private property. The Government did not keep up mosques and temples ; but these places of worship had been endowed with lands by former Governments or by individuals. Those lands were vested in Managers or Trustees for the purposes for which they were originally granted ; and the Government had no more right to take them than they had to take the private property of any individual. Then, why should the managers, who were appointed to look after the interests of a temple, be excluded from having a voice in the appointment of the punchayet who were to assess the value of the lands committed to their management and control ? Why, in such a case, should a Government Officer have it all his own way in selecting the punchayet ?

Then, again, there was the Section which authorized the Government officer to issue search warrants for title-deeds which might be required by himself or the arbitrators. There was no necessity for arming the Government officer with such a power, and he thought the Section was exceedingly objectionable. The title-deeds would not prove the value of the land ; and it was not the province of the arbitrators to determine

Mr. Peacock

any question of title. But even if it were so, there was no more reason why, in a case where lands were taken for public purposes, the Government officer should have a power conferred upon him which had never been given to any Civil Court of Justice.

Upon the whole, therefore, it appeared to him that the present Bill ought not to be read a second time, and that another Bill should be brought in framed upon the model of the Act which had so lately as 1852 been passed for the Presidency of Madras.

The principle and details of that Bill would then come under the consideration of the Council; and if they were found to be objectionable, the Act should not be allowed to continue in force in Madras.

SIR JAMES COLVILE, said he agreed with the Honorable Members who had spoken, in thinking that no sufficient cause had been shown why the Council should depart, in this matter, from that which was in itself a sound principle, namely uniformity of legislation.

With regard to the Section authorizing the issue of search warrants for title-deeds, he confessed that it had surprised him when he first read it in this Bill. He could not see why, on a compulsory arbitration like that here proposed, any larger powers should be given when title-deeds were withheld than those which were possessed by the ordinary Courts of Justice in Civil proceedings. It was, however, due to his Honorable Friend who introduced this Bill to say that a similar provision was incorporated in Act XX of 1852 for Madras. There was, perhaps, greater excuse for it in that Act than there was in this; because that Act empowered the arbitrators, to a certain extent, to try questions of title. He confessed, however, that he did not see any necessity for so very stringent a provision either in the one case or in the other; for the arbitrators ought to act only as Judges do—that is, where a question of title was raised, and title-deeds were not produced by the party relying on them, to proceed to a decision as if they did not exist; or if the opposite party wished to compel a production of the documents, to give him the means of doing so, or of supplying the want of them by the ordinary mode of procedure.

The only reason for passing laws of this kind was to enable the Government, as representing the public, to acquire a good title in the land which it was necessary to take for public and useful purposes; and to ascertain the price to be paid for it. In most countries, it was found sufficient to effect these objects, leaving those who claimed adverse titles in the land, to assert those titles to the money into which the land had been converted before the ordinary tribunals.

It seemed to him that it would be objectionable to force rival claimants to the land to submit their rights to a compulsory arbitration, if the award of the arbitrators were to be final. He observed, however, that Act XX of 1852 did give a dissatisfied claimant the power of carrying the question before a Court of Law, and suspended the execution of the award in the mean-time; and he could well conceive that in a country like this, where property was very much sub-divided, it might be desirable to give the arbitrators the power of entertaining these questions of title subject to such a right of appeal to the regular tribunals. Even in England, considerable inconvenience had been felt from the operation of those clauses of the Railway Acts which, if there was any doubt as to the title, or if the party entitled was under any disability, brought the compensation money into the Court of Chancery.

He (Sir James Colvile) entirely concurred in the view that had been taken of the mode provided for estimating the value of the property to be taken in cases in which the arbitrators, or a majority of them, failed to agree. It seemed to be analogous to what he had heard was the practice of Courts Martial when flogging in the Army was more rife than it happily now was. If the Honorable and gallant General, who was unfortunately absent, were in his place, he might be able to say how that practice had worked. But in the absence of any such authority, he (Sir James Colvile) was disposed to think that the method proposed was open to the objections which had been well put by other Honorable Members; and that an arbitrator might be apt to make his award depend, not altogether on his conscientious conviction of the value, but partly on the presumed extravagance or niggardliness of a brother arbitrator. He agreed with his Honorable and learned friend in thinking that arbitrators were sometimes too ready to act as partisans; and that it was not desirable to diminish in any degree that sense of responsibility under which every arbitrator should act—namely, that he was a Judge, and ought to give his decision upon the question before him without regard to any supposed consequences.

It was also desirable, in any enactment of this kind, to provide that the arbitrators

should choose an umpire in the first instance. This Bill made the choice of an umpire contingent upon the existence of a dispute amongst the arbitrators. He certainly thought that, in every case, they should elect an umpire before they proceeded a single step in their inquiry, for if the claim was delayed until the necessity for an umpire arose, there might be very great difficulty in bringing them to agree as to the man.

On the whole, he thought that the Honorable Member for Bombay would exercise a sound discretion in withdrawing the present Bill, and bringing in another extending, with a few additions, the provisions of Act XX of 1852 to the Presidency of Bombay.

MR. LEGEYT said, it was not his wish to take up the time of the Council with any further arguments in support of the Bill. Looking at the decided opinion which had been expressed upon the subject of the proposed Law by the legal advisers of the Government of Bombay, and at the concurrence of the Government of Bombay in that opinion, he had thought it his duty to lay the present Bill before the Legislative Council. But finding, as he had now done, that the feeling of the Council was so decidedly adverse to it, he would not press the second reading, but would ask leave to withdraw the Bill, and would speedily prepare and bring in another one, framed upon the provisions of Act XX of 1852.

With the leave of the Council, the Bill was withdrawn.

CUSTOMS (MADRAS).

MR. ELIOTT moved that the "Bill for amending Act No. VI of 1844" (the Madras Customs Act), be now read a second time.

Motion carried, and Bill read a second time accordingly.

MR. ELIOTT next moved that the above Bill be referred to a Select Committee, consisting of Mr. Allen, Mr. Currie, and the Mover.

Agreed to.

SMALL CAUSE COURTS.

MR. PEACOCK moved that the Council resolve itself into a Committee upon the Bill "for the more easy recovery of small debts and demands in the territories subject to the Government of the East India Company;" and that the Committee be instructed to consider the Bill in the form in which it has been recommended by the Select Committee to be passed.

Sir James Colvile

He stated that, in making this motion, he thought it would probably be convenient if he were to call attention to some of the principal provisions of the Bill.

He would commence at Section XI, which prescribed the mode of instituting a suit. By that Section, it was stated that, in order to the institution of a suit under the Act, a plaintiff might state his claim to a Judge either in writing or verbally. If verbally, the plaint was to be reduced into writing in the vernacular language of the Judge, by the Judge himself, or by an officer of the Court in his presence, and under his personal superintendence. The first thing, therefore, to be done on the institution of a suit, would be to submit a plaint to the Judge. If this were done verbally, the plaint would be reduced into writing by the Judge, and the plaintiff, therefore, would be able to institute a suit, if he pleased, without employing an agent to draw up his plaint. He (Mr. Peacock) had considerable doubt whether the plaint ought to be reduced into writing in the vernacular language of the Judge, or in the language of the Court. As his late Honorable Colleague, Mr. Mills, had left the Council, he felt bound to state that that Honorable Member was very strongly of opinion that it ought to be written in the vernacular language of the Judge. For his own part, he confessed his opinion was that it should be written in the language of the Court. That, however, was a matter of detail, which might be determined when the Council went into Committee.

If the plaintiff sued on a bond, or relied in support of his claim on any document, he would be bound to produce the bond or the document at the time of presenting his complaint, and to deposit it in Court. This was required by Section XIII, the object of which was to prevent any alteration being afterwards made in the document. But if a plaintiff should rely upon an entry in a book, it might be inconvenient to him to deposit the book; and therefore, the Select Committee had altered the Section as it stood in the original Bill, so that the party would not be bound to leave the book in Court, but would merely have to produce it together with a copy of the entry on which he relied.

The Court, having received a plaint, was to proceed to make inquiry by examination of the plaintiff or his agent, upon oath or affirmation, as to the merits, and was to record the substance of the examination. This provision, which was contained in Sec-

tion XIV, was highly desirable. The course was followed in criminal cases before Magistrates, and there appeared to be good reason for adopting it in Civil suits. It would enable the Judge to examine whether a plaintiff had a cause of action or not before he summoned the defendant, and would thus prevent a defendant from being unnecessarily dragged from his home upon a claim for which there might be no real foundation. If the Court should be satisfied that the plaintiff had a sufficient *primâ facie* case, the plaint would be filed together with any document produced in support of it. If, on the other hand, the Judge should consider that the plaintiff had not made out a *primâ facie* case, he would reject the plaint.

But to guard against the rejection of a plaint from an error of judgment, or a misconstruction of law, or any improper motive, Section XV provided that the Judge should record his decision, which should be reduced into writing in his own vernacular language, together with the reasons upon which it was founded.

He (Mr. Peacock) believed that there would be some difference of opinion in the Council upon the question whether, in every case in which a summons was issued, the defendant ought to be compelled to attend in person. The Select Committee thought that the personal attendance of a defendant should not be made compulsory, unless the plaintiff should require it, or the Judge should consider it necessary. If this were otherwise, the defendant would often be subjected to unnecessary inconvenience. He might know nothing of the claim preferred against him; or the whole case might turn upon the evidence of his own or the plaintiff's witnesses. In such a case, it would probably be unnecessary to compel him to attend. A vakeel or agent might appear on his behalf, who, by cross-examination of the plaintiff and of such persons as he might produce, or by his own showing, might satisfy the Judge that there was not sufficient reason to direct issues for trial by witnesses. If a summons were issued, a copy of the plaint must be annexed to it; and if the plaintiff should require the personal attendance of the defendant, and satisfy the Court that such personal attendance was necessary, or if the Judge of his own accord should require such personal attendance, the summons should contain an order for the defendant to appear personally in Court on a stated day; otherwise, the summons would order the defendant to appear personally, or by an agent duly authorized on his behalf.

The Select Committee had added another Clause to the Section, which would probably also prevent much inconvenience. The effect of the Clause was, that if there should be more than one defendant, the plaintiff or the Judge might require the personal attendance of any one or more of the defendants. Where two or more persons were joined as defendants in a suit, it did not of necessity follow that they all had personal knowledge of the matter in dispute. In the case of a firm, for example, only one of the partners might have attended to the transaction; and if that transaction were made the subject of a suit, it would be very hard to require the attendance of all the partners before the Court.

To prevent the inconvenience of personal attendance to a defendant living at a great distance from the Court, the Select Committee had also intoduced a Clause providing that personal attendance of a defendant should not be required if, at the time of issuing the summons, he were *bonâ fide* residing beyond fifty miles from the Court. By this Clause, a defendant living beyond fifty miles from the Court would not be prevented from attending if he pleased, or be relieved from giving his evidence as a witness: he would only be excused from attending in person. If the plaintiff should insist upon his evidence, the Court might direct that he should be examined under a commission.

The next provision in the Bill to which he would direct the attention of the Council, was contained in Clause 2 of Section XXVI. It was a new provision, and was penal in its nature; and he thought it probable that many suggestions would be made upon it when it came to be considered in Committee. The Clause was as follows:—

"Any Nazir who shall wilfully make any false statement in respect to the service or non-service of a summons, by any endorsement on such summons, and any person who shall wilfully make any false statement respecting the service or non-service of the summons, or shall personate any party to a suit, shall be liable, on conviction before a Magistrate, to be imprisoned for a term not exceeding one year, with or without hard labour, or fine, or both."

It was very important that the personation of defendants should be rendered a criminal act. He knew from information which he had received from a late eminent Judge of the Small Cause Court in Calcutta—Baboo Russomoy Dutt—that defendants were frequently personated with a fraudulent

intent. A man would take out a summons, and would cause it to be served upon some one who would personate the real defendant, and who, on the day of hearing, would come into Court and allow judgment to pass against him. The plaintiff would then take out a warrant of execution; and the first intimation that the real defendant would receive of the action, would be the execution of the warrant in his house. When this came to be discovered, the man personating the real defendant, instead of allowing judgment to go by default, would sometimes come into Court, and pretend to resist the action by setting up a defence in which he, of course, failed; and then, as before, the plaintiff would take out a warrant, and have it executed in the house of the real defendant, who had had no knowledge whatever of the existence of the action before that moment. Such a state of things ought not to be permitted; and the Select Committee were of opinion that the personation of a defendant, or a false statement regarding the service of a summons, should be rendered a criminal offence, punishable in a summary manner by a Magistrate.

If, on the day fixed by the summons, the plaintiff only should appear, the Court, upon proof that the summons had been duly served, or that the defendant had come to the knowledge of it, was to proceed to examine the plaintiff or his agent, and to consider any documentary or oral evidence adduced by him; and might either dismiss the case, or make an *ex parte* decree against the defendant.

If both plaintiff and defendant appeared, the Court was to call upon the defendant, or his agent, to state his defence, which would be reduced into writing in the vernacular language of the Judge; after which the Judge was to examine the parties, and might proceed to examine such of the witnesses of the parties as might be present; and either party or his agent might cross-examine the other. If any issue should result from the examination of the parties upon which it should become necessary to hear further evidence, the Court would declare and record such issues, and was to fix a convenient day for the examination of witnesses and the trial of the suit; and the trial was to take place on that day, unless there should be sufficient reason for adjourning it; in which case, the reason for the adjournment was to be recorded by the Judge. It appeared to him (Mr. Peacock) that this mode of proceeding would be very beneficial, inasmuch as it would protect witnesses from the serious inconvenience and hardship to which they were frequently exposed, of having to leave their homes and vocations, perhaps during the most busy times of the year,—a ryot during the harvest, or a manufacturer during the manufacturing season —for the purpose of attending a Court at a considerable distance, in which they were detained for many days; and in cases, too, in which it eventually turned out that their evidence was wholly unnecessary. Before any witnesses could be compelled to attend under this Act, the parties to the suit must be examined personally, unless their attendance were excused; in which case, they must send an agent to represent them, who would be liable to be examined in the same manner as his principal would have been. If the matter in dispute could be decided without the evidence of witnesses, the Judge would decide it at once; and thus the unnecessary attendance of witnesses, with all the consequent hardship, inconvenience, and loss of time, would, in many cases, be obviated.

The Select Committee had added a Clause to Section XXXIV, by which it was provided that a defendant, if he should rely on any document, must file it in Court at the time of making his defence, unless the document should be an entry in a book; in which case he must produce the book together with a copy of the entry; and the Judge, after comparing the copy with the original, and marking the original, was to cause the copy to be filed, and the book containing the original entry to be returned.

By Section XLVII,

"If a decree be made *ex parte*, and the party against whom such decree shall have been made, appear either in person or by agent, if a plaintiff within fifteen days from the date of the Court's order, and if a defendant within such time as the Court shall deem reasonable under all the circumstances of the case, not exceeding three months after the defendant has been arrested or some part of his property has been attached in execution of the decree; and shall show good and sufficient cause for his previous non-appearance; and shall satisfy the Court that there has been a failure of justice: the Court may, upon such terms and conditions as to costs, or otherwise, as it may think proper, revive the suit, and alter or rescind the decree according to the justice of the case, recording the reasons for so doing; and may also order restitution, if the decree shall have been executed. But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it."

The object of this provision was to prevent injury either to a plaintiff or to a de-

fendant who might be prevented from attending at the hearing by any unforeseen accident ; and it would also enable the Court to give relief to a defendant, if it should turn out that the summons had not been served upon him. The plaintiff or defendant, in either of these cases, would have the privilege of coming forward, within the time prescribed for each, and of explaining the cause of his absence ; and if he could satisfactorily account for his non-attendance and satisfy the Judge that there had been a failure of justice, he might obtain a re-hearing of the case and a revision of the decree. But no decree could be altered or reversed, until the party in whose favor it was made, should previously have had notice to appear and be heard in support of it.

One point, he (Mr. Peacock) had omitted to mention with reference to the subject of recording issues for trial. He found that, under the existing system, instead of raising merely the points to be determined, issues were recorded upon facts which were evidence only of the points to be determined. For example, if, in an action for goods sold, the defendant should state that on a certain day he went to the shop of the plaintiff accompanied by a friend, and in the presence of that friend paid the plaintiff for the goods, and that the plaintiff thereupon gave him a receipt, the point to be determined would be simply whether the defendant had paid the plaintiff for the goods ; in support of which the defendant would swear that he had paid the plaintiff, and would state all the circumstances connected with the payment, and would call his friend as a witness to corroborate him, and would also produce the receipt and prove that it was in the plaintiff's handwriting. Upon that evidence, the Judge would determine the issue, namely, whether he had paid the plaintiff or not. But under the present system, the Judge would probably record the following issues :—

First.—Whether the defendant went to the plaintiff's shop on the day named ?

Secondly.—Whether he was accompanied by his friend ?

Thirdly.—Whether he then paid the plaintiff for the goods ?

Fourthly.—Whether the plaintiff gave him a receipt ?

The third issue would be the only real point to be determined. The others would be raised upon matters of evidence only, and the defendant might prove that he had paid the money, although he might fail in proving the first, second, and fourth issues. He (Mr. Peacock) held in his hand the record of a case in a Moonsiff's Court. The suit was brought to recover possession, by foreclosure, of 6½ biggahs of land including a small pond and trees, valued together at Co.'s Rupees 60. The case stated by the plaintiff was, that the defendant and his son on the 22nd Aghun 1251 B. S., on the receipt of 20 Rupees 4 annas from the plaintiff, executed a *hubaluh* of the disputed land. The defendant, in his answer, entered into a long rigmarole story to show that he had not executed the deed, and, amongst other things, he made the following statement. He said—

"The plaintiff states in his petition of plaint that, on the evening of the 22nd day of Aghun 1251 B. S., your petitioner—meaning himself the defendant, and his son—having executed on a stamp paper, and in the presence of witnesses, a deed of absolute sale of 6½ biggahs of land including a small pond, &c., situate in Mouzah Nalooah, and measured and assessed in his name, have taken Co.'s Rs. 20-4 for the value of the same, and so forth. To this, your petitioner begs to answer that he, not being born in 1190 B. S. when Mouzah Nalooah was measured and assessed, how could the land be assessed in his name ? That on the 22nd of Aghun 1251 B. S., your petitioner was not at home. He was at that time employed as a servant at the lodging-house of Bhukto Ram Roy, a Mookteear attending at the Zillah Court of Hooghly, to feed and take care of his cows. Such being the case, how is it probable that your petitioner has, together with his son, on the evening of the 22nd day of Aghun, executed to the plaintiff a *kubalah* on account of 6 biggahs and 10 cottahs of land on receipt of Rs. 20 and 4 annas ?

"That the reason why the plaintiff has instituted this false suit against your petitioner and his son, is, that in Chyte 1253 B. S., when your petitioner's son went to Mome (or wax) Mehal, he took from one Chundee Bewa one Rupee on the promise of giving her 16 seers of honey ; that in Bysakh 1254, the said Chundee widow came to your petitioner's house with a man carrying an earthen pot ; and your petitioner gave her 12 seers of honey, and was unable to give her the remaining 4 seers ; that on his son Khurgessur going to the house of the said Chundee at the time when the plaintiff was at her house, a quarrel arose between them, and they abused each other ; whereupon, your petitioner went to the spot, and the plaintiff then, in a fit of anger, went on threatening in these words—'that, for the sake of this honey, he would make your Petitioner and his son leave their dwelling house.' That, upon this, your petitioner being about to beat the plaintiff and Chundee, they ran away. That the plaintiff, being a man of property, your petitioner and his son being very poor, the former, in order to please the said Chundee widow, who was his concubine, as well as to show his own power, on the 12th of Bhadro 1254 B. S., collected Chippee Peon, Imamodda Sirdar Chowkeedar, Paujoo Sirdar Chowkeedar, Kaoree Bagdee, and

Greedhur Bagdee, who, by order of the plaintiff, caught your petitioner and his son, and at first carried them to the Zemindarry Cutcherry, and afterwards the plaintiff carried them from thence to his house, and kept them in confinement till evening in the charge of other persons. The plaintiff then, with the said Chippee Peon, and others, came to your petitioner's house, and plundered rice, pieces of cloth, dhotee, chudder or sheet, and in short all that your petitioner had. That in the evening, the people in whose custody your petitioner was, having released him, he came home,—when, being informed of all that had happened, he made the matter known to several places; and, on the 18th Bahadro of the said year, he presented to the Magistrate of the 24-Pergunnahs a petition stating the aforesaid circumstances; when, being informed of this, and fearing that he would be severely punished for such offence, the plaintiff, through the intercession of some persons, got the matter compromised by giving 6 rupees to your petitioner, who, a poor man as he is, agreed to accept the same, and refrained from prosecuting the case, which was consequently struck off on default. That now your Petitioner is given to understand that the plaintiff, cherishing the same old enmity, has procured an old stamp paper, and fabricated a *kubalah* in the hope of being backed by tutored witnesses, and caused the notice of foreclosure to be issued."

It would be observed, Mr. Peacock continued, that the defendant had set up a number of circumstances to show that he never executed the deed, and the only point to be determined was whether or not the defendant had executed it. One of the issues recorded was—

"Whether the defendant, on receipt of 20 rupees 4 annas from the plaintiff, executed a *kubalah* of the disputed land including the small pond and trees ?"

This, he should have thought quite sufficient. But he found that in addition to that issue, there were nine others recorded; and amongst others, the following :—

"Whether Kurgheesur, son of the defendant Muddun, was at a different place on the 22nd Aghun 1251 B. S. ?"

"Whether the son of the defendant had taken one Rupee from Chundee widow on the agreement of giving her 16 seers of honey, and having given her 12 seers, was unable to give her the remaining 4 seers ?"

"Whether the plaintiff, having connexion with Chundee widow, a quarrel had arisen between him and the defendant; and whether the plaintiff had threatened the defendants ?"

"Whether on the 13th Bhadro, the plaintiff, by the assistance of his men, had caught the defendants and brought them first to the Zemindar's Kutcherry, and then to his own house; and, having confined them there, had come to their house in company with some men, and plundered their property ?"

"And whether the defendant Muddun, having brought an action in consequence in the Fouzdarry Court, the plaintiff had appeased him by giving 6 rupees, and the defendant had refrained from proceeding with the case; and whether this case had been instituted through the said enmity ?"

These nine issues were recorded because the defendant, instead of stating directly that he had not executed the deed, had entered into a rigmarole story to show that he had not executed it, asking in his answer such questions as the following—"Why should I have executed the deed ? How could I have executed it ?" He (Mr. Peacock) alluded to this case not for the purpose of bringing into ridicule the Moonsiff who directed the issues, but simply for the purpose of showing that no inconvenience could arise from requiring the Judge to record the points to be established by the parties respectively. He had heard it stated that the rule which required issues to be recorded, was productive of much inconvenience and difficulty. But he did not think there would be any difficulty, or any additional labour in simply recording the points to be established. If proper care were taken by the Judge to record the points to be determined, and upon which the decision of the cause depended, instead of recording the evidence to be adduced upon such points, he would have no difficulty or additional labour.

This was all that was required by Regulation XXVI of 1814, the precise effect of which did not appear to be correctly understood by some of the native Judges. He should be glad if they could have their attention directed to the point: for the rule, if correctly acted upon, must necessarily be attended with beneficial results. It compelled the Judge to ascertain the precise points upon which a correct determination of the case depended; and having done so, he was enabled to keep clearly before his mind the points to which the evidence was to be directed instead of being lost in the labyrinth of a long, verbose, and argumentative statement, such as that to which he had already adverted. A Judge was not competent to decide a case, if he were not competent to ascertain and state the points upon which his decision must depend. He (Mr. Peacock) should be sorry, therefore, to see the rule abandoned which required the Court to consider and record the points to be established by the parties respectively before it proceeded to take the evidence of the witnesses.

The next Section to which he would direct the attention of the Council was Section LVIII, which said—

"On the trial of any issues, the substance of the evidence of each witness shall be reduced into writing in the vernacular language of the Judge in the form of a narrative, by, or in the presence, and under the personal superintendence, of the Judge."

It was possible that there might be some objections to this provision in regard to the language in which the evidence should be taken down. The Section, as amended by the Select Committee, required that the language to be used should be the vernacular language of the Judge, and not of the Court. His Honorable friend, Mr. Mills, thought that it would be a salutary check upon the Judge if he were required to take down the evidence in his own hand and in his own vernacular language; and as there would be no appeal upon the facts, the Council would probably think that the notes of the evidence should be taken in the vernacular language of the Judge. It might be said that if the Judge were to take down the evidence at all, the trial of the case would be very much delayed; and that all that the Judge should be bound to do, was to sit and hear the evidence. But he (Mr. Peacock) thought that the Judge should be bound to take down the substance of the evidence upon which the case was to be decided. It was done by the Judges in England both in Civil and Criminal cases, though in the latter class of cases there was no appeal. It was also done by the Judges of Her Majesty's Supreme Courts of Judicature. Such notes would be necessary in the Small Cause Courts in the Mofussil, if any question should arise as to the improper admission or rejection of evidence; and they would also enable the Zillah Judges to exercise a salutary check over the Moonsiffs by supervising their proceedings. There could be no great difficulty in taking down the substance of the evidence. Mr. Mills, in his admirable Report upon Assam in 1854, in reference to the mode in which the Native Judges were in the habit of taking down evidence in criminal cases, made the following remarks, which would be found at page 35 of the Report:—

"In the administration of Criminal justice, the salutary provisions of Clause 6, Section II of the Assam Criminal Code, authorizing the taking of evidence *vivâ voce*, and the recording of the substance either in English or in Bengallee as the Commissioner may direct, in misdemeanors, thefts to the amount of 50 rupees, and offences for which Magistrates are empowered to pass sentence of imprisonment not exceeding six months, have been also greatly neglected. The Deputy Commissioner, Major Vetch, has very properly enjoined their enforcement; but the law leaves it to the option of the Assistant to adopt it or not, and with those who do not approve of it, it may become a dead letter. The Rule should be made imperative, and the examination should be recorded in English by Europeans, and in Bengallee by the Native Judges. I examined the note-books, and found the decisions carefully and accurately drawn up, and received no complaints against, or heard any dissatisfaction expressed regarding the working of the rule."

Mr. Buckland, the Register of the Sudder Court at Calcutta, in consequence, he believed, of Mr. Mills' Report, and at the instance of Mr. Mills, had sent for and examined the books of the Native Judges, in which the evidence was recorded; and he (Mr. Peacock) had the authority of that gentleman for stating that the notes appeared to have been taken with great care, accuracy, and conciseness.

He would now call attention to Section LXXIII. The following were the words of that Section;—

"If, at the time of a summary inquiry into a plaint under Section XIV of this Act, or at any subsequent stage of a suit, any question of law, or usage having the force of law, or the construction of a document affecting the decision of a case, may arise, on which the Court may entertain reasonable doubts, or which it may be requested by either party to reserve for the opinion of the Sudder Court, the Court may draw up a statement of the case, and submit it, with its own opinion, for the decision of the Sudder Court."

He thought it probable that this Section would give rise to some conflict of opinion. Honorable Members might differ as to whether, on the first institution of a suit, if a Moonsiff believed that the plaintiff had a sufficient cause of action, but entertained doubts upon a point of law, he should submit a case for the opinion of the Sudder Court, instead of summoning the defendant. They might also differ as to whether a Moonsiff should have the power of stating a case for the opinion of a superior Court at all; or, if he should have that power, whether he ought not to state it for the opinion of the Zillah Judge, instead of for the opinion of the Sudder Court. For his (Mr. Peacock's) own part, he thought that if doubtful points of law should arise in cases tried under this Act, it would be far preferable that they should be referred to the Sudder Court at once; because if the reference were made to Zillah Judges, there would, in all probability, be conflicting opinions recorded upon the same points of law.

There was another reason which influenced him in coming to this conclusion. Under the present system, if a suitor believed that a Moonsiff had decided a point of law erroneously, he appealed to the Zillah Judge; but the decision of a Zillah Judge upon a point of law was not final, and either party, whatever might be the amount in dispute, was entitled to a special appeal to the Sudder Court, and to obtain their judgment upon the point. Consequently, in effect, even under the present system, either party was entitled to the judgment of the Sudder Court, upon a point of law. By this Act, the question would be submitted directly for the opinion of the Sudder Court, without the necessity of first appealing to the Zillah Judge. By adopting this course, the delay of a regular appeal would be avoided; the time of the Zillah Judges would be saved; and no additional labour would be imposed upon the Sudder Courts. For these reasons, and more especially with the view of avoiding delay to suitors, and of securing uniformity in the decisions of the Courts, he thought it would be the better course to allow doubtful or difficult questions of law to be referred to, and determined by the Sudder Court in the first instance. He did not think it likely that the Sudder Courts would be over-burthened by cases of this description, whilst they would be relieved from all special appeals in cases tried under this Act. His Honorable and learned friend opposite (Sir James Colvile) would probably be able to state what proportion references of this nature from the Small Cause Court in Calcutta to the Supreme Court, bore to the whole number of cases tried. He (Mr. Peacock) believed that very few references were made to the Supreme Court in the course of a year; and he did not think it likely that many difficult points of law would arise, upon which it would be necessary to obtain the judgment of the Sudder Court in the class of cases to which this Bill applied.

Section XCV, as amended by the Select Committee, provided that

"The Court, at the instance of the judgment creditor, may, at any time after judgment, summon the judgment debtor and any other person whom it may think necessary, and examine him upon oath or affirmation touching the property of the judgment debtor, and his means of satisfying the judgment; and if such judgment debtor or other person, on such examination, shall wilfully misrepresent any matter on which he may be examined, he shall be deemed guilty of perjury, and shall be proceeded against, and, upon conviction, punished accordingly."

Mr. Peacock

It was well known that, in this country, it was difficult to obtain execution of a decree. It was too frequently the case that a judgment debtor contrived, either in anticipation of a decree against him, or as soon it was pronounced, to make away with his property by a *benamee* transfer, or some other fraudulent device. By the English Law, if a man became bankrupt or insolvent, any one of his creditors could summon him to attend before the Court, and examine him as to the mode in which he had disposed of his property, and in like manner any other person might be summoned and examined touching the property of the bankrupt or insolvent debtor. If the bankrupt stated with regard to any property, that he had transferred it to another person for a valuable consideration, that person might be summoned and examined as to all the circumstances of the transaction. He thought it was a mere mockery of justice to allow decrees of a Court of Justice to be evaded by the subtle devices to which resort was now so frequently had by fraudulent debtors; and he would therefore subject the debtor, as well as all other persons, to be summoned and examined touching the property of the debtor, and his means of satisfying the demand.

Section CX related to appeals. By Clause 1:—

"Every order and judgment passed under this Act, shall be final, and not open to review or appeal, except as herein provided."

"Clause 2nd.—Upon the application of a plaintiff, the Zillah Judge may order the admission of a plaint improperly rejected."

"Clause 3rd.—The Zillah Judge, or the Small Cause Court with the sanction of the Zillah Judge, may, upon the application of either party to the suit, order the rehearing of the suit upon the ground of the discovery of new evidence or matter material to the issue of the case, which the petitioner had no knowledge of, or could not produce at the time of trial."

"Clause 4th.—The Zillah Judge may, upon the application of either party, set aside a judgment of the Small Cause Court, and make such investigation into the merits of the case, and pass such decision thereon as to him may seem fit, for any of the following special reasons:—

"1.—The rejection of evidence which ought to have been admitted, or the admission of evidence which ought to have been rejected, if the Judge be of opinion that the admission of the evidence improperly rejected, or the rejection of the evidence improperly admitted, would have been likely to cause a different finding upon any material issue in the case."

By this last clause, the Zillah Judge would have power to grant a new trial only where he saw that the evidence improperly

rejected would really have altered the merits of the decision, or that the evidence improperly admitted had had that effect. In such a case, the Zillah Judge would not send back the case to the lower court for re-trial, but would himself take the evidence which had been improperly excluded, or reject the evidence which had been improperly admitted, and proceed to investigate the merits of the case, and pass a decision. The Select Committee considered that it would be safer to prescribe this course, than to leave the case to be re-heard by the Judge of the Small Cause Court by whom it had been heard in the first instance. Perhaps, however, some Hon'ble Members might think that it ought to be sent back to the Small Cause Court for re-hearing ; and if so, they would have an opportunity of being heard upon the question when the clause was considered in Committee.

By paragraph 2 of Clause 4 of the same Section, the Zillah Judge might set aside a judgment of the Small Cause Court, and investigate and decide the case himself, for

> " substantial defect in the procedure or investigation of a case in the Small Cause Court, or misconduct of the opposite party, or of the Small Cause Court, from which there may be strong probable grounds for presuming a failure of justice. But no decision of a Small Cause Court shall be reversed or altered, nor shall a re-hearing be directed in any case, upon the ground that the decision of any question of fact is contrary to, or not warranted by, the evidence duly taken in the case."

This would provide, to some extent, a check on the Judges of the Small Cause Courts ; for it would show them that their decisions would be open to review if they were guilty of any misconduct, or any substantial defect in procedure, or in the investigation of a case. But no decision could be reversed or altered, nor would a re-hearing be directed in any case, on the ground that the decision of any question of fact was contrary to, or not warranted by, the evidence.

This was an important question, upon which, probably, Hon'ble Members would entertain conflicting opinions. He thought that, as a general rule, a Judge who had not heard the witnesses or seen their demeanor whilst under examination, should not have the power of reversing the decision upon a question of fact of a Judge who had both seen and heard the witnesses. In this respect, there appeared to be some anomaly in the existing procedure. If a Zillah Judge, sitting as a Court of original jurisdiction, determined a question of fact after having seen and heard the witnesses, the Sudder Court might reverse his decision upon a regular appeal. But if a Zillah Judge, sitting as a Court of regular appeal, reversed the decision of a Moonsiff or other Court of original jurisdiction upon a question of fact, the decision of the Judge was final, though the lower Court had the advantage, which the Judge had not, of having heard and seen the witnesses, and observed their demeanor. In the former case, the Judge's decision was not opposed to that of any other Court. He had the advantage, which the Sudder Court had not, of judging of the truth or falsehood of the evidence from the deameanor of the witnesses : yet, his decision might be reversed by the Sudder Court. In the latter case, the Judge's decision was opposed to that of the lower Court. He had not the same advantage as the lower Court, of seeing and hearing the witnesses. Yet, the Sudder Court, which was in as good a position as the Judge to form an opinion as to the nature of the evidence, could not enter into the question, or decide which of the conflicting opinions was the correct one.

In Bombay, a Zillah Judge might refer a regular appeal from the decision of a Moonsiff to an Assistant Judge ; and the Assistant Judge might, upon such reference, reverse the decision upon a matter of fact. Formerly it was considered that an appeal would lie in such a case from the Assistant Judge to the Zillah Judge. He (Mr. Peacock) had seen it stated upon record that, while this system prevailed, nearly nine-tenths of the decisions passed by the Assistant Judges when they interfered with the judgments of the Native Judges, were themselves reversed or altered, and the decrees of the Native Judges affirmed. This was stated by Mr. Hutt, a Judge of the Sudder Court at Bombay in the year 1848, and it was also stated by the Government of Bombay in 1849 that, in point of fact, they were disposed to concur with Mr. Hutt. It was now distinctly laid down that no appeal would lie to a Zillah Judge from the decision of an Assistant Judge, in such a case. Thus, if an Assistant Judge reversed the decision of a Moonsiff upon a question of law, a special appeal would lie to the Sudder Court ; but if he reversed the decision of a Moonsiff upon a question of fact, no appeal whatever would lie either to the Sudder Court or to the Zillah Judge. The Zillah Judges might, and still did, refer appeals from the Moonsiffs to the Assistant Judges for decision. The only difference between the law now

and the law as it existed in 1848 was, that the decisions of ths Assistant Judges were final upon matters of fact, so that these very Judges, nine-tenths of whose decisions were reversed when they interfered with the decisions of the Moonsiffs, were now allowed to reverse the decisions of the Moonsiffs upon questions of fact, and their decrees were final. It followed, therefore, that, instead of its being an injury to the people, it would be a great benefit to them, to take away the power, which was now vested in the Assistant Judges at Bombay, of interfering with the decisions of the Native Judges upon questions of fact. The Assistant Judges in Bombay might have improved since 1848 ; but he could not think it likely that they could have so far improved as to render it desirable to continue an appeal upon matters of fact to Judges whose decision was now final, but of whose decisions, when they were subject to appeal, nine-tenths were reversed or altered when they interfered with the decision of the Native Judges. If nine-tenths of the original decisions were upheld upon an appeal from an appellate Court by which they were reversed, it was impossible not to see that the appellate Court was worse than useless.

By Sections CXVII and CXVIII, the Executive Government in each of the Presidencies would have power to extend the summary jurisdiction under this Act of the Moonsiff's Court in any district to an amount not exceeding 300 rupees, and to invest any other Civil Court of the East India Company now existing, or which might hereafter be established with the sanction of the Governor General in Council, with the summary jurisdiction of a Small Cause Court under the Act for the adjudication of claims to an amount not exceeding 500 rupees. This would enable the Executive Government to create Small Cause Courts in any districts in which they might be necessary, with a jurisdiction over claims to the same amount as those now cognizable by the Small Cause Courts in the Presidency towns. The jurisdiction, however, of Moonsiffs could not be extended beyond 300 rupees, the amount of their ordinary jurisdiction. He thought it right that the Executive Government should have power to extend the summary jurisdiction of a Moonsiff's Court to 300 rupees in any particular town or district in which it might be found desirable to do so, and that it should also have power to invest a Sudder Ameen or Principal Sudder Ameen with jurisdiction as a Small Cause Court to the amount of 500 rupees or to establish new Courts where they might be found necessary. The Bill, as altered in Select Committee, gave every Moonsiff's Court the jurisdiction of a Court of Small Causes for suits to the amount of 50 rupees at once ; but left it to the Executive Government to extend that jurisdiction in particular districts or towns to 300 rupees in the case of Moonsiffs, and to 500 rupees in the case of other Judges, according to the wants and necessities of the inhabitants.

Having gone through some of the principal provisions of the Bill which related to procedure, he (Mr. Peacock) would now proceed to call the attention of the Council to some of the earlier Sections.

By Section II, all claims for money due, whether on bond or other contract, or rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand did not exceed in amount or value the sum of 50 rupees, were to be tried in a Court of Small Causes except in certain cases.

The first of the cases excepted, was—

> " On balance of partnership account, unless the balance shall have been struck by the parties, or their Agent."

The object of this provision was apparent. If a Court of Small Causes were empowered to try whether 50 rupees were due on the balance of a partnership account, it might have to enter into accounts involving items amounting to a lakh of rupees or upwards. The Select Committee had, therefore, thought that it would be better not to allow the investigation of partnership accounts in a Court of Small Causes, but to leave the parties to settle their dispute in such a case in the ordinary Courts.

The second exception provided for by the Section, was—

> " For a share or part of a share under an intestacy, or a legacy or part of a legacy under a will."

This exception had been introduced upon the same principle as the former one ; for, in order to ascertain whether the plaintiff was entitled to be paid a sum of 50 rupees as a legacy or as a share under an intestacy, it would be necessary to take an account of all the liabilities of the testator or intestate, which might involve an inquiry into questions of much larger amount than those which could be properly entrusted to a Small Cause Court.

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The third exception was—

"For any claim relating to arrears or exactions of rent, or to alleged illegal distraints for rent, for which claim, or for any part whereof, a summary suit could have been brought before an Officer of Government in the Revenue Department, if commenced in due time."

This clause related to those cases which might now be tried in a summary suit before Officers of Revenue; namely, for arrears of rent of land, or distraints for, or exactions of, rent for land; but for the rent of a shop or of a house, an action might be brought in a Small Cause Court, under this Bill.

The fourth exception was—

"For the recovery of damages on account of alleged personal injury, unless special damage of a pecuniary nature shall have resulted from such injury."

There had been a difference of opinion between Mr. Mills and the other Members of the Select Committee as to whether actions should be permitted under this Act for recovery of damages on account of personal injuries. Mr. Mills thought that, if they were permitted, all sorts of petty and frivolous actions would be brought for assault, libel, slander, &c., which would be extremely inconvenient. The other Members of the Select Committee, however, were of opinion that, where a personal injury was attended by special damage of a pecuniary nature, the person injured ought to have his remedy in a Court constituted under this Act. Suppose, for example, that a man were run over by a carriage; that he had to pay 40 rupees to a doctor; and that he was willing to limit his claim for compensation to 50 rupees. There seemed to him (Mr. Peacock) to be no reason why he should be driven to a regular suit to recover the 50 rupees.

He (Mr. Peacock) was glad to say there now remained only two questions to which it was necessary to direct the attention of the Council.

The first of these was, whether this Act should continue the present system of stamps upon the institution of suits. The Select Committee were of opinion that so long as the system of levying a tax on legal proceedings was continued throughout the Presidencies, including the Small Cause Courts in the Presidency towns, it was not advisable to abolish it altogether in the Small Cause Courts in the Mofussil.

The majority of the Committee were, however, in favor of altering the scale of stamp duty laid down in the original Bill; and probably the question would be mooted in Council whether the stamp duties should be altogether abolished in respect of suits in the Small Cause Courts, or whether they should be charged according to the existing scale, or according to the lower scale given in the original Bill, or according to the still lower scale recommended by the Select Committee. The Stamp Laws at Bombay differed materially from those of the other two Presidencies. The Stamp Laws at Bombay were altered in 1827; and at present, actions for sums not exceeding 1 Rupee were exempt from stamp duty. He, certainly, was not inclined, by extending this Bill to Bombay, to impose upon suitors there a higher tax for justice than they had to pay at present; and, therefore, if the Honorable Member for Bombay should feel it his duty, for the protection of suitors in that Presidency, to move an amendment in the Bill with the view of allowing actions for sums not exceeding 1 Rupee to be instituted without any stamp duty, he (Mr. Peacock) would cordially support that motion. Indeed, if necessary, he should himself be prepared to make a motion to that effect. He also thought it would be right that actions of that class in Bengal and Madras should be placed on the same footing as those in the Presidency of Bombay.

The scale laid down in the Bill as amended in Select Committee, applied only to cases where the claim did not exceed 50 rupees. It did not apply to the summary jurisdiction of 300 rupees which the Executive Government might extend to Moonsiffs in particular districts; or to the summary jurisdiction of 500 rupees with which it might invest any Civil Court of the East India Company already existing, or to be established. The Select Committee had thought it right that, in the latter cases, the stamp duties charged should be according to the existing rates; because, in general, the extended jurisdiction would be given only to large cities and towns, where the majority of suitors would be merchants, shop-keepers, and other classes of persons, who were better able to afford the higher amount of stamp duty than the inhabitants of the rural districts.

The principle upon which the scale in the amended Bill had been prepared, appeared to him to be as just and reasonable as it could be. The Lieutenant Governor of Bengal recommended that the use of stamped paper in the proposed new Courts, should be abandoned altogether. But that would scarcely be right so long as legal proceedings were subject to a tax throughout the three

Presidencies, including the Small Cause Courts in the Presidency towns. Besides, if that portion of the Government revenue which was derived from stamps on legal proceedings were given up, the loss must be made up in some other manner. Mr. Dunbar, lately one of the Judges of the Calcutta Sudder Court, considered the value of the stamp paper according to the scale laid down in the original Bill, to be generally too high, and proposed that the rates there given should be reduced by one-half. The majority of the Select Committee had greatly reduced them. It could scarcely be said that the present stamp laws, so far as they related to the levying of fees upon legal proceedings, was based upon any principle which could be defended. But that was a question which ought to be considered separately, and not in connection with the present Bill, which related merely to Small Cause Courts. In the scale given in the amended Bill, the majority of the Select Committee had adopted the principle of making the stamp duty 5 per cent. on the highest amount in each step of the scale. Thus :—

Stamp Duty.

	Rs.	As.	Pie
"If the amount of debt, or damage, or the value of property, claimed, shall not exceed 5 rupees, ...	0	4	0
" If the same shall exceed 5 rupees, and not exceed 10 rupees, ...	0	8	0
" If the same shall exceed 10 rupees, and not exceed 15 rupees, ...	0	12	0
" If the same shall exceed 15 rupees, and not exceed 20 rupees, ...	1	0	0
" If the same shall exceed 20 rupees, and not exceed 25 rupees, ...	1	4	0
" If the same shall exceed 25 rupees, and not exceed 30 rupees, ...	1	8	0
" If the same shall exceed 30 rupees, and not exceed 35 rupees, ...	1	12	0
" If the same shall exceed 35 rupees, and not exceed 40 rupees, ...	2	0	0
" If the same shall exceed 40 rupees, and not exceed 45 rupees, ...	2	4	0
" If the same shall exceed 45 rupees, and not exceed 50 rupees, ...	2	8	0"

It appeared to him that, if it were considered that cases under this Act for sums not exceeding 50 rupees should be subject to the Stamp Laws at all, this was as fair and reasonable a scale as could be well adopted.

The only other question to which he should advert, was, whether the Act should at once be introduced throughout the three Presidencies, giving to every Moonsiff's Court in the country a summary jurisdiction as a Court of Small Causes to the extent of 50 rupees, or whether it should be left to the local Governments to determine what particular Moonsiff's Courts should be invested with such jurisdiction. As the Bill was originally framed, the Executive Governments were authorized to invest any Moonsiff's Court with the jurisdiction of a Small Cause Court in respect of claims not exceeding 100 rupees; but if a Moonsiff's Court were not so invested with jurisdiction, it would not have the power to exercise it in any case. The majority of the Select Committee were of opinion that the new jurisdic- should be extended uniformly, and that every Moonsiff's Court should be a Small Cause Court for claims not exceeding 50 rupees in the first instance. It had been objected to this, that every Moonsiff was not competent to exercise such a jurisdiction, and that he could not safely be trusted with it. But it appeared to him that if a Moonsiff was capable of trying causes to the extent of 300 rupees under the law as it now stood, he must be equally capable of doing so under the law which it was proposed to introduce. If a Moonsiff could extract the kernel of a case from the mass of shell with which it was surrounded under the present system, he would surely be able to do so under the simple mode of procedure proposed to be adopted. Under the present system, the mode of procedure was somewhat similar to that which formerly prevailed in the Court of Chancery in England. There was first a plaint, then an answer, and then a replication: and in Bombay, he believed the pleadings might be extended to a rejoinder. In the case to which he had before referred, in which a suit had been instituted in a Moonsiff's Court for the foreclosure of 6½ beegahs of land valued at 60 rupees, the record occupied 84 sheets of foolscap paper. If instead of all this, the simple mode of procedure proposed by the Bill before the Council were introduced, he believed that the Judges would be relieved from much difficulty and labour; and that the parties, and those who were entitled to as much, if not to a greater amount of consideration—namely, the witnesses—would be greatly benefited. He was, however, bound to state that his Honorable friend, Mr. Mills, for whose judgment he had great respect, and whose opinions upon these matters, owing to his great experience, were entitled to much deference, considered that it would not be safe to invest every Moonsiff's Court with the new jurisdiction even to the extent of 50 rupees. The Lieutenant Governor of Ben-

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gal had also expressed a similar opinion. It must be admitted that, to some extent, the right of appeal which existed at present was restricted by the proposed Bill; but it should be borne in mind that in 1816, in the Presidency of Madras, district Moonsiffs generally were invested with a jurisdiction in causes to the amount of 20 rupees, without any appeal at all; and the result had been so satisfactory that the Sudder Court and the Government of that Presidency concurred in recommending that the jurisdiction should be extended to 50 rupees. Now if the Moonsiffs in Madras could in 1816 be safely entrusted with a final jurisdiction in claims not exceeding 20 rupees, and if that jurisdiction could now be safely increased to 50 rupees under the complicated procedure incident to a regular suit, he (Mr. Peacock) did not think that there could be any difficulty or danger in allowing them to exercise the jurisdiction proposed to be vested in them by the present Bill; and if the Moonsiffs could be trusted with that jurisdiction in Madras, why should not the Moonsiffs in Bengal and Bombay be equally trusted? He had been informed, only the other day, by a very good authority, that there were a number of persons carrying on business between Calcutta and Barrackpore on the banks of the river who were in the habit of employing men to make gunny bags, and of making advances in money on account of the work to be done. After the Small Cause Court in Calcutta was established, these persons, when making advances, were in the habit of going within the jurisdiction of that Court, in order that, in the event of their being compelled to take legal proceedings, they might be spared the necessity of instituting a suit in the Mofussil Courts. If men would take the trouble of going from their own houses and places of business for the purpose of entering into contracts in a place in which a Small Cause Court existed, it proved most conclusively that the present Mofussil Courts were not adapted to the wants and habits of the people, and that a more speedy and summary procedure was necessary.

The argument against conferring such a jurisdiction upon all the Moonsiffs at once, was, that they could not be safely trusted with it. If this argument was good as regarded the Legislative Council, it must also be good with respect to the Executive Governments. If the whole of the Moonsiffs could not be safely trusted with this jurisdiction by the Legislative Council, they could not be safely trusted with it by the Executive Governments. His (Mr. Peacock's) answer to this argument was, if the Moonsiffs were not fit to be trusted with the proposed jurisdiction, they were not fit to be trusted with the jurisdiction which they now enjoyed, and they ought to be removed. Suppose a summary jurisdiction under the provisions of this Act were conferred by the Executive Government upon the Moonsiff's Court in district A, but not upon the Moonsiff of the adjoining district B. Suppose, also, that an inhabitant of district B, were to petition the Executive Government to confer a similar procedure on district B. He would say:

"My friends and neighbours in district A can sue for claims under 50 rupees by paying a much smaller amount of stamp duty, and can recover their claims in much less time and with much less trouble than I can. I am forced, whenever I enter into a contract for a sum not exceeding 50 rupees, to go into district A, in order to avoid the necessity of suing upon it in my own district. Do, pray, give district B, in which I live and carry on my business, a Small Cause Court also."

What would be the answer that the Executive Government could make to this petition? Why, if the argument against the general extension of this Act was to be used, they must say:

"We approve of the summary procedure which we have conferred upon the Moonsiff in district A. We would willingly give your district a Small Cause Court. It works well in district A; but the Moonsiff in your district is incompetent to exercise the jurisdiction, and we cannot trust him."

Now *could* that be said? *Ought* it to be said? Ought it to be said that a Judge, who was trusted to decide claims to the amount of 300 rupees under a system which required a record such as that to which he had before alluded, was not competent or could not be trusted to decide cases under a system very much more simple? Would not such an answer tend to throw discredit upon the whole of that class of the civil institutions of the country? Would not the petitioner have a fair right to reply:

"Then, give us a competent Moonsiff?"

Whatever objections might be urged on the score of intelligence, discretion, or honesty to any Moonsiffs being invested with the new jurisdiction, would be equally objections to their being allowed to continue in the exercise of the jurisdiction with which they were now entrusted. If a Moonsiff should be found unfit to try causes under this Act,

it would be better to get rid of him altogether, and to supply his place by a qualified officer. It certainly appeared to him that the jurisdiction proposed by this Bill to the extent of 50 rupees should be extended to the Moonsiffs generally ; and he trusted that, after a short trial, it would be found that it might be safely extended to cases of much higher amount. The Lieutenant Governor of the North-Western Provinces, if he (Mr. Peacock) was not mistaken, proposed to give every Moonsiff's Court a Small Cause Court jurisdiction to the extent of 20 or 25 rupees at once.

SIR JAMES COLVILE observed, what the Lieutenant Governor of the North-Western Provinces said, was that he

> "would wish to see the local Governments empowered to assign a limited Small Cause jurisdiction, not at first exceeding a value of 20 or 25 rupees to the Courts of all the Moonsiffs, as these Officers might be thought worthy (as a great majority of them would, doubtless, now be) of being recommended for the exercise of such special authority by the Sudder Court."

MR. PEACOCK said, he would not lay any stress upon the opinion of the Lieutenant Governor of the North-Western Provinces; but, at any rate, it showed that a great majority of the Moonsiffs in those Provinces might be safely trusted with the proposed jurisdiction to the extent of from 20 to 25 rupees.

Mr. Norton, the Government Pleader in Madras, proposed to give the Moonsiffs in that Presidency a jurisdiction to the extent of 100 Rupees, upon the principle of not allowing any appeal from their decisions. Now, if they could be trusted with a jurisdiction like that, they could as safely be trusted with a jurisdiction to the extent of 50 rupees under the proposed Bill.

The Government of Bombay, also, would give them a jurisdiction to the extent of Rupees 20.

But whether the amount of the jurisdiction should be 20 rupees or 50 rupees, he certainly thought that the Legislature ought to give a jurisdiction to the same extent to the whole body of Moonsiffs. He thought that what was given to one, ought to be given to all, except in particular districts, where the Executive Government might see occasion, with reference to the extent of the transactions current among the people, to confer a jurisdiction of 300 rupees, to be exercised by Moonsiffs of a superior grade, or a jurisdiction of 500 rupees to be exercised by Sudder Ameens or some other Judicial Officer of higher standing.

He trusted that the Council would pause before it struck out of the Bill the clause which made all the Moonsiff's Courts in the three Presidencies Courts of Small Causes, in order to substitute a clause that would leave it to the Executive Governments to give a Small Cause jurisdiction to particular Moonsiffs only. The Bill before the Council had been framed after much deliberation, and with great care. Every Member of the Council had, no doubt, carefully and deliberately considered the several provisions of this important measure. He had no doubt that the experience and knowledge of Honorable Members would suggest to their minds many improvements in the Bill, and that they would propose them in Committee of the whole Council. He should be glad to support any amendment which would improve the Bill. He hoped and believed that the Bill, if passed, would be found to work well. He could truly say, on behalf of the Members of the Select Committee, and he was sure that the Honorable Member on his left (Mr. Eliott) would bear him out in the assertion, that the Bill had received their utmost care and attention, in the earnest desire that it might be found effectual for the purpose for which it was intended, and that it might confer important benefits upon the people.

With these observations, he begged to move that the Council resolve itself into a Committee upon the Bill.

SIR JAMES COLVILE said, he should avail himself of this opportunity to make the few observations which he had to offer upon the general principle and scope of the Bill ; and he thought there was the more excuse for his adopting this unusual course, because this was the first time that the Bill had come before this Council. If he was not mistaken, it was one of those measures which had been transferred from the former Legislature ; and whether that was so or not, there could be no doubt that the alterations which were proposed by the Select Commitee, made it substantially a new Bill.

Whatever difference of opinion there might be in the Council with regard to the merits of the measure, there could, he thought, be none upon the last point on which the Honorable and learned Member opposite (Mr. Peacock) had touched—namely, the extreme care, and he would add the great ability, which the Members composing the Select Committee had bestowed upon the Bill, and the degree to which this Council was indebted to them for their labours. If any doubt did exist as to the merits of the

measure, they were caused by the peculiar circumstances of the country, by the great complexity of the question, and by the difficulty of introducing one uniform measure into the three Presidencies.

The first question of principle which arose upon this measure, was—whether it was desirable to make that change which the majority of the Select Committee proposed to make ; namely, to constitute every Moonsiff's Court in the country a Small Cause Court at once, with a jurisdiction limited to 50 rupees ;—or whether it was desirable to leave it to the Executive Governments to confer such a jurisdiction upon certain officers selected at their discretion, with power to enlarge it for any particular Court or district, and, with the sanction of the Governor General in Council, to erect new Courts. He must confess that the question was one upon which he found it extremely difficult to come to a conclusion very satisfactory to his own mind ; and in whatever form the Bill might leave the Committee of this Council, supposing the changes which the Select Committee recommended should be introduced, he hoped that it would be published, in order to invite the opinions of the public upon its provisions. He, certainly, had reasoned himself into the belief that the wisest and best course would be to give at once to all Moonsiffs without exception the jurisdiction which the majority of the Select Committee proposed to give them. At the same time, however, he felt no shame in confessing that his confidence in the soundness of this conclusion had been shaken by a note which he had received that morning from a native gentleman, than whom no one was better acquainted with the qualifications of the Native Judges of Bengal, and who expressed a clear opinion against this part of the measure. Therefore, before the Bill was finally passed into law, he should wish that the public voice was heard upon its provisions. Notwithstanding the communication to which he had alluded, however, his present impressions were in favor of passing the Bill, with such amendments as the Council might think it necessary to make through the Committee. All he desired was, that after it should have been settled in Committee, and before it was passed into law, it should be permitted to go forth to the world.

It might further be a question whether this should be a general measure for all the three Presidencies. When he looked at the opinions which had been expressed by the different Governments, and by different Courts, there undoubtedly seemed to him to be considerable difficulty in determining upon the degree in which Moonsiffs could be trusted in each Presidency. In Madras, the Government, the Sudder Court, and the Government Pleader, Mr. Norton—a gentleman of considerable authority on such points, and certainly with no prejudices in favor of Mofussil tribunals—were disposed to give a final jurisdiction to Moonsiffs—the Government and the Court, to the amount of 50 rupees ; Mr. Norton, to the amount of 100 rupees. In Bombay, the Sudder Court proposed, and the Government would sanction, a jurisdiction without appeal to the amount of 25 rupees. In Bengal, the capacity of the Moonsiffs generally to exercise even the powers proposed to be conferred upon them by this Bill, was questioned. We, certainly, were not in the habit of thinking that things in Bengal were inferior to things of the same kind in the other Presidencies. He had no reason to suppose that the Moonsiffs of Bengal were, as a class, inferior in attainments or integrity to Moonsiffs in the other Presidencies ; but it might be that there was in this Presidency a greater jealousy than existed elsewhere of judicial power, at least when exercised by Native officers. On the other hand, there were, to his mind, considerable objections to the mode of action which he understood the Lieutenant Governor of each division of the Presidency of Fort William to recommend. He said *both* the Lieutenant Governors, because, as he read the letter from the Government of the N. W. Provinces, he understood the Lieutenant Governor of Agra to recommend the grant of a jurisdiction limited to 20 rupees, not to all Moonsiffs, but to those Moonsiffs only whom the Executive Governments might think worthy of being entrusted with it. He (Sir James Colvile) could find no answer satisfactory to his own mind to the objection to such a plan which had been suggested by the Honorable and learned mover of the Bill. If, indeed, the condition of the country were such—and that was a position taken by the Native gentleman to whom he had alluded before—that Courts of Small Causes were not required except in districts where there were great marts, or in large provincial towns, it would all be very well to leave the Executive Governments to determine what particular districts or towns should have Small Cause Courts. But that there was no necessity for Small Cause Courts in every district, was a conclusion to which he had the greatest

difficulty in coming. On last Saturday, the Council had been told of cases instituted in Moonsiff's Courts for sums under one rupee; and he was unable to see why the inhabitants of a small rural village should not, equally with those of a large town, have a cheap and expeditious mode of trying their disputes, a vast majority of which, he apprehended, arose out of matters which would be properly cognizable by Small Cause Courts, if such Courts could be established. He had, therefore, no doubt that it was desirable, if it was practicable, to introduce the measure generally; and if that was so, he could, as he had said before, see no sufficient answer to the objection, that by conferring a Small Cause jurisdiction on certain Moonsiffs selected at discretion by the Executive Governments, and withholding it from others, you would establish a most invidious distinction between judicial officers of the same class. Nor would the evil rest there. No doubt, the jurisdiction now exercised by Moonsiffs was a perfectly distinct thing from the jurisdiction which they would exercise under this Bill; for there was an appeal upon facts in the one case, and there would be none in the other. Still, if the Executive Government should say that particular Moonsiffs were incompetent to exercise a Small Cause jurisdiction, while others were invested with such a jurisdiction, would it not proclaim that there were Moonsiffs exercising the ordinary jurisdiction in whom it had no confidence? It, therefore, did seem to him that it would be far better and more judicious not to give a Small Cause jurisdiction to any Moonsiff's *eo nomine* at all, than to establish a distinction between judicial officers, which would not only be a severe reflection upon those who were denied the new powers, but would destroy the confidence of the people in their ability to exercise the jurisdiction which they were permitted to retain. For his own part, as at present advised, he was in favor of giving the limited jurisdiction proposed by the Bill to all Moonsiffs without exception; and he should, therefore, prefer going into Committee upon the Bill, hoping, however, that, as he had said before, after it should have been settled there, it would be published, as amended, for the information and the opinions of the public.

The next grave question of principle to consider, was—how far the jurisdiction proposed to be given, should be without appeal? That, again, led him to desire that the Bill should be published, after it should have passed through Committee. The Governments of two of the Presidencies were strongly of opinion that there should be no appeal upon facts; and, certainly, if the Legislature could ensure that justice would be done by Moonsiffs deciding the class of cases which would come before them, it would be hard upon successful suitors in these Courts to put it within the power of litigious opponents to subject them to the inconvenience, delay, and expense of appeals. Moreover, if the appeal to the Zillah Judges, as retained by this Bill, were taken away, the proceedings would be materially shortened, since it would not be necessary for the Judge below to take down the evidence so fully and particularly in order that the Zillah Judge, who would have the power to set aside his judgment if he had improperly admitted or rejected evidence, might have the means of seeing what he had admitted, and what he had rejected. For his (Sir James Colvile's) own part, he was very much in favor of allowing the jurisdiction to be final, if not in respect of claims amounting to 50 rupees, at all events in respect of the smaller cases that would come before the Moonsiffs as Small Cause Judges.

He wished to deal as briefly as he could with matters of detail, and would proceed to the 3rd Section, which fixed the personal jurisdiction of the Court. It said that any Court constituted under the Act should

"be competent to hear and determine all claims cognizable by such Courts when the cause of action shall have arisen, or the defendants, or one of the defendants, at the time of the commencement of the suit, shall reside as a fixed inhabitant, or shall carry on his business, within the limits of such Court. Provided that, if an action be brought against several Defendants, of whom one shall be resident as a fixed inhabitant, or shall carry on his business within the limits of the Court within the jurisdiction of which the cause of action shall have arisen, the action shall be brought in that Court."

The jurisdiction given here was considerably larger than that given to the Small Cause Court of Calcutta, the personal jurisdiction of which was only over parties

"who dwell or carry on their business, or work for gain within the district of the Court at the time of the bringing of the action, or who did so dwell, or carry on their business for work or gain therein within six months before the time of bringing the action for causes of action which arose within the same time."

To be subject to that jurisdiction, therefore, the party sued must dwell or carry on his business within the district of the Court at the time the action was brought, or must

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have done so within six months previously. The English County Courts Act said, that a summons from a Court under the Act

"may issue in any district in which the defendant, or one of the defendants, shall dwell or carry on his business at the time of the action; or, by leave of the Court for the district in which the defendant or one of the defendants shall have dwelt, or carried on his business at some time within six calendar months next before the time of action brought, or in which the cause of action arose, such summons may issue in either of such last-mentioned Courts."

So that a creditor could sue a debtor in the Court of a district of which the debtor was not a resident at the time, but where he had lived within six months previously, or where the cause of action had arisen; but he could do so only by leave of the Court of that district. Section III of the Bill before the Council, therefore, differed from the personal jurisdiction of the Small Cause Court—firstly in that it gave the Court of a district jurisdiction over a party sued whenever a cause of action within its cognizance should have arisen, irrespective of the place of his residence. He (Sir James Colvile) was not disposed to oppose that, because, although it had its inconveniences, yet, if a person contracted for the purchase of goods in one district, had the goods delivered to him there, and chose to go away to another and distant district without paying for them, very great hardship would probably ensue if the seller were not permitted to sue him for the money where the contract was made, but were required to follow the purchaser to the district to which he had removed himself, and bring his action there. He (Sir James Colvile) observed that the Lieutenant Governor of the North-Western Provinces recommended that the English rule should be followed, and that the special leave of the Court should be made requisite for the admission of a suit in the place where the cause of action arose against a defendant not resident there. No doubt, his Honor justly remarked, that the reasons for this caution were much less strong in England than in this country where the districts were so very much further removed from each other than in England. But in truth this Bill provided sufficiently in another way against the risk of harassing a distant defendant by means of a vexatious suit, since it required a plaintiff, before he obtained a summons, to satisfy the Judge that he had a sufficient cause of action.

The Lieutenant Governor of the North-Western Provinces had, however, also suggested that the Section should be so altered that, if a person preferred a claim against several defendants, the Court should have jurisdiction against all, if any one of them was residing at the time within the local limits of that jurisdiction; and the Bill had been altered in the Select Committee in accordance with that suggestion. Now, it was to that alteration that he (Sir James Colvile) objected. To test its consequences, he would put, as he had a right to do, an extreme case. A cause of action might arise at Chittagong between a tradesman and two other men. Before payment, one of the co-contractors might go to Delhi, and the other to Cuttack. By the Section as it stood now, the tradesman would have the power of suing at the Court in Cuttack not only the man whom he found in that district, but also the man who had gone to reside permanently at Delhi. This, it appeared to him (Sir James Colvile), would be very unreasonable; nor was there any necessity that the plaintiff, if it were for his advantage to sue at Cuttack, should join both the defendants in his action; since the Bill provided by another Section that a plaintiff should not be bound to join in an action all the parties against whom he had a joint demand. If he wished to sue both, he would have the power of doing so in the district in which the cause of action arose. Therefore, he (Sir James Colvile) should prefer to see the 3rd Section restored to its original form.

On the general machinery for the working of the Act, he should say only this. When he read it, he had some doubts, which were not yet removed, whether it was not a little too cumbersome—whether there were sufficient reasons for making a plaintiff come to Court three times before his case should be decided. In most Courts having summary jurisdiction, a plaintiff took out a summons; the defendant attended on the day named in the summons, with his witnesses; the plaintiff also appeared, with his witnesses; and the Court tried and determined the issue at once. By this Bill, there would be a preliminary inquiry by examination of the plaintiff as to the merits of his plaint. There was, undoubtedly, much to be said in favor of this provision, as a check on vexatious actions. Then, if a summons issued, there would be, on the day named in it, an examination of the plaintiff and defendant alone—unless the witnesses of the parties should voluntarily come forward to give their evidence on the same occasion. If, on the result of this proceeding, the Judge should be unable to determine the cause, he was to direct and

record the issues for trial, and to issue subpœnas for the attendance and examination of the witnesses on another day, when the plaintiff and defendant must again appear. It was to the expediency of this second proceeding that he (Sir J. Colvile) entertained the greatest doubt. It was, no doubt, supposed that it might prevent the necessity of bringing witnesses from their homes ; that the cause would be settled by the examination of the parties. But any one who confidently expected that the necessity for the third proceeding would be obviated by extracting from the defendant an admission of the plaintiff's demand, must be very imperfectly acquainted indeed with the feelings and habits of suitors, at least of the lower orders, in this country. It might be taken for granted that, in the great majority of cases, the third step which he had mentioned would be necessary ; and then, again, if, on the day fixed for the trial, there should be a pressure of other business in the Court, the Judge might order an adjournment. To him (Sir James Colvile), it appeared that this procedure and these repeated proceedings would entail unnecessary inconvenience on the parties, and prove an unnecessary tax on the time of the Judge ; but remembering that he himself had but little knowledge of the mode of proceeding in Mofussil Courts, he should not set his impressions regarding these questions against the judgment of those who had greater experience, and larger means of information.

Another point to which he would advert, and upon which the native gentleman to whom he had before referred entertained a very strong opinion, but in which opinion he (Sir James Colvile) did not concur, was the supposed inexpediency of allowing a Moonsiff, as a Judge of Small Causes, to refer points of law to the Sudder Court. His correspondent said that, if the permission were given, there would be some 800 references in the course of the year ; but looking at the amount and nature of the suits that would come before the Moonsiffs, he (Sir James Colvile) thought that even if they should make idle references upon points of law, they would be references which the Sudder Court might dispose of without much expenditure of time. With regard to the references made from the Small Cause Court of Calcutta to the Supreme Court, to which his Honorable and learned friend (Mr. Peacock) had adverted, he (Sir James Colvile) did not speak confidently, but he believed that the average number was 5 or 6—certainly not above 10—in the year. No doubt, that afforded no certain criterion, because suitors in the Small Cause Court in Calcutta had greater confidence in that tribunal than suitors in the Mofussil probably would have in the Small Cause Courts there, and were also less addicted to the practice of appealing. On the other hand, the references which came up to the Supreme Court were almost entirely upon questions of mercantile law, such as never would arise in the Mofussil, upon which the parties concerned might fairly desire to have the decision of a higher authority. No doubt, it would be a great evil if a successful suitor in the Moonsiff's Court should be liable to be harassed and subjected to expense by a reference upon a point about which no real difficulty existed ; but, considering that the party who took the reference would always have to pay his own costs, he thought the evil, if it ever arose, would soon work its own cure. And if there was to be this kind of appeal at all on doubtful questions of law (and he did not see how it could be dispensed with), he was clear that, to secure uniformity of decision, it should be to the Sudder Court.

This exhausted all he had to say, at present, upon the Bill. He should certainly prefer going into Committee upon it, and should do his best to suggest any improvements in its provisions which might appear to him expedient ; but, at the same time, he did not wish to commit himself to any final opinion as to the policy of extending, in Bengal at least, the jurisdiction given by it to every Moonsiff's Court, until the different Governments and the public had had a further opportunity of expressing their opinions upon the subject.

Mr. LEGEYT said, he regretted to state that he had received from the Government of Bombay a very strong expression of disapproval by the Sudder Court of that Presidency against the Draft Act for the institution of Small Cause Courts in the Mofussil. That Draft Act had since been considerably altered ; and could he be sure that the amended Bill would be published, so that the people of Bombay might have an opportunity of seeing how it stood in its altered form, he should not object to the Bill being considered in Committee of the Council as including Bombay. But in the uncertainty whether it would be published or not, he felt a considerable difficulty. After what had fallen from the Honorable Member who had spoken last, he was certainly led to think that the Council would permit further publi-

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cation ; and, in that belief, he would proceed to make the few observations which he had to offer upon the Bill.

The reasons for which the Government of Bombay had objected to the Draft Act sent up to it, were that much that was provided for in it, was not wanted in Bombay. Since 1827, that Presidency had possessed a Code of Civil Procedure which had worked extremely well ; and all that it did want, was what the Madras Presidency had enjoyed since 1815—namely, finality of decision in small suits. The Sudder Court of Bombay had expressed themselves very strongly indeed upon the subject, and had said that they were very averse to accepting any Bill which, having for its object the easy recovery of small debts and demands, comprised for that purpose nearly as many Sections as were contained in Regulations II and IV of 1827, which were the Statutes for the Civil Law of that Presidency. By Regulation IV of 1827, all that was required to be done in a Moonsiff's Court was comprised in 59 Sections ; and, in most instances, a case was decided in 18 or 20 days, and there was nothing in the Regulation to make the time more than 28 days. Then, again, the people of Bombay had nothing to complain of in the working of the present Law. In the year 1852, Principal Sudder Ameens, Sudder Ameens, and Moonsiffs decided 72,538 cases, from which there were only 4,542 appeals, or 1 appeal in 15 cases ; and the duration of suits, during that period, was, on an average, three months and 14 days. In Bombay, Principal Sudder Ameens and Sudder Ameens took up all suits, without reference to the amounts involved. Their jurisdiction did not only begin where the Moonsiffs ended ; because if it did, they would have but very little to do. The present Bill, which would include certainly nine-tenths of the suits that were now decided in the Courts, would introduce almost an entirely new procedure, which the Bombay Government considered, rightly as he thought, would be more lengthy than the mode of procedure in existence now. He did not deny that there were several very great improvements in this Bill, and he should be glad to see the restrictions as to appeals which it imposed as also certain others of its provisions, extended to all suits, except those for very high amounts—for amounts above 5,000 rupees. But, as far as he knew the feelings prevailing in Bombay, the people there did not like the idea of finality of jurisdiction in these Courts. He never could meet with any one who wished that the right of appeal from the decisions of these tribunals, should be taken away. Whether this arose from a distrust which was not well founded, or, which he considered more probable, from a desire inherent in the Hindoo mind to put off as long as possible the evil day, and to endeavor to get in one Court what could not be obtained in another,—so it was ; and he should be very glad if the Bill in its present form, and after it should have been further altered in Committee, which doubtless it would be, should be published, in order that he might ascertain whether it would be more acceptable to the people of Bombay than the draft Act sent to that Presidency in 1854 had proved to be. He thought it possible that it might ; and that some of the provisions were so good and admirable, that, with slight alterations, they might be adopted with advantage. He felt, therefore, very much inclined not to make any objection to the extension of the proposed Act to Bombay, in the hope that an opportunity would be afforded to the people of that Presidency of expressing their opinions upon it before it was passed into law. He was afraid there were no means of being certain that it would be published ; but after what had been said upon the same point by the Honorable and learned Member who had spoken last, and by himself, he trusted that due consideration would be given to the subject, and, therefore, would not oppose the Bill going through a Committee of the whole Council.

MR. ALLEN said, the question of principle whether the Small Cause jurisdiction proposed, should be extended to all Moonsiffs without exception, or whether it should be conferred upon particular Moonsiffs selected by the Executive Government, having been raised on the motion to go into Committee upon the Bill, he thought it right to offer his opinion regarding it, though he had intended to consider the question in proposing an amendment on the first Section of the Bill when in Committee.

When speaking upon the subject at the Meeting of the Council held a fortnight ago, he had said nearly all that he could and wished to say.

Honorable Members had urged that, to give the Executive Government the power of selecting at discretion particular Moonsiffs for the proposed jurisdiction, would be to cast a slur upon the Moonsiffs who should be excluded from the choice. He did not think that the opinion was justified by what had been

the practice before. Formerly, as he had said on the last occasion, it was very common for the Legislature, when creating an extraordinary jurisdiction, or extending the jurisdiction of any class of Courts, to confer that jurisdiction, not upon all judicial officers at once, but upon judicial officers selected with reference to their capacity for exercising it. For example, the Law for making Deputy Collectors act also as Deputy Magistrates, did not require that the new power should be given to all Deputy Collectors indiscriminately, but left it to the Executive Government to give it to such of them only as appeared to be capable of exercising it. Thus, at the present day there were many Deputy Collectors who had not the powers of Deputy Magistrates; and he had never heard it said that they were under a slur for that reason.

It had been urged that, if any Moonsiffs were found incompetent to exercise the jurisdiction proposed to be given by this Bill, the Government ought to remove them, and provide men who were competent in lieu of them. But any person acquainted with the administration of a country, must know that, practically, it was a very difficult thing to turn off a man already in office. The Government could form some opinion, from Reports submitted by the Sudder Courts, of the way in which Moonsiffs exercised the jurisdiction with which they were now entrusted—whether they were fit or unfit for their present posts; but if it considered any of them to be unfit, it could not easily turn them out. In every case where a person was appointed to an office, the Executive Government found it difficult to dismiss him. It might refuse to re-appoint him, or to increase his powers; but while he was still at his post, it felt great difficulty in removing him. To compare great things with small, the Ministry at home had declined to re-appoint Sir Charles Napier to command in the Baltic; but the present or any other Ministry would have thought twice before it re-called him from his post while operations were going on. That being so in regard to the Navy, and the same being the case in the Army, how much more cogent was the reason for not removing from their posts persons holding judicial office. The Legislature had always, and very properly, looked with jealousy at any interference with judicial officers. A man once a Judge, was always a Judge. It was always difficult to bring home to him sufficient proof of incapacity or corruption.

Mr. Allen

He observed that, whereas the terms of the Title and Preamble of the Original Bill made the provisions applicable to "the territories subject to the Government of the East India Company," the terms of the Preamble and the first Section of the Bill as amended in Select Committee, made the provisions applicable only to "the Presidencies of Fort William in Bengal, Fort St. George, and Bombay." He was not sure whether, by the first Section as it originally stood, the non-Regulation Provinces would be excluded from the operation of the Bill; but if that was the effect of the first Section as now amended, the Bill would take away part of the benefit, intended to be conferred; and, therefore, in the amendment which he had to propose, he should move that the Executive Government should have a discretionary power to confer the jurisdiction upon Courts in these Provinces likewise.

Another alteration in the present Bill was the exclusion from it of the clauses inserted in the original Bill for the purpose of limiting the period for the commencement of summary suits to two years after the cause of action should have occurred. The Lieutenant Governor of Agra felt more strongly the inexpediency of excluding these clauses, than of extending the proposed summary jurisdiction to all Moonsiffs' Courts at once. The Select Committee stated as their reason for striking them out, that a general Law of Limitation was being prepared, and would shortly be brought in. That, however, did not appear to him to be a sufficient reason; and when the time arrived, he should propose that the clauses which had been expunged should be restored.

MR. PEACOCK said, after the time that he had already occupied in directing attention to the principal provisions of the Bill, and the indulgence which the Council had shown him on that occasion, it was not his intention to carry his remarks in reply to any considerable length.

With regard to the publication of the Bill as amended in Committee, he should be the last person to object to it, if it were considered necessary; and as three Members of the Council had expressed a wish that the Bill should be re-published in order that the Executive Governments and the public might have an opportunity of expressing their opinion upon the alterations, he should certainly not divide the Council upon such a question, but would support the motion if made. The only objection he had

to the adoption of such a course, was upon the score of delay; but as it would be necessary to allow time to enable the Native Judges to study the Bill before it came into operation, he did not think that much time would be lost by a re-publication of it. He could assure Honorable Members that, if any serious objections should be urged against any of the provisions of the Bill as amended, his Honorable colleague on the Select Committee (Mr. Eliott) and himself would be most willing to consider them, and to give them their anxious and earnest attention.

With regard to the observations which had been made upon that part of the Bill which conferred jurisdiction over defendants who might leave the district, he would remark that the Small Cause Courts in the Presidency towns had jurisdiction over all persons who dwell or carry on their business, or work for gain within the district of the Court at the time of bringing the action, or who did so dwell or carry on their business, or work therein, at the time when the cause of action arose, or within six months before the time of bringing the action. At present, a Moonsiff had jurisdiction over a defendant residing out of his district in cases in which the cause of action arose within his district, irrespectively of the time when the defendant left it.

If a person, having contracted a debt within the district of a Court, chose to remove himself to another district without paying the debt which he had contracted there, the question simply was whether his creditor ought to be allowed to sue him where the debt was contracted, or whether he should be bound to follow him to the district to which he had removed himself, and to bring his action there. It appeared to him that if either of the parties were to be put to the inconvenience of appearing in a Court within the jurisdiction of which he did not reside, that inconvenience ought to fall upon the person who left the jurisdiction without paying his debts, rather than upon the creditor who remained where the debt was contracted.

The Honorable and learned Member opposite (Sir James Colvile) had remarked upon certain clauses in the Bill as prescribing a cumbersome mode of procedure, inasmuch as they would render it necessary for a plaintiff to come to the Court three times before he could obtain a decision of his case. But that would not be so in all cases; for he believed there were many cases which would be determined as soon as the plaintiff and defendant came together before the Court.

This Bill required a plaintiff to make out a *primâ facie* case before the defendant could be summoned, There appeared to be a choice of evils;—you must either require a plaintiff to make out a *primâ facie* case before the defendant was summoned, or you must allow defendants in many cases to be summoned vexatiously, when there was no ground of action against them. It appeared to him (Mr. Peacock) that, as between the two parties, the one who required the other to be summoned, ought to make out a *primâ facie* case before the summons was issued.

Then, with regard to the second step—namely, that of appointing a day for the examination of the plaintiff and defendant before the witnesses could be summoned—there appeared to him to be also a choice of evils. You must either compel the parties to attend and ascertain what points are in dispute upon which it is necessary to hear witnesses, or you must allow the witnesses to be compelled to leave their homes and occupations, and attend the Court in cases in which their evidence might turn out to be unnecessary. Now, of the two evils, he thought the attendance of the parties was much less than the unnecessary compulsory attendance of witnesses, who were no parties to the litigation. He believed that, in many cases, there would be no necessity for compelling the attendance of witnesses if the parties were confronted and examined, and that the provision of the Bill to which the Honorable and learned Member objected, would practically save much unnecessary inconvenience and loss of time to persons who were now unnecessarily required to attend as witnesses in cases in which their evidence might have been dispensed with by the examination of the parties.

Baboo Ramapersaud Roy, the gentleman to whom his Honorable and learned friend opposite (Sir James Colvile) had alluded, estimated that if Moonsiffs were permitted to refer points of law to the Sudder Courts under this Bill, there would be, in Bengal alone, about 800 references in the course of each year. The total number of suits instituted in Moonsiffs' Courts in 1852, was 80,362 in Bengal, and 51,253 in Madras. In every one of those cases, a regular appeal might be brought from the Moonsiff to the Zillah Judge, and afterwards a special appeal upon points of law from the Zillah Judge to the Sudder Court. By the present Bill, no party would have an absolute right to an appeal to the Sudder Court; but the Judge of the Small Cause

Court might state a case for the decision of the Sudder Court if any question of law, or usage having the force of law, or the construction of a document affecting the merits of the case, should arise, on which he might entertain reasonable doubts; or the Zillah Judge might do so, if he should consider that the decision of the Small Cause Court upon any of those points was erroneous. Now, of the 80,362 suits instituted in 1852 in Bengal, 21.047 were for land and land-rent, and 42,787 for other claims not exceeding 50 rupees each; and of the 51,253 suits instituted in the same year in Madras, 41,077 were for claims not exceeding 50 rupees each. Therefore, the jurisdiction proposed to be assigned by this Bill would, in Bengal, embrace more than two-thirds of the whole litigation in the Moonsiffs' Courts, exclusive of suits for land and land-rent; in Madras, it would embrace about four-fifths; and in Bombay, he believed, it would embrace a very large proportion likewise. Now, considering that, under the present law, in every one of these cases in Bengal there was a right of special appeal to the Sudder Court, he (Mr. Peacock) did not think that there was any reason to apprehend that the operation of this Act would impose any additional burthen upon that Court.

With reference to what had fallen from the Honorable Member for Bombay, it appeared that the Sudder Court and the Government of that Presidency had objected to the Bill "on account of its great length and intricacy." The Sudder Court said—

> "We find ourselves unable to accord any approval to an Act proposing to have for its object the easy recovery of small debts and demands, which comprises for this purpose nearly as many Sections as are contained in Regulations II and IV of 1827, which are the Statutes for the Civil Law of this Presidency."

And the Government of Bombay concurred generally in that view. But neither the Sudder Court nor the Government of Bombay pointed out any one Section which they thought might be properly omitted. If they had said that particular provisions ought to be struck out for certain reasons, he would have been prepared to discuss that question; but he was not prepared to assent to the position that a Bill was a bad Bill merely because it consisted of 122 Sections, or was longer than two of the present Regulations of the Bombay Code. This style of objection reminded him of a case which occurred in his presence before a late learned Judge in England. There, a defendant might plead several pleas, each setting up a distinct defence. But he could not do so without an order of a Judge. In the case to which he alluded, a suitor went before the Judge in Chambers, and handed up an abstract of the defences which he wished to set up by his pleas. The Judge, seeing that the suitor proposed to plead 32 pleas, immediately, and without knowing any thing of the case, flew out at him with—"Sir! I will not allow you to plead 32 pleas!" "How many may I have, my Lord?" replied the suitor. "I will not allow you to have more than 6," said the Judge; upon which the suitor very quietly asked, "Then *which* six am I to have, my Lord?" The Judge was staggered, for he had not read the abstract, and did not know which of the defences proposed to be set up were necessary, and which were not, and he was obliged to say "You may take any six you please." The suitor then went into his case, and ultimately the Judge allowed him to plead the whole of the 32 pleas! The objection which the Sudder Court and the Government of Bombay took to this Bill was very much like that which was at first taken by the Judge to the suitor's application. The Bill contained 122 Sections, and if the Sudder Court were here, he should like to ask them how many they would allow, and which he might take. He trusted that, after argument, the Council would find that none of the Clauses could be properly rejected. If any Honorable Member could show by argument that any Section of the Bill was unnecessary, he should readily assent to its being struck out; but he could not consent to strike out any of the Sections without some better argument than that the Bill consisted of 122 Sections.

With regard to the question whether the jurisdiction proposed by this Bill should be given to the whole body of Moonsiffs at once, or whether it should be given by the Executive Governments to Moonsiffs to be selected at their discretion, the Honorable Member opposite (Mr. Allen) had adduced, as an instance of the mode in which new judicial powers had been assigned in former cases, the case of Deputy Collectors, some of whom were also Deputy Magistrates, while others were not. But it was to be observed that a Deputy Collector, without having the power of a Deputy Magistrate conferred upon him, had no criminal jurisdiction at all, whereas a Moonsiff, without the power proposed to be conferred by this Bill, would have cognizance, in his regular jurisdiction, of

all the cases which it was intended by the Bill to authorize him to try summarily as a Small Cause Court. The real question, therefore, was not whether civil jurisdiction should be conferred upon selected Moonsiffs, in the same manner as the criminal jurisdiction of a Deputy Magistrate had been conferred upon selected Deputy Collectors ; but whether one set of Moonsiffs should have the power of trying in a summary manner cases which another set, not deemed qualified for that power, would continue to try by a more complicated procedure. The case that would be really analogous to the course that was contended for by the Honorable Member (Mr. Allen), would be that of an Act which should propose to enable the Executive Governments to authorize Courts Martial of particular districts or of particular Regiments to proceed, on trials before them, in a manner different from the course of procedure required to be pursued by similar Courts Martial in other districts or in other Regiments. No one, he thought, would advocate such a measure.

The Honorable Member had urged that it was very difficult to get rid of a man who had once been appointed as a Judge. Certainly, no Government would like to remove a Judge ; but he (Mr. Peacock) was of opinion that, if a Government found that a Judge was not competent to discharge the duties of his office, and that he was doing injustice in the exercise of his jurisdiction, whether regular or summary, it would be the duty of the Government, however painful the discharge of that duty might be, to remove him from his office. He did not mean to say that any Moonsiff now in office was not competent to exercise the jurisdiction proposed to be conferred by this Bill. That was the argument of the Honorable Member opposite (Mr. Allen). All he did mean to say was, that if a Moonsiff was competent for the jurisdiction which he now exercised, he would be equally competent to exercise that jurisdiction which it was the intention of this Bill to confer upon him ; and that, if he was not competent for the one, he was not competent for the other, and ought to be removed ; and the public ought not to be allowed to suffer from his neglect or inefficiency.

Before concluding, he begged to thank the Council for the indulgence which it had shown him, and the attention with which it had listened to his arguments. He hoped that the time which he had occupied in laying before the Council the views of the Select Committee upon the principal Sections of the Bill, upon which different opinions might be entertained, had not been thrown away ; and that the labours of the Council in Committee might be lessened by considering the Bill as a whole before they discussed in Committee the details of the several Sections.

The Honorable Member's motion that the Council should resolve itself into a Committee upon the Bill, was then put and carried.

The Council having resolved itself into a Committee—

THE CHAIRMAN read Section I of the Bill, which was as follows :—

"In each of the Presidencies of Fort William in Bengal, Fort St. George, and Bombay, every Moonsiff's Court shall be a Court of Small Causes for the trial of summary actions, and shall exercise summary jurisdiction under the following rules."

On this Section being proposed by the Chairman—

MR. ALLEN moved that the Section be left out in order that the following Sections might be substituted for it :—

"I.—The Executive Government of any portion of the territories under the Government of the East India Company may invest any Moonsiff's Court or other Civil Court now existing, or which may hereafter be established within the said territories, with summary jurisdiction as a Court of Small Causes under the provisions of this Act ; and may, from time to time, determine the territorial limits within which such Court shall exercise such summary jurisdiction.

"II.—Whenever any Court shall be invested with summary jurisdiction under Section I, all the provisions of this Act shall apply thereto."

MR. ELIOTT said, he should object to this amendment. It raised the question which had already been argued, whether all the Moonsiffs' Courts in the three Presidencies should be invested with the summary jurisdiction of a Small Cause Court, or whether particular Moonsiffs' Courts only should be invested with such jurisdiction at the discretion of the Executive Governments. The arguments against the measure advocated by the mover of the amendment, had been ably put by the Honorable and learned Member to his right (Mr. Peacock), and he thought it unnecessary to repeat them. But there was one point on which he would animadvert. The proposition that the Executive Government should have power to give a Small Cause Court jurisdiction to selected Moonsiffs only, proceeded upon the

alleged ground that every Moonsiff was not competent to exercise that jurisdiction. Now, in what did the supposed incompetency consist? Did it consist in a want of ability to decide cases of the simple character proposed in the Bill? He supposed no one would seriously assert that there was a single Moonsiff really incompetent, in point of intellectual capacity, to decide any of the cases contemplated by the Bill.

Taking it for granted, then, that the Moonsiffs were not incompetent, in this respect, to try the class of cases proposed, he would ask were they incompetent in the sense that they were venal? Were they untrustworthy? It seemed to him that, in the class of cases which would come before them, under this Bill—cases within 50 rupees—there was not the smallest risk of their integrity being tampered with. He thought that Moonsiffs might be far better trusted in such small cases than, with all the check of a regular appeal, in cases to the amount of 300 rupees in Bengal, of 1,000 rupees in Madras, and of 5,000 rupees in Bombay, to which their ordinary jurisdiction extended. Was there not much more risk of corruption in cases of this higher class? Without question, there was; and he said again, it would be far more safe to repose in Moonsiffs the power proposed by this Bill—there was far less risk of its being abused through corruption—than the power now exercised in the three Presidencies of trying cases to the extent of 300 rupees, 1,000 rupees, and 5,000 rupees respectively, even though subject to the control of appellate Courts.

The Honorable Member opposite (Mr. Allen) had said, that it was not the custom of the Legislature of this country, when extending the jurisdiction of any class of Courts, or creating an extraordinary jurisdiction, to give general effect to the new arrangement at once, but that the practice was to introduce it gradually. Was that the case when the jurisdiction of Moonsiffs was extended in 1814? No. The jurisdiction of Moonsiffs was extended without any exception in Bengal—it was extended without any exception in Madras—and, he believed, it was, in like manner, extended without any exception in Bombay.

MR. CURRIE said, this was a point upon which the Government of Bengal had a very strong opinion, and he should like to say a few words regarding it.

He thought that the Honorable Member who had spoken last was not quite correct in stating the principle upon which extended powers had been given to Moonsiffs on former occasions. His impression was that, in Bengal at least, the practice had been, when providing a new or extended jurisdiction, to confer it gradually. He found that, in such cases, the Legislature had given a general sanction, and left it to the Executive Governments to carry out the measure according as they might find suitable means. He could see no reason why that course ought not to be followed on the present occasion. The late Member of the Select Committee upon the Bill, whose opinions upon this subject were entitled to very great respect, not only for the part he had taken in framing the Bill, but also for his long and extensive experience, thought that the introduction of the Act required great caution, and that to give the powers created by it to the bulk of our Moonsiffs, would be to hazard the success of the whole measure. He (Mr. Currie) quite concurred with Mr. Mills in this opinion; and he hoped that the success of the measure would not be risked by an undue precipitation in extending the new jurisdiction to the whole body of Moonsiffs.

MR. LEGEYT said, he had only a few words to offer upon the amendment proposed. He did not concur in the objection of the Honorable Member opposite (Mr. Allen) against the simultaneous extension of the proposed jurisdiction to all Moonsiffs. He should be doing an injustice to Native Judges of that class with whom he was acquainted, if he were to allow it to be understood, by a silent vote, that he entertained an opinion that any of them were not fully qualified to administer the provisions of an Act such as this. He found that, formerly, Native Judges in Bombay had power to try suits to an unlimited extent. That had been modified by Regulation XVIII of 1831, which limited the jurisdiction of Moonsiffs to claims not exceeding 5,000 rupees, and of Sudder Ameens to claims not exceeding 10,000 rupees, but left the jurisdiction of Principal Sudder Ameens unrestricted; and there had been no reason to complain of the mode in which these extensive jurisdictions had been exercised. He thought it due, therefore, to the Moonsiffs of Bombay to say that they, at least, were fully qualified to administer the proposed Act.

MR. PEACOCK said, he was exceedingly glad to hear the Honorable Member who had just spoken, bear testimony to the ability and character of the Moonsiffs in Bombay.

In all that the Honorable Member opposite (Mr. Allen) had said, he had shown no ground for making the distinction for which he had contended between one Moonsiff and another in any of the Presidencies. Did the Honorable Member mean that the Moonsiffs were not honest, and that, if they were not, they would be made honest by keeping voluminous records of proceedings such as the one from which he (Mr. Peacock) had read that day? Or did he mean that they were not competent to decide in a simple and summary manner causes which they were competent to decide by a more technical and complicated mode of proceeding? Was the principle upon which the Honorable Member insisted in this case, the principle upon which the Executive Governments had extended the jurisdiction of this very class of Judges from time to time before? The Courts of Native Commissioners or Moonsiffs were established by Regulation XL of 1793, which gave them a jurisdiction in civil suits for sums of money or personal property of a value not exceeding 50 Sicca rupees. That jurisdiction was extended by Section XIII Regulation XXIII of 1814 to 64 Sicca rupees; and subsequently by Regulation V of 1831, to 300 rupees. But all Moonsiffs were bound by the same rules of procedure, and the Executive Governments were not empowered to authorize one Moonsiff to try cases by a different procedure from that by which another was bound. Every Native Commissioner appointed under Regulation XL of 1793 had jurisdiction to the extent of 50 Sicca rupees. When the jurisdiction was extended in 1814 to 64 Sicca rupees, it was extended to all the Moonsiffs alike—and by Regulation V of 1831 persons invested with the powers of Moonsiff were empowered to try suits for money or other personal property not exceeding 300 rupees.

MR. ALLEN said, Regulation V of 1831 provided for the "gradual introduction" of its provisions.

MR. CURRIE said, the preamble of that Regulation stated—

"Whereas it is expedient that the provisions for this purpose" (namely, the purpose of employing respectable natives in more important trusts connected with the administration of the country) "should be *gradually introduced* into the Zillahs and Cities from time to time as the Governor General in Council, by an order in Council, may be pleased to direct."

And the terms of the enacting part also were:—

"Whenever it shall appear expedient, in the judgment of the Governor General in Council, to extend the provisions of this Regulation to any Zillah or City, it shall be competent to the Governor General in Council, by an order in Council, to direct the same."

MR. ELIOTT asked, how had the Regulation been carried out practically? Had the Government extended its provisions to any particular Moonsiffs only, or to all Moonsiffs at once? It had extended them to all at once. Every time that the jurisdiction of Moonsiffs had been enlarged since 1793, it had been enlarged as to the whole body.

MR. ALLEN'S amendment was then put. The Council divided.

Ayes 2.	*Noes* 6.
Mr. Currie.	Mr. LeGeyt.
Mr. Allen.	Mr. Eliott.
	Sir James Colvile.
	Mr. Grant.
	Mr. Peacock.
	The President.

Majority against the Amendment—4.

MR. LEGEYT moved that the words "Principal Sudder Ameen's, Sudder Ameen's, and" be inserted after the word "every" and before the word "Moonsiff's" in the 3rd line of the Section. The effect of this amendment, he said, would be to make every Principal Sudder Ameen's and every Sudder Ameen's, as well as every Moonsiff's Court, a Court of Small Causes under the Act; and he proposed it in order to meet the peculiarity which existed in the Presidency of Bombay, of Principal Sudder Ameens and Sudder Ameens taking cognizance of suits that might be filed in their Courts even if they involved amounts within the jurisdiction of Moonsiffs.

MR. PEACOCK thought it would be inconvenient to adopt this amendment, because the reason which the Honorable Member assigned for it did not exist in the Presidency of Bengal or in the Presidency of Madras. If it should be necessary in Bombay to give the Courts of Principal Sudder Ameens and Sudder Ameens the jurisdiction of a Small Cause Court, there would be no difficulty in doing so without the amendment proposed; because, by Section CXVIII of the Bill, provision was specially made for that purpose. The Section said—

"It shall be lawful for the Executive Government in any of the Presidencies to invest any Civil Court of the East India Company *now existing*, or which may hereafter be established with the sanction of the Governor General in Council, with the summary jurisdiction of a Small Cause Court under this Act, &c."

Therefore, it was quite clear that, if there should be any necessity in Bombay for giving to Principal Sudder Ameens and Sudder Ameens the jurisdiction of Small Cause Judges, the Bombay Government would have simply to make an order to that effect.

MR. LEGEYT said, he would not press his amendment. He had proposed it under the impression that Principal Sudder Ameens and Sudder Ameens in Bombay might think themselves slighted if their Courts were excluded from the Section.

MR. PEACOCK said, there was no intention of offering any such slight.

MR. LEGEYT then, with the permission of the Council, withdrew his amendment.

Section II was then read by the Chairman, and was as follows :—

"All claims for money due, whether on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of 50 rupees, shall be tried in a Court of Small Causes ; provided that a summary action in such Court shall not lie in any of the following cases :—

First.—On balance of partnership account, unless the balance shall have been struck by the parties or their Agents.

Second.—For a share or part of a share under an intestacy, or a legacy or part of a legacy under a Will.

Third.—For any claim relating to arrears or exactions of rent, or to alleged illegal distraints for rent, for which claim, or for any part whereof, a summary suit could have been brought before an Officer of Government in the Revenue Department, if commenced in due time.

Fourth.—For the recovery of damages on account of alleged personal injuries, unless special damage of a pecuniary nature shall have resulted from such injury.

Fifth.—For any claim which, irrespectively of the amount thereof, is not, according to law, cognizable by a Moonsiff in his ordinary jurisdiction."

After a verbal amendment in the above, introduced on the motion of Sir James Colvile—

MR. ALLEN moved that the words "unless special damage of a pecuniary nature shall have resulted from such injury," added in Select Committee to the 4th Clause, be left out.

MR. ELIOTT said, he should oppose the motion ; because he thought that the Court ought to have the power of awarding damages where pecuniary loss had resulted from a personal injury. As the Honorable Member to his right (Mr. Peacock) had observed before, there was no reason why a man who had been run over by another, and had had to pay 50 rupees to a Doctor, should not be able to recover that amount by a summary action, instead of being driven to a regular suit.

MR. PEACOCK said, for his own part, he was quite willing to strike out the whole of the Clause. He was not afraid to allow persons to sue under this Act for any personal injury for which he might maintain an action in any other Court ; but his Honorable friend Mr. Mills was of opinion that, unless the Clause were retained, many frivolous and vexatious actions would be brought in the Small Cause Court for assault, libel, slander, and other similar cases ; and that it would be better to leave such cases to the Criminal Courts. The majority of the Select Committee, however, considered that, if a man sustained pecuniary loss in consequence of any personal injury, there was no reason why he should not sue in a Small Cause Court to recover the amount of his loss if it were within the cognizance of the Court. They had altered the Clause accordingly, and had provided the following form of plaint for such actions :—

"For that the defendant, on the day of 185 at so improperly drove a certain cart, that it struck and injured a cow belonging to the plaintiff, whereby the plaintiff has sustained damages to the amount stated."

Or—

"For that the defendant, on the day of 185 at so improperly drove a certain cart, that it struck and thereby broke one of the plaintiff's legs ; in consequence of which injury, the plaintiff makes the following claim against the defendant for special pecuniary damages,—namely :—

Loss of wages from to , at the rate of rupees .....
Medical attendance, ...
Compensation for personal suffering,

Total—Rupees, ."

SIR JAMES COLVILE observed that much might be said in favor of the object which Mr. Mills had had in view ; but if a plaintiff should really have sustained a special damage, and the question to decide was a mere matter of fact, there was no reason why he might not bring his action in a Small Cause Court. He (Sir James Colvile) was therefore inclined to leave the Clause as it stood.

MR. CURRIE said, the words introduced by the Select Committee into the Clause, were an important addition, and, in his opinion, would open the door to a number of frivolous and vexatious complaints. He did not think that Moonsiffs would be guided

very much by the form of plaint given in the Appendix.

MR. ALLEN'S Amendment was then put, and negatived by a majority.

THE CHAIRMAN then read Section III, which was as follows :—

"No person whatever shall, by reason of place of birth, or by reason of descent, be excepted from the jurisdiction of any Court of Small Causes constituted under this Act; and any such Court shall be competent to hear and determine all claims cognizable by such Court, when the cause of action shall have arisen, or the defendants, or one of the defendants, at the time of the commencement of the suit, shall reside as a fixed inhabitant, or shall carry on his business, within the limits of such Court; provided that if an action be brought against several defendants, of whom one shall be resident as a fixed inhabitant, or shall carry on his business, within the limits of the Court within the jurisdiction of which the cause of action shall have arisen, the action shall be brought in that Court."

SIR JAMES COLVILE said, the Honorable Member opposite (Mr. Peacock) had nôt quite understood the amendment which he intended to propose in this Section. He (Sir James Colvile) entirely concurred in thinking that the Court of that district in which the cause of action had arisen, should have jurisdiction irrespectively of the place of residence of the defendant; and, although he should be glad to see some limitation which would prevent a defendant who had left the district a considerable time before the bringing of the action, from being subjected to the inconvenience and expense of being brought back to it, he did think it would be a hardship upon the plaintiff to require that, if he wished to sue his debtor, he must follow him to the place to which he had gone, instead of bringing his action in the district in which the contract had been made. The objection which he really felt against the Section was, that if a plaintiff preferred a claim against several defendants, it gave the Court jurisdiction against all the defendants, if any one of them was residing at the time within the local limits of its jurisdiction. As the Section stood originally, its words were—

"Every such Court shall be competent to hear and determine all claims of the nature prescribed in the preceding Section, when the cause of action shall have arisen, or the *defendant*," (in the singular) "at the time of the commencement of the suit, shall reside as a fixed inhabitant within the limits of such Court."

Of course, a person who quitted a district without paying debts incurred by him there, could have no reason to complain if he were sued in the district in which he had taken up his residence. But the Section had been altered by the Select Committee; and as it stood now, if several co-contractors were sued in the Court of any district, all would be subject to the jurisdiction of that Court if any one of them was living within the limits of the district. There was a proviso which said that, if an action was brought against two or more defendants, of whom one should be residing or carrying on business within the limits of the district in which the cause of action should have arisen, the action should be brought in the Court of that district, and that was a very proper limitation. But, if there were two defendants, it might happen that both had left the district, and gone each to a different part of the country. In such a case, it would be a hardship upon either to bring him to the district in which the other was residing by an action in that district against both. There was no necessity for this, since, by another Section of this Bill, the plaintiff was relieved from the obligation of joining all who were jointly liable to him as defendants in the action. He (Sir James Colvile) wished the Section to stand as it originally did, and should, therefore, move that the words "defendants, or one of the defendants," in the 8th line of the Section, be omitted, in order that the word "defendant" be substituted for them.

He would also remark that the phrase used in this Section by the framers of the Bill, was "within the limits of the Court." Now, strictly speaking, that was not an accurate expression. No one could be properly said to carry on his business "within the limits of the Court," except a pleader, or mooktear—unless, perhaps, it was a suitor who, like Peter Peebles, had, by long litigation, obtained a domicile there. He had no doubt that what the words were intended to express was, "within the local limits of the jurisdiction of the Court;" but as that was not the meaning which they would naturally bear, he would suggest, either that they be amended, or that the meaning which they were intended to convey, be explained in the Interpretation Clause.

MR. PEACOCK said, the last objection taken by the Honorable Member, was a very good one, and he should be glad to amend the words referred to; but with regard to the question of jurisdiction, he thought that the Section had better be left as it stood. There were two grounds upon which the

Court had jurisdiction—first, if the cause of action arose within the local limits ; secondly, if the defendant resided or carried on his business within those limits. If two defendants were liable upon a joint contract, and one of them left the district in which the contract was entered into, and the other continued to reside there, ought the plaintiff to have the option of taking the defendant who remained within the jurisdiction in which he incurred the debt, to the district to which the other had removed ? Certainly, he ought not ; but he ought to be entitled to bring his action in the district where the contract had been made. The Honorable and learned Member opposite contended that, if the plaintiff brought his action in the district where the contract was made, it would not be necessary for him to join the absent co-contractor, inasmuch as Section LIII of the Bill gave a plaintiff, having a joint demand against several defendants, power to sue one or more of them without the others. It was true that he might make such an election, leaving the defendant whom he sued to seek contribution from his co-contractor ; but it was to be observed that, if he did that, he would discharge the other contractor from all further responsibility to him. This being so, if a plaintiff, having a joint claim against two persons, should elect to sue only one of them, and should obtain a decree against him, and the defendant so sued should be unable to pay more than half the amount of the debt, the plaintiff would lose the other half. The question, then, was, would the Legislature bind the plaintiff to discharge the absent defendant, by requiring him to confine his action to that defendant alone who continued to reside in the place where the cause of action had arisen ?—or, if not, would it allow him to sue both defendants in the district to which the absent defendant had gone, or to sue them in the district in which the contract had been made, and where the other defendant continued to reside ? If a contractor chose to go away from a district without paying his debt, it would be very hard to compel the plaintiff and his co-contractor to follow.

MR. GRANT said, if he understood the gist of the amendment, that was not the point of objection taken by the Honorable and learned Member to his right (Sir James Colvile). The point of the objection was that, if a cause of action arose in one district against two co-contractors who afterwards removed each to a different district, this Section would allow the creditor to sue *both* defendants in the district in which he finds either of them residing. Thus, if A and B should become indebted to C in Chittagong, and before payment A goes to Delhi, and B to Cuttack, C might, under this Section, sue both A and B in Cuttack, because B is residing there. That, it seemed to him, would be a hardship upon A who is at Delhi.

Mr. PEACOCK said, if a cause of action arose against two defendants in Chittagong and one remained there, and the other went to Delhi, it seemed to him that the question was, between the two defendants, which of them should be put to inconvenience ? Surely, the defendant who remained, should not be bound to go to Delhi to defend an action there ; but the plaintiff should be entitled to bring his action in the Court at Chittagong. That, he (Mr. Peacock) thought, would be the effect of the Section as it stood. If both the contractors should go away—one to Delhi, and the other to Cuttack—the plaintiff might sue both at Chittagong where the cause of action accrued, or, if he pleased, he might sue them both at Delhi or in Cuttack. If the defendants chose, without paying the debt, to leave the place where they contracted it, he, (Mr. Peacock) thought that they could have no right to complain of hardship.

SIR JAMES COLVILE said, it seemed to him that his amendment would leave the plaintiff in this condition. If he elected to bring a joint action, he might sue the defendants in the district in which the cause of action had arisen ; but if he pursued the defendant who had left the district, out of that district, he must sue him where he resided. He (Sir James Colvile) perfectly agreed in the justice of the proviso in the Section which limited the jurisdiction to the place of contract if any one of two or more defendants continued to reside there ; but he could not see why, where both the defendants had left the place of contract, one for Delhi and the other for Cuttack, a plaintiff should be at liberty to sue the man who had gone to Delhi at Cuttack because the other had taken up his residence at Cuttack. The only reason given for this was that, if he confined his action to the man whom he found at Cuttack, he would give up his claim against the other, and might suffer, in consequence, a partial or entire loss, from the insolvency of the defendant whom he had elected to sue. But he could avoid that result by suing both the defendants in the district in which the cause of action had arisen.

MR. PEACOCK said, Section LIII provided that, if a plaintiff had a demand recoverable against two or more persons jointly, he might sue any one or more of such persons without joining the other; but that the dismissal of the suit, or a decree in it, should bar his claim against the person not joined. That was a reasonable provision. Where two persons were liable for a joint debt, the creditor ought not to be allowed to sue each successively, because, if he were allowed to do so, he might put each to the trouble of attending at one time as a defendant, and at another as a witness. For example, if his claim was against A and B, he might first sue A, and call B as a witness; and he might then sue B, and call A as a witness. This would be harassing the parties; and, therefore, if the plaintiff should elect to proceed against one only, he ought to be bound to abandon his remedy against the other.

In the case of one of two contractors removing from the place of contract, the question as to where the action should be brought, did not lie between the plaintiff and the defendants, because the plaintiff might always sue where the cause of action arose; but if the plaintiff should sue where one of the defendants resided, it should be at the place of residence of that defendant who remained where he contracted the debt. If A and B contracted a joint debt at Chittagong, and A went to Delhi before payment, the creditor might sue both, or he might sue B who remained at Chittagong. If he sued only B, he would discharge A from further liability. But if he elected to sue both, the question was, between the two, which of them was to be put to inconvenience? Should B be bound to go and defend an action at Delhi, he having remained where the cause of action had arisen; or should A come back to Chittagong to defend an action there? There would be a choice of difficulties. Upon which of the two should the inconvenience fall? Surely, not upon B who remained in the place of contract, but upon A who chose to go away to Delhi without paying the debt.

MR. ALLEN said, if either of the two co-contractors remained at Chittagong, there was no difference of opinion that the plaintiff must bring his action against both in the Court of that district. But if one of them should go to Cuttack, and the other to Delhi, would it be right to give the plaintiff the choice of suing two persons in either of three places—that is to say, either in Chittagong where the cause of action had arisen, or in Cuttack to which one of the contractors had removed himself, or in Delhi to which the other had gone? Should not he be bound to bring his action at Chittagong? Why should he force the Cuttack man to go to Delhi.

MR. GRANT said, the Honorable Member opposite (Mr. Peacok) had stated that the case lay between the two defendants, and that the question was, which of them should be put to hardship? He (Mr. Grant) answered—neither of them. There would be no hardship upon them if they were both sued in the district in which the cause of action had arisen; and there would also be no hardship upon either of them who might be sued where he resided. But in his (Mr. Grant's) opinion, neither defendant ought to be sued in a district in which the cause of action had not arisen, and in which he did not reside. If the plaintiff chooses to sue both defendants jointly, after they have both left the place where the cause of action arose, and have gone to live each in a different place, he should sue in the place where the cause of action arose.

Sir James Colvile's amendment was then put, and carried.

MR. GRANT said, without in the first instance moving any amendment, he wished to ask if another part of the Section was not open to objection, by which a Court constituted under the Act would be competent to hear and determine all claims cognizable by it when the defendant shall, at the time of the commencement of the suit, "*carry on his business*" within the limits of its jurisdiction. If the business carried on was the very business in the course of which the dispute between the parties arose, he (Mr. Grant) could understand the reason of such a provision. But he could not see why a resident of Allipore, carrying on business as a banker by a gomastah at Delhi, should be sued at Delhi for a common debt incurred at Allipore. He was not sure that such a case might not happen, if the Section passed in its present form.

MR. PEACOCK said, he himself rather thought that the words to which the Honorable Member alluded, had better be left out of the Section. They had been inserted in the Select Committee in consequence, he believed, of a suggestion made by the Lieutenant Governor of Agra, without sufficiently considering that, certainly, a man might be residing in one district, and be carrying on his business by an agent in another and remote district.

MR. GRANT then moved that the words "or shall carry on his business," in the 12th line of the Section, be left out.

Motion carried.

The words "limits of the Court" were next amended, as suggested by Sir James Colvile; and after a further verbal amendment introduced on the motion of Mr. Grant, the Section was passed.

Section IV was read by the Chairman, and after a slight amendment, was passed.

The Committee adjourned, on the motion of Mr. Grant.

The Council then resumed its sitting.

POLICE (MADRAS).

MR. ELIOTT moved that a communication which he had received from the Chief Secretary to the Government of Fort St. George on the subject of the draft Act "for regulating the Police Courts and for the good order and Civil Government of the Town of Madras" be laid upon the table and referred to the Select Committee on the Police and Conservancy projects of Law.

USURY LAWS.

MR. ELIOTT proposed to move that a Petition, which he had received from the Madras Chamber of Commerce, relating to the Bill "for the repeal of the Usury Laws," be laid upon the table, and referred to the Select Committee on the Bill.

THE PRESIDENT said that the Standing Orders required all Petitions to be transmitted to the Clerk of the Council, and that the motion was not regular.

The Council adjourned.

Saturday, May 26, 1855.

PRESENT:

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

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

USURY LAWS.

THE CLERK brought under the consideration of the Council a Petition from the Madras Chamber of Commerce relating to the Bill "for the repeal of the Usury Laws."

MR. ELIOTT moved that the petition be printed, and referred to the Select Committee on the Bill.

Agreed to.

MEASUREMENT AND REGISTRY OF SHIPPING.

THE CLERK reported that he had received from the Under-Secretary to the Government of India in the Home Department, a communication forwarding, with a view to the consideration of the necessity of any alteration in Acts X of 1841 and XI of 1850, copies of a despatch from the Court of Directors, and its enclosures, regarding the application to India of certain provisions of the English Merchant Shipping Act 17 and 18 Vic. c. 104, which regulate the measurement and registry of shipping.

MR. GRANT moved that these papers be printed, and referred to the Select Committee on Marine matters.

LANDS FOR PUBLIC WORKS (BOMBAY).

MR. LEGEYT moved the first reading of a Bill "to facilitate the acquisition of land needed for public purposes in the Presidency of Bombay." The object of this Bill, he said, was the same as that of the Bill the second reading of which he had moved at the last Meeting of the Council, but which he had, by leave, withdrawn. But the present Bill was founded strictly on Act XX of 1852 and Act XLII of 1850. He had ventured to make only one variation; and this was that, whereas Act XX of 1852 provided, in regard to money paid over to the Collector for lands or buildings as to which there was a dispute, that it should be invested in Company's Paper when it amounted to 500 rupees, this Bill proposed that all sums which came into the Collector's hands should bear interest, while they remained in deposit, at the lowest current rate of interest payable upon Government securities. Instead, also, of only referring, as Act XX of 1852 did, to certain other Acts, he had embodied those Acts into this Bill; which, he thought, would make its provisions more clear.

The Bill was read a first time accordingly.

SMALL CAUSE COURTS.

The Council then resolved itself into a Committee for the further consideration of the Bill "for the more easy recovery of small debts and demands in the territories subject to the Government of the East India Company."

On Section V being read—

Mr. ALLEN said, before the Section was put, he desired to draw the attention of the Council to certain Sections in the original Bill which the Select Committee had