Saturday, 5th May, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. I

(1854-1855)

verted to by the Honorable Member, which had not been sufficiently considered by this Council on Saturday last ; and he should, therefore, say no more, but move the third reading of the Bill.

The question being put, the Council divided :—

Ayes 5.	*Noes 3.*
Mr. Allen.	Mr. LeGeyt
Mr. Eliott.	Sir James Colvile.
Mr. Peacock.	The President.
Mr. Grant.	
Major General Low.	

Majority for the Motion—2.

The Bill was then read a third time, and passed.

BOUNDARY MARKS (FORT ST. GEORGE).

MR. ELIOTT moved that certain papers received by him from the Government of Fort St. George relating to the Bill "for the establishment and maintenance of boundary-marks in the Presidency of Fort St. George," be laid upon the table, and referred to the Select Committee upon the Bill.

Agreed to.

MASTERS AND SERVANTS (FORT ST. GEORGE).

MR. ELIOTT moved that a communication received by him from the Government of Fort St. George, forwarding the Draft of an Act for the settlement of disputes between Master and Servant, together with a copy of the correspondence on the subject, be laid upon the table, and referred to the Select Committee on the Penal Code prepared by the Indian Law Commissioners, with an instruction to report specially thereon.

Agreed to.

ENFORCEMENT OF JUDGMENTS (BOMBAY).

MR. LEGEYT moved that a communication from the Government of Bombay to Mr. Malet's address, forwarding a copy of a correspondence relating to a judgment of the Supreme Court at that Presidency in the matter of a writ of execution issued under process from the Zillah Court of Surat, be laid upon the table and printed.

Agreed to.

Mr. Grant

NOTICE OF MOTION.

MR. PEACOCK gave notice that, on Saturday next, he would move the second reading of the Bill "relating to the emigration of Native laborers to the British Colonies of St. Lucia and Grenada."

MESSENGER.

MR. GRANT moved that General Low be requested to carry the Bill "to improve the Law relating to the Copper Currency in the Straits" to the President in Council, in order that it may be submitted to the Governor General for his assent.

Agreed to.

The Council adjourned.

Saturday, May 5, 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., and P. W. LeGeyt, Esq.

CUSTOMS REGISTRY AND PORT REGULATIONS (STRAITS).

THE CLERK reported that he had received from the Secretary to the Government of India in the Home Department, a further communication from the Straits Government relative to the Draft Acts for the provision of a more correct registry and account of all goods imported into, and exported from, the Straits Settlements : and to establish Port and Harbour Regulations for those Settlements.

SMALL CAUSE COURTS.

Also that he had received, by transfer from Mr. LeGeyt, a communication from the Government of Bombay relative to the Bill "for the more easy recovery of small debts and demands in the territories subject to the Government of the East India Company."

MR. LEGEYT moved that the above communication be printed and circulated among the Members for their information. When the motion for going into Committee upon the Bill was made, he should also

propose a postponement, in order that Members might have an opportunity of seeing the communication from the Bombay Government before proceeding to a further consideration of the Bill.

Motion for printing the communication carried.

CUSTOMS (MADRAS).

MR. ELIOTT moved the first reading of a Bill "for amending Act No. VI of 1844," for Madras—the Act which abolished the Land Customs, and regulated the Sea Customs, in that Presidency. This Act corresponded with Act XIV of 1836 for Bengal and Act I of 1838 for Bombay. It was substantially the same as these; and where it differed from the Act for Bengal, it agreed with the Act for Bombay. In fact, the Bombay Act had been taken inadvertently as the model for the Madras Act, it having escaped notice that there was no provision in it for a Board of supervision. As the Madras Act ran, therefore, following that of Bombay, it contained no provision for any supervision and control over Collectors of Sea Customs in that Presidency. It did not, however, repeal Section V Regulation II of 1803 of the Madras Code, which placed the Collectors of Customs as well as the Collectors of Land Revenue under the control of the Board of Revenue. In the administration of the Act, an anomaly had arisen, in reference to the want of a provision in it for such control. Since 1844, Collectors of Customs in the Provinces of Madras have continued to act under the supervision of the Board of Revenue, under Regulation II of 1803; but the Collector of Sea Customs at the Presidency was for some time allowed to act independently of the Board. This practice being found inconvenient, was rectified by the orders of Government, under which the supervision and control over the Collector of Sea Customs was again vested in the Board of Revenue. A question had been raised lately, however, with reference to the provisions of Act VI of 1844, as to the propriety of this course. The Government of Madras referred it to the Government of India, who stated, in reply, that the withdrawal by that Act of the control over the Customs Department formerly exercised by the Board of Revenue, was an oversight, and advised the Government of Madras to submit the Draft of an Act for remedying this defect. The present Bill had that object in view.

Bill read a first time accordingly.

STAMPS (BOMBAY).

MR. LEGEYT moved the second reading of the Bill "to provide for certain applications to Courts of Principal Sudder Ameens, Sudder Ameens, and Moonsiffs in the Presidency of Bombay, being written on stamped paper."

The question being proposed by the President—

MR. ELIOTT said, he was not prepared to assent to the second reading of this Bill, though he was of opinion that the Stamp Laws of Bombay required revision, with reference particularly to the provision which had been recently made for the execution of decrees of Native Judges by those Judges themselves. The jurisdiction of the Native Judges in Bombay was very high. That of the Principal Sudder Ameens was unlimited: that of the Sudder Ameens extended to 10,000 Rupees: and that of the Moonsiffs, to 5,000 Rupees. It seemed right that the use of stamps should be required in the higher classes of suits which these officers had to adjudicate, in all cases in which stamps were required to be used in judicial proceedings before other Judges. But if this Bill were passed, it would place suitors in the Moonsiffs' Courts in Bombay in a considerably less advantageous position than suitors in the same Courts in Bengal and Madras. These suitors could have their causes tried before the Courts of the Moonsiffs without being called upon for any stamp but the institution stamp, in Bengal to an amount not exceeding 300 Rupees; and in Madras, to an amount not exceeding 1,000 Rupees. If this Bill should be passed, it would place suitors in Bombay claiming sums not exceeding 300 Rupees, on a less favorable footing than suitors in Bengal for the same amount; and suitors for an amount not exceeding 1,000 Rupees, on a less favorable footing than suitors for the same amount in Madras. It might be right, however, to require that stamps such as were mentioned in the Bill, should be used in Bombay in all suits in which stamps other than the institution stamp were required to be used in both the other Presidencies—that is to say, in suits for sums above 1,000 Rupees. So far as the Courts of Principal Sudder Ameens and Sudder Ameens in Bombay were concerned, he saw no objection to the provisions proposed in this Bill; but with regard to the Courts of the Moonsiffs, it was to be observed that suitors therein already held a disadvantageous position as

compared with that of the same class of suitors in Bengal and Madras, since all the pleadings in those Courts were required to be upon stamp paper. He should like to see that altered; but at all events, he was not prepared to go further and see all miscellaneous proceedings subjected to a stamp duty. It was very remarkable that although the Law, as it stood, did not make miscellaneous proceedings subject to a stamp duty, the practice, it was said, had invariably been to require stamps to be used. This practice, it seemed, had only lately been brought to the notice of the Sudder Court, and had been pronounced by it to be illegal. The information upon this point was not very full. Indeed, it applied to one district only; and even there, the practice appeared to have been diverse. It seemed to him that the best course would be to revise generally the Regulations relating to Stamp duties in the Courts of the Native Judges. For the present, all he proposed to do, was to oppose the second reading of this Bill: and if the Bill should be rejected, he hoped the Honorable Member who had moved it, would bring forward a new one, in which the points to which he (Mr. Eliott) had adverted, would be considered.

Mr. ALLEN said, he should much prefer to let this Bill pass the second reading, and then refer it to a Select Committee, under Standing Order No. LXX with special instructions to report upon it, and suggest any alterations which they might deem expedient to make before publication. The Bill as it stood applied solely to Bombay. As a general rule, he was averse to legislating singly for any person or any one class of persons, or any one Presidency. When an individual found a law oppressive, it was quite right that he should cry out, and require that, in his special case, it should be altered. But it was for the Legislature to consider whether the law was oppressive singly to Mr. Smith, or equally to Mr. Jones, and to Mr. Brown, and to others; and to alter the law not for Mr. Smith only, but for every body else. If, for instance, the law of unlimited liability was considered objectionable for Mr. Smith and certain others engaged in the making of tea, he did not see why the law should not be altered for every other Joint-stock Company as well as for Mr. Smith's Tea Company. In the same way, if the Government of one Presidency found a law to be oppressive, and the shoe to pinch, it was quite proper that it should send up a representation for the repeal or alteration of that law in regard to itself; but it was for the Legislature to consider what reasons existed for such a special measure. The proceedings in Moonsiffs' Courts in the cases referred to in this Bill, were not written upon stamp paper in any of the Presidencies. He did not know whether the exemption had arisen from inadvertence, or whether it was intentional. He believed it had arisen from inadvertence. In each Presidency, stamps were levied upon two principles,—they were levied either in proportion to the value of the suit, or according to the Court in which the petitions were presented. In those cases in which the amount of the stamp was regulated by the amount in dispute, the Stamp Regulations were applicable whether the suit was brought in the Moonsiff's or in any other Court; but where the amount of the stamp was regulated by the Court in which the Petitions were presented, no stamp was required in the Moonsiffs' Courts, because, when the law prescribing that stamp was passed, Moonsiffs' Courts with their present jurisdiction did not exist. For instance, those Courts were established in the Bengal Presidency by Regulation V of 1831; and in that Regulation, certain petitions and applications and copies of decrees were specially exempted from the stamp duty. Since then, different powers had been given to Moonsiffs; their jurisdiction had been extended; and when these extensions took place, no mention of stamps was made. He did not think that the Legislature had taken into consideration whether the law regarding stamps, the value of which depended upon the Court in which they were to be used, should be made applicable to these Courts or not.

The case was much stronger in regard to Madras than to Bengal. In Madras, when the Stamp Laws were established, the Moonsiff had a jurisdiction of 200 Rupees; the Sudder Ameen, of 500 Rupees. All miscellaneous petitions presented in the Courts of the Moonsiff were exempt from stamp duty; but petitions presented in the Courts of the Sudder Ameen were subject to a stamp of 4 annas. Subsequently, in 1821, the jurisdiction of Moonsiffs was extended to Rupees 500; of late years, it had been further enlarged to Rupees 1,000; and now again, there was a Bill before the Legislature for extending it still further—namely, to give those officers the power of reviewing their own judgments. But in none of these subsequent Acts were stamps referred to; and therefore, although formerly miscella-

neous petitions in cases of above 200 and under 500 Rupees value paid a stamp tax of 4 annas each, they now paid none. He (Mr. Allen) was not sure if the Legislature, when extending the jurisdiction of the Moonsiffs' Courts, had considered the point whether it was correct to relieve parties from the Stamp Laws as well as render their resort to the Courts more easy.

Under these circumstances, if this Bill was read a second time, for which he should vote, he should propose that it be referred to a Select Committee, with special instructions to them to submit a preliminary Report upon it, suggesting any amendments they might think right. That, he thought, would be a better and more convenient course than to reject the Bill altogether.

MR. PEACOCK said, he confessed that he did not quite understand what the effect of the Bill would be; but as far as he did understand it, the Bill appeared to him to be objectionable. It seemed to have arisen out of a reference made by the Judge of Ahmedabad to the Sudder Adawlut of Bombay on the question—first, of "the value of the Stamp necessary on applications made under Regulation IV of 1827, s. 7," that is, applications to take security from a defendant about to leave the jurisdiction; and secondly, as to the value of the stamp on which "the many counter-applications and representations made by others than Plaintiffs in connection with the execution of decrees, were required to be given in before the Native Judicial functionaries." Those were the two questions referred by the learned Judge to the Sudder Adawlut of Bombay. Upon that reference the Sudder Adawlut appeared to have raised an entirely new question with reference to the Stamp required to be used upon applications to the Courts of Native Judges for the execution of decrees under Act VII of 1851. By that Act it was enacted that decrees in Civil suits, whether original or in appeal, should be executed by the Court in which the original decree was passed; and that every application for the execution of a decree should be made to the Court in which the decree was originally passed. Before that Act, Moonsiffs had not the power of executing their own decrees. The Sudder Adawlut reported to the Government of Bombay their "opinion that the last table in Appendix D to Regulation XVIII of 1827, ought to have been extended to Native Judges when Act VII of 1851 was passed"; and they suggested "that measures should be taken to rectify the oversight." It did not appear from the papers before the Council whether the Government of Bombay concurred in the view taken by the Sudder Adawlut, or not; he thought it might be fairly assumed that they did. It was perfectly clear that the suggestion of the Sudder Court had reference merely to an amendment of Regulation XVIII of 1827, as to applications for execution of decrees under Act VII of 1851. The Bill before the Council however, went much further. The object of the Bill, as explained in the statement of objects and reasons, was "to enable Courts presided over by Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, to receive certain applications in judicial proceedings pending before them on stamp paper." He thought that the object would have been more correctly expressed by stating that it was "to compel suitors to write these applications on stamp paper." The Statement proceeded thus:—

"The Bill provides that such applications shall be written on a stamp of 8 annas value. The provisions of the Stamp Law at Bombay, Regulation XVIII of 1827, declare that a certain class of applications shall be made on stamps of a certain value. That value, in regard to some of them, is made to depend upon the amount of the sum sued for; but in others, which do not always belong to a regular suit, the value is made to depend on the Court in which it is presented. The operation of Act VII of 1851, which empowers Courts of original jurisdiction to execute all decrees passed by them, has necessarily increased the number of applications for enforcement of decrees and other subjects arising therefrom; and although the particular case in which this difficulty arose, did not spring from Act VII of 1851, a consideration of the reference made by a Zillah Judge to the Sudder Court, showed that Court the defect in the law, which, on inquiry, was found to have been irregularly and illegally remedied by a discretionary practice. It was therefore thought advisable to apply to the Legislature for a law to admit of the subordinate Courts receiving those applications on a stamp of defined value. It is therefore found necessary to extend the law, which provides for those applications, when made to the superior Courts, being on stamp paper, to district and subordinate Courts."

In his (Mr. Peacock's) opinion, Act VII of 1851 was perfectly right as it stood, and even supposing the evil complained of to exist, the proposed Act went very much beyond the remedy intended. His Honorable friend on his left (Mr. Eliott) called his attention to the terms of the letter of the Registrar to the Sudder Adawlut in Bombay,

conveying the opinion of that Court upon the reference. He (Mr. Peacock) would therefore read it, though it did not alter his opinion upon the case. The Registrar said—

"I have the honor, by direction of the Judges of the Sudder Dewanny Adawlut, to request you will have the goodness to inform the Right Honorable the Governor in Council, that the Judges are of opinion that the last table in Appendix D to Regulation XVIII of 1827 should have been extended to Native Judges when Act VII of 1851, empowering these Officers to execute their own decrees, was passed; and the Judges would now suggest that measures should be taken to rectify this oversight."

That letter confirmed his view of the case that the suggestion of the Sudder Court was confined to applications made under Act VII of 1851. What he ventured to affirm was this, that the Bill now before the Council went far beyond that suggestion, and that it did not extend to the supposed evil which it was intended to remedy. There were three questions to be considered,—first, whether there ought to be any stamp, and if so, of what value on applications to Native Judges to execute their own decrees; secondly, what ought to be the value of a stamp on applications to Native Judges to compel a defendant about to quit the jurisdiction to find security; and thirdly, what ought to be the value of the stamp on counter-applications and representations to Native Judges by other than Plaintiffs in connection with the execution of decrees,—for example, applications in the nature of interpleader suits, from persons claiming property seized under an execution. Now, he would call the attention of the Council to Regulation XVIII of 1827, and would show that no such Act as was now proposed, was necessary; and in order to do this, he must go back to Appendix C of that Regulation. That Appendix fixed the value of the stamp to be used for every plaint filed in a Civil suit and for every appeal, whether regular or special. According to that table, if the plaint in original suits were for a sum or value not exceeding 100 Rupees, no stamp was required. In appeals, regular or special, if the amount appealed against did not exceed 1 Rupee, no stamp was required; if it exceeded 1 Rupee, and did not exceed 2 Rupees, a stamp of 2 annas was required upon the petition of appeal; if it exceeded 2 Rupees, and did not exceed 5 Rupees, a stamp of 4 annas was required; if it exceeded 5 and did not exceed 10 Rupees, a stamp of 8 annas was required; and so on, according to the sum sued for or appealed against. He then came to Appendix D. That Schedule was headed thus:—

"Table showing the value of the stamp to be used for every answer, reply, and rejoinder; every razeenamah and vakalutnama; every application for examining a witness, or filing an exhibit *for the revision of a decree*; for a special appeal against orders issued either in the course of a suit or after the decree: or against orders issued in any other judicial proceeding; and generally, every application filed in any suit, appeal, or judicial proceeding not being of a criminal nature."

By that Schedule, the following stamps were required:—

In original suits.

If the sum sued for did not exceed 100 Rupees, no stamp was required for any pleading or paper filed.

In appeals regular and special.

If the sum sued for or appealed against did not exceed 1 Rupee, no stamp was required.

If it (that is to say the sum sued for or appealed against) exceeded 1 Rupee, but did not exceed 25 Rupees, the stamp required was 1 anna.

If it were above 25 Rupees, but did not exceed 50 Rupees, a stamp of 2 annas.

If above 50 Rupees, but not above 100 Rupees, a stamp of 4 annas.

In original suits and appeals.

If above 100 Rupees, and not above 200 Rupees, a stamp of 8 annas was required:—and so on, according to the amount sued for or appealed against.

Then came the last table in Appendix D.

"For every application for the revision of a decree, or for a special appeal against orders issued either in the course of a suit after the decree, or against orders issued in any other judicial proceeding; and generally for every application, pleading, or vakalutnama filed in any judicial proceeding *not being an ordinary suit or appeal, regular or special, nor in the Criminal Department*:—

	Value of Stamp. Rs.	As.
In the Court of an Assistant Judge.	... 0	8
In the Court of a Zillah Judge.	... 1	0
In the Court of Sudder Adawlut.	... 2	0

By a subsequent Regulation (III of 1828,) the exceptions contained in Appendices C and D in regard to original suits for sums not exceeding 100 Rupees, were repealed; and plaints and other papers in original suits for

sums not exceeding 100 Rupees, were made subject to the same stamp duty, as in the case of appeals of the same amount.

Now, as he understood Appendix D, the first part of it applied to applications filed, whether in the Courts of European Judges or in the Courts of Native Judges, in an *ordinary suit or appeal not being of a criminal nature*, whether in the course of the suit or after a decree : and the last table applied to applications filed in the Courts therein mentioned in any judicial proceeding, *not being an ordinary suit or appeal, regular or special, nor in the criminal department ;* otherwise, in cases above 100 Rupees, the stamp would be less in the Court of a Zillah Judge than it would be in the Court of a Native Judge.

If he were right in his construction of the Act, an application for the execution of a decree when the amount sued for was less than one rupee, would not require any stamp.

If the sum sued for were above 1 rupee and not above 25 rupees, it would require a stamp of 1 anna.

If above 25 rupees and not above 50 rupees, a stamp of 2 annas.

If above 50 rupees and not above 100 rupees, a stamp of 4 annas.

Whereas, if the present Bill were to become law, each of such applications would require to be on a stamp of 8 annas. Thus, a poor man who might sue for and recover a decree for a sum less than 1 rupee, would be obliged to pay 8 annas before he could get his decree executed ; and the stamp duty might, in many cases, exceed the amount of the demand.

The same observations would apply to an application for the revision of a decree ; for, notwithstanding the Bill arose out of a suggestion of the Sudder Court with reference merely to applications for the execution of decrees, the Hon'ble Member who had introduced the Bill admitted that it would extend to every application for the revision of a decree.

If an application were made for the revision of a decree in an ordinary suit, it would come under the first part of Appendix D ; but if this Bill should pass, it would come under Section I of the Bill : and thus, though the decree might be for a sum not exceeding 1 rupee, the application would require a stamp of 8 annas, instead of being free from any stamp under the existing law. If the decree were for a sum not exceeding 25 rupees, the stamp required would be 8 annas instead of 1 anna. And if the decree were for a sum not exceeding 100 rupees, it would require a stamp of 8 annas instead of 4 annas.

The proposed Bill, therefore, appeared to him to be highly objectionable, inasmuch as it would greatly increase the amount of stamp duty payable in all suits for sums not exceeding 100 Rupees, and these were the cases above all others, in which the suitors ought not to be subjected to any increased burthen in the nature of stamps. As the Bill now stood, it would render even criminal cases subject to a stamp duty ; for, notwithstanding cases in the criminal department were excepted both in the first and second parts of Schedule D, and though the present Bill followed the words of the second part of that Schedule in other respects, it did not except criminal cases. Why that exception was omitted from the first section of the present Bill, which, in the language of the enacting part of it, applied to every Court, when the framers of the Bill had the words of Schedule D before them, he could not pretend to say.

He had already stated that he did not know that this Bill would remedy the supposed omission in Act VII of 1851 suggested by the Sudder Court ; for, as it was worded, it extended to applications, pleadings, &c., in judicial proceedings *not being an ordinary suit or appeal, regular or special.* It appeared to him that an application for the execution of a decree in an ordinary suit, would not come within the meaning of the words " Every application in any judicial proceeding *not* being an ordinary suit." He thought that such an application would be an application in an ordinary suit. He would ask the Hon'ble Member who had brought in this Bill, whether an application for the execution of a decree was, or was not, an application in an ordinary suit ? If it was, this Bill would not include such an application—and, consequently, would not extend to the cases to which alone, according to the printed statement of objects and reasons, it was intended to apply.

But whether it would include that class of cases or not, it was clear that it would extend to a great many others. It would require stamps in cases which were now altogether exempt from stamp duty ; and it would also increase the amount of stamp duty in many other cases, and did not even except from its provisions cases in the criminal department, or of a criminal nature. He would ask the Hon'ble Member, what part of

Schedule D it was which rendered a stamp duty necessary upon an application to a Zillah Judge for the execution of a decree ? For it was that part of Regulation XVIII of 1827 which this Council was asked to extend to applications made to the Courts of the Native Judges under Act VII of 1851. He would be glad if the Hon'ble Member would state whether, in his construction of Schedule D, an application to a Zillah Judge for the execution of a decree came under the first or last table of Appendix D ? Whether, in fact, it was an application in a judicial proceeding in an ordinary suit, or in a judicial proceeding not being an ordinary suit ? His Hon'ble friend did not answer the question ; but he would presently have an opportunity of replying, and he (Mr. Peacock) hoped that he would then state distinctly what construction he put upon the words *not being in an ordinary suit or appeal.* He (Mr. Peacock) maintained that if an application for the execution of a decree in an ordinary suit did not come under the first table of Appendix D, it did not come under the Appendix at all, and ought to be free from stamp duty ; and that if it ought to be free in the Court of a Zillah Judge, it ought also to be free in the Court of a Moonsiff.

It also appeared to him that an application to compel a defendant in an ordinary suit, who was leaving the jurisdiction of the Court, to find security, was an application in an ordinary suit ; and that counter-applications made in connection with the executions of decrees in ordinary suits, were also applications in ordinary suits ; and consequently, that such applications in suits for amounts not exceeding 100 Rs. should be exempt from stamp if the suit was for a sum not exceeding 1 rupee ; or be subject only to the smaller stamps imposed by the first table of Schedule D, instead of the stamp of 8 annas intended to be imposed by this Bill.

He should be very glad to see the whole of the Stamp Laws in the three Presidencies revised ; but he did not think that there was any necessity for passing an Act for amending the Stamp Laws relating to applications for the execution of decrees under Act VII of 1851. He was unable to say what would be the effect of the Bill if passed in its present shape. It might extend to criminal matters, which were expressly excepted in Appendix D to Regulation XVIII of 1827. There was nothing to show that it was confined to civil proceedings. [*Sir James Colvile*—Yes, the enacting part is much wider than the preamble.] He thought that it was hardly necessary to refer such a Bill as this to a Select Committee ; and seeing that it would increase the stamp duty in many cases in suits for sums not exceeding rupees 100, he felt it to be his duty to vote against the second reading.

SIR JAMES COLVILE said, but for his unwillingness to interfere with the privilege of the Hon'ble Mover of the Bill of having the last word, he should have preferred to reserve the few observations which he had to make until he had heard him ; because it was very possible that the Hon'ble Member might remove many of his present impressions in regard to the Bill ; and because he was bound to admit he had very little to guide him in a decision on the question before the Council, except a general and very decided objection to taxes upon justice, and a general indisposition to increase any existing tax of that kind except upon cause shown. One of the last objections taken to the Bill by the Hon'ble and learned Member who had spoken last—namely, that it did not exclude proceedings in criminal matters—appeared to him, upon a literal construction of the enacting part, to be well founded ; but looking at the Preamble and Title, he had no doubt the intention of the Hon'ble Mover of the Bill was to confine its operation to the Courts of the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, of which the jurisdiction was, he believed, in Bombay as elsewhere, exclusively civil ; and, therefore, the introduction of the words "to the said Courts" in the 1st Section would satisfy that objection ; and he would now deal with the Section as if they had been added to it.

Then, he was bound to say, that, except as to applications to a Moonsiff's Court for executions of decrees, he did not find any clear ground stated showing why such a Bill was necessary at all ; and although, on reading the Bill for the first time, he thought the Hon'ble Member had made it very difficult for a suitor to do anything that would not cost him 8 annas, he (Sir James Colvile) on considering the terms used more carefully, was inclined to think that his Hon'ble and learned friend opposite (Mr. Peacock,) was right ; that the particular blot aimed at, was not hit ; and that an application for the execution of a decree in a Moonsiff's Court could hardly be brought within any of the terms of the first Section. He would assume, however, that the Section was worded—and, by a slight amendment, it might easily be worded—so as to include these applications.

The question then arose—Is it desirable to subject such applications to the proposed stamp? Before Act VII of 1851, Moonsiffs, it seemed, had no power to grant executions on their own decrees. The Hon'ble Member on his right (Mr. Allen) informed him that, prior to that Act, it was necessary to apply for execution of a Moonsiff's decree to another Court, and that a stamp was payable upon that application. If it were so, he did not know what amount of stamp was formerly paid. Possibly, it was a stamp of 8 annas; but in that case, he must say that was an extravagant sum to pay for obtaining an order for the execution of a decree which, according to the extracts quoted by the hon'ble and learned Member opposite (Mr. Peacock,) might be for a sum as small as the fractional part of a rupee. Whether it was intentional, or whether it was only a *casus omissus*, that Act VII of 1851, which empowered Moonsiffs to grant executions for their own decrees, contained no provisions making that stamp payable upon applications for such orders of execution, which had been payable upon them in another Court, he was not disposed to remedy the omission by taxing suitors in the Moonsiffs' Courts by imposing an uniform stamp of 8 annas on all such applications now.

The rest of the Section, taken in its generality, seemed to him to render it impossible for a suitor to take any step or do anything in a suit without making himself subject to a tax of 8 annas. Waiving the general question, and admitting, for the sake of argument, that the system which existed, of imposing a tax upon judicial proceedings, must continue; he thought that the scale proposed, though it might be consistent with the state of things in the Courts of Principal Sudder Ameens and of Sudder Ameens, was far too high for the class of cases with which Moonsiffs had to deal; and therefore, without a much further explanation of the objects and reasons of the measure proposed, he should certainly be opposed to the Bill being made applicable to the Courts of Native Judges of that class.

MR. LEGEYT said, as the objects of this Bill did not appear to be at all clearly understood, he would endeavor, in as few words as possible, to explain them, by showing what had been the practice of the Courts of Bombay in regard to those applications to which the Bill related, and then by stating what he believed to be the object which the Government and the Sudder Adawlut of Bombay had in making the reference which was now before the Council.

Appendix D to Regulation XVIII of 1827, had always been taken to regulate the stamps required to be provided in all judicial proceedings not being a plaint or an application for a plaint in regular suits. It provided that there should be stamps for every answer, reply, and rejoinder; every *razeenamah* and *vakalutnamah*; every application for examining, or for summoning and examining a witness, or filing an exhibit. So far, the practice had been to require that the stamp necessary for these papers should be regulated by the value of the suit. Then, the Appendix provided that there should be stamps for every application for the revision of a decree, or for a special appeal against orders issued either in the course of a suit or after the decree, or against orders issued in any other judicial proceeding; and generally, for every application, pleading, or *vakalutnamah* filed in any judicial proceeding, not being an ordinary suit or appeal, regular or special, nor in the criminal department. By the Law, it seemed to be required that the stamps necessary for these papers, should be according to the Court in which they were presented. In an Assistant Judge's Court, the value of the stamp was 8 annas; in a Zillah Judge's Court, 1 rupee; and in the Sudder Ameen's Court 2 rupees. The Council had heard from the Hon'ble Member to his right (Mr. Peacock), what had given rise to the reference by the Judge of Ahmedabad to the Sudder Adawlut of Bombay and how the reference had been dealt with by the Sudder Adawlut. He (Mr. LeGeyt) could say, speaking from his own knowledge of the practice, that, before Act VII of 1851, all applications in Bombay for executions of decrees were made to the Court either of an Assistant Judge or a Zillah Judge. An order would thereupon be passed by the Court for the execution of the decree, and would be sent down to the lower Court; and he believed the practice to have been, that where a suit was for so small a sum as would admit of a stamp, in proportion to its value, being under 8 annas, the stamp would be received under 8 annas: if the proportional amount was above 8 annas, the rupee Stamp was used; by which course, the suitor had to pay a smaller sum than that to which his application was subject under the the first part of Appendix D to Regulation XVIII of 1827. He (Mr. LeGeyt) was not so certain, but he believed that an application for an execution to enforce a decree,

had not been held by the Bombay Courts to be an application filed in the course of an ordinary suit or appeal. His impression was that an ordinary suit had been supposed to end with the decree ; and an application to enforce the decree was treated as an applica- of a miscellaneous nature. He supposed that the reason why the Sudder Adawlut now stated that it was necessary to extend the last table in Appendix D to the Native Courts, was, that the operation of Act VII of 1851 had greatly increased the number of such applications to those Courts. After what had fallen from the Hon'ble Member to his right (Mr. Peacock,) he admitted that that construction of Regulation XVIII of 1827 might be wrong, and that it might be that applications for executions of decrees ought to be governed by the first part of Appendix D, and that the stamps required upon them should have been regulated by the value of the suits. But one of the objects of the Bill was, that those applications which, before Act VII of 1851, would have to be made to European Courts, but which, since that Act, might now be made to Native Courts, should be made upon stamp paper ; and another, that opportunity should be taken of correcting the oversight which the Sudder Adawlut of Bombay considered had occurred when Act VII of 1851 was passed.

With regard to the objection taken by the Hon'ble Member to his right (Mr. Peacock) that the Bill did not exclude criminal proceedings, as Appendix D to Regulation XVIII of 1827 did, that was merely an oversight. He should state, however, that the Courts of Principal Sudder Ameens, Sudder Ameens, and Moonsiffs had no criminal jurisdiction ; and consequently, it had not struck him as necessary that he should in terms except criminal proceedings from the operation of the Bill.

With regard to another objection urged by the Hon'ble Member, he might explain that there was no intention to make any application in a suit for a sum under 1 rupee liable to a stamp.

But he was ready to admit, after all he had heard to-day, that it would perhaps be better to withdraw this Bill, with the leave of the Council, with the view of referring the subject back to Bombay, with a *précis* of the impressions which existed regarding it here ; and hereafter to submit, if so advised, an amended draft Act on the subject.

The Hon'ble Member then moved for leave to withdraw the Bill.

Agreed to.

Mr. LeGeyt

EMIGRATION TO ST. LUCIA AND GRENADA.

MR. PEACOCK moved the second reading of the Bill "relating to the emigration of Native laborers to the British Colonies of St. Lucia and Grenada." He said, at the last Meeting of the Council he had fully explained the objects of the Bill, and he therefore thought it unnecessary to detain the Council with any further observations upon it.

MR. ALLEN said, he had one suggestion to offer regarding this Bill. If he had correctly understood the Hon'ble Mover of the Bill, he had said on a previous occasion that the principle of one of the Sections—the 17th—differed from that laid down in the previous Emigration Acts. The 17th Section of the Bill provided that the Act should take effect as to St. Lucia and Grenada from the day when the Governor General in Council, or, in his absence, the President in Council, should notify in the *Calcutta Gazettee* that such regulations had been provided, and such measures taken, as he might deem necessary for the protection of emigrants during their residence in the Colonies and in respect of their return to India. He (Mr. Allen) understood the Hon'ble Member, in moving the first reading of the Bill, to have said that in the previous Acts, there was a provision of another nature—*viz.*, that the Courts in the Colonies should take measures for the protection of emigrants during their voyage to the Colonies. He thought that to omit a similar provision from the present Bill, was unwise ; because, supposing the Captain of a ship took a larger number of emigrants on board than he ought to take, or provided a smaller quantity of provisions for the emigrants than he ought to provide, and that his offence was not discovered until the ship arrived at the Colony, and the emigrants complained,—how, in the absence of such a provision, would he be punished ? He (Mr. Allen) should, therefore, prefer that a provision requiring the Courts in St. Lucia and Grenada to take measures for the protection of emigrants during their conveyance to those Colonies, should be imported into the Bill.

MR. GRANT said, he did not rise to make any objection whatever to the Bill. On the contrary, he intended to support it. But he wished to make a suggestion, which perhaps the hon'ble and learned Member might take into his consideration. Might it not be better, instead of making this Bill applicable only to two colonies, to introduce one general Bill, repealing all the existing

Laws regarding emigration from India, and making provisions which would be applicable to any Colony which the Executive Government might think fit to throw open, on being satisfied that proper regulations had been made, and proper measures taken, in such Colony for the protection of emigrant labourers?

MR. PEACOCK said, he did not see any very great objection to the course suggested by the Honourable Member who had spoken last; but there were certain provisions in the Act allowing emigration to the West Indies which would not be necessary in a general Act allowing emigration to other places. It had been found necessary, owing to the nature and length of the voyage, to insert in the Act for allowing emigration to Jamaica, British Guiana, and Trinidad, many provisions which were not necessary in the Act for allowing emigration to the Mauritius. In this Bill, as well as in the Act relating to emigration to other Islands in the West Indies, it was necessary to fix within certain limits, the time at which ships conveying cooly emigrants should sail from the ports in India, in order that the emigrants might suffer as little as possible from the alterations of climate. These, and other provisions of a like nature, might not be necessary in an Act authorizing emigration to Australia and other places. Therefore, he had thought it would be more simple to frame a separate Bill for the two colonies now intended to be thrown open to emigrant labourers, than to attempt to frame a general Bill applicable to all places to which coolies might be allowed to emigrate.

With regard to the objection of the Honorable Member who had spoken first, (Mr. Allen), he would observe that in the Act allowing emigration to Jamaica, British Guiana, and Trinidad, there was no provision, as the Hon'ble Member had supposed, that the authorities in the Colonies must provide for the protection and safety of emigrants on the voyage *to* the Colony. Such a provision was only in the Act relating to the Mauritius; and he apprehended that the Government here would be better able to ensure that object by taking care that no ship carrying emigrants should leave the port until she had been previously examined, and it was seen that she had not more than a certain number of emigrants on board, and that she was sufficiently found in provisions, medical stores, and proper clothing for the use of the emigrants during the voyage. If the Captain of the ship committed an outrage on the high seas, he (Mr. Peacock) did not know how this Government or even the Colonial Government could provide for that, for neither had power to legislate for places beyond the territories subject to their jurisdiction. The Captain would be liable only to the Admiralty jurisdiction; and he (Mr. Peacock) did not see how this Government could compel the authorities in the Colonies to punish for an offence committed beyond their jurisdiction. If this Government took stringent measures here to provide for the protection of emigrants, by seeing that no emigrant was misled by fraud, or by false or unreasonable expectations as to the real advantages he was likely to derive from proceeding to the colonies; that no ships carried more than a proper number of emigrants; that suitable space was provided for them on board; that a sufficient quantity of good and wholesome provisions was laden on board for their consumption on the voyage; that proper regulations were made for their protection during their residence in the Colonies, and for their due return to this country at the expiration of the term of their industrial residence,—he thought it would do all that it could do, or that it was bound to do, without unnecessarily interfering with the liberty of the people. Under Act XXI of 1844, labourers emigrating to Jamaica, British Guiana, and Trinidad, were entitled to return to India after five years of industrial service. But if they preferred to remain there after that period, which they might do, considering that the wages of labour there were much higher than here, being from 1*s.* 8*d.* to 2*s.* per day—there was no reason why they should not be allowed to remain. The object and duty of the Government of India was, not to throw obstacles in the way of the emigration of coolies, but to afford them every facility by means of Law and of convenient public arrangement consistent with their safety and well-being.

The Government should be satisfied that the authorities in the Colonies had made proper regulations providing for the protection of the coolies during their residence there, and that, after a certain period, an emigrant should be allowed to return to India, if he chose so to do. Originally, after five years, the Colony was bound to provide emigrants, with a free passage home. But it was suggested by the Secretary to the Colonial Board that the Colony should provide only a portion of the passage-money, and that the emigrant should pay the rest. The Government saw no objection to this.

It thought that if it were thoroughly explained to an emigrant before he left India, that he would be entitled to a free passage to the Colony, that he would be bound to labour there for a certain period, and that if, after that period, he chose to return to India, he must contribute a portion of the money for his passage home, and the emigrant accepted these terms, there would be nothing unjust in following the suggestion of the Colonial Board. If a cooly chose to proceed to the West Indies on the terms of contributing a portion of his passage-money back, he could always very well do so in addition to bringing home with him a considerable sum of money, assuming only that he were industrious and prudent. This Government might as well undertake to punish an offence committed on the high seas as to require the Colonies to do so. No such difficulty, he believed, as that apprehended by the Hon'ble Member had really occurred, and he did not think there was any necessity for making the amendment suggested ; but the Bill would have to pass through a Select Committee, and also through a Committee of the whole Council ; and he should be most happy, on either of those occasions, to make any amendment in it which might appear requisite for the safety and well-being of the emigrants.

The Hon'ble Member's motion was carried, and the Bill was read a second time accordingly.

SMALL CAUSE COURTS.

THE PRESIDENT then read the Order of the Day for the Council to 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."

MR. LEGEYT moved that the Council postpone going into Committee upon this Bill until Saturday the 19th instant, in order that the papers which he had received from the Government of Bombay regarding it, might be printed and circulated among the Members of the Council. These papers, which he had received only on Wednesday, contained grave objections to the Bill being extended to the territories within the Presidency of Bombay. Before the Bill came to be settled in a Committee of the whole Council, therefore, he should be glad if the Honorable Members who had sat on the Select Committee, would have an opportunity of considering the views and opinions which had been expressed by the Government of Bombay upon the subject.

MR. PEACOCK said, it was not his intention to offer any objection to the proposed adjournment ; but he must say that it was very inconvenient that objections to a Bill should come up at so late an hour as this. The Bill had been printed and published in the month of April 1854, and was not taken into consideration until the following July. All the other Governments had sent in their suggestions upon it, except the Government of Bombay. The Select Committee on the Bill thought it necessary to invite the opinion of the Bombay Government, and accordingly desired the Clerk of the Council to write a letter, requesting that, if it had any observations upon the Bill to send in, it would do so. The letter was forwarded in September 1854, but from that time to this, no reply had been sent and no communication had been received by the Clerk from the Government of Bombay upon the subject of the Bill. The Select Committee were exceedingly anxious that the Bill should be fully considered before the departure from India of Mr. Mills. They were most anxious to have his advice and assistance through the various stages of the Bill ; and therefore determined that, if the Government of Bombay would send in no communication, they would proceed with the Bill, and do their best without the Bombay Government. They prepared their Report accordingly ; the Bill was set down in the Orders of this day, for the Council to go into Committee upon it ; and now, for the first time, it appeared that the Government of Bombay had grave objections to the measure proposed in it, and desired that the Committee should be made acquainted with them. He must say that this did appear to him a very late hour for the Bombay Government to send in their objections. If these objections should be of a serious nature, it might be necessary to refer them to the Select Committee ; and, after all the time that had been expended on the Bill, there would be great inconvenience and difficulty if the Select Committee should have to go through the Bill again, and make amendments in it upon the objections.

Notwithstanding this, however, he should not oppose the motion that the Council should postpone going into Committee upon the Bill, because he, in common he believed with every other Member of this Council, was most anxious to receive any suggestions which could be offered by any Government or any individual upon the Bill. But, at the

same time, he thought it ought henceforward to be understood that, if objections to a Bill were not sent in to the Clerk of the Council within eight weeks from the date of the first publication if it related to the Presidency of Bengal, or twelve weeks if it related to the other Presidencies—the periods allowed by the Standing Orders for that purpose—the Select Committee would not be bound to attend to them, and that the Council would not suffer its proceedings to be delayed in consequence of them.

MR. ALLEN said, he also had a few words to offer upon the motion.

THE PRESIDENT said, as yet there was no motion before the Council; and therefore, in point of order, there was nothing to which the Hon'ble Member could speak. No motion had yet been proposed from the Chair.

MR. PEACOCK said, he (Mr. Peacock) had been out of order in speaking upon the motion to postpone going into Committee upon the Bill before the question had been formally proposed to the Council by His Honor the President. The Hon'ble Member for Bombay was quite right in moving the postponement; and if the question were now proposed from the Chair, the Honorable Member opposite (Mr. Allen) might, of course, be heard upon it. The error which had been made, was entirely his own. In his anxiety to assent to the adjournment asked for by the Hon'ble Member for Bombay, he had inadvertently spoken upon the motion directly the Hon'ble Member sat down, and before the question was put by the President.

MR. LEGEYT then handed in the following, to be submitted by the President as his motion :—

"That the words 'the Council do resolve itself into a Committee of the whole Council upon the Bill for the more easy recovery of small debts, &c.' be omitted from the question, and the words 'the consideration of the Bill in Council be postponed until this day fortnight' be substituted for them."

MR. GRANT said, all disputed points of order were for the decision of the President; but, with permission, he would offer a few words upon the question which had arisen. According to his recollection of the Standing Orders, the only motion which could now be proposed from the Chair, was a motion that the Council should resolve itself into a Committee upon the Bill. The Bill stood in the Orders of the Day for that purpose; and at the stage of the proceedings at which the Council had now arrived, it was not, he believed, competent to any Member to make any other motion than that the Council should go into Committee upon the Bill. The Honorable Member in charge of the Bill had precedence. He might first move that the Council should resolve itself into a Committee upon it, as had always been done in this Council on other occasions; and after that it would be quite competent for any other Member to move a postponement by way of amendment.

MR. PEACOCK said, he had given notice a fortnight ago that he would move for a Committee of the whole Council upon this Bill. In consequence of that, the Bill was set down in the Orders of the Day for this Meeting. Upon that Order of the Day being called on by His Honor the President of the Council, the Honorable Member for Bombay moved that the consideration of the Bill in Committee should be postponed until that day fortnight. It appeared to him (Mr. Peacock) that, under the 113th Standing Order, it was perfectly competent for the Honorable Member to make that motion at that stage. The 113th Standing Order said—"Any motion may be made regarding an Order of the Day,"—that is to say, instead of an Order of the Day being moved, any Member might make a motion that it should stand over, or any motion regarding it. This appeared to him to be a very convenient course. In the present case, he should not have thought it either his duty to this Council, or respectful or courteous to the Bombay Government, knowing as he did that objections had been received from that Government against the Bill, to ask the Council to resolve itself into a Committee upon it until time should have been allowed for printing and distributing the observations, and for that careful and attentive consideration of them by every Member of the Council to which they were certainly entitled. Therefore, if the Honorable Member for Bombay had not made his motion, he (Mr. Peacock) himself, instead of moving for a Committee of the whole Council upon the Bill, would have moved a postponement; and if he could make such a motion, why should not any other Member be at liberty, under the Standing Orders, to do so? He (Mr. Peacock) must admit that he had been out of order in speaking upon the motion for a postponement before the question had been proposed from the Chair; but the Honorable Member for Bombay was, in his opinion, quite in order in making that motion. If it were the case that he (Mr. Peacock)

could not make the motion for a postponement, and that no other Member could make it, he would have been placed in this predicament—knowing that objections from the Government of Bombay against the Bill were upon the table, and wishing anxiously to see them before he discussed the Bill in Committee, he must have moved that the Council do resolve itself into a Committee upon the Bill, when he was desirous that, instead of their doing so, the consideration of the Bill should be postponed. He must say that he should not like to be placed in that position ; and he did not think that such could be the intention of the Standing Orders.

SIR JAMES COLVILE said, the difficulty suggested by the Honorable Member, might be easily got rid of, if the Honorable Member would say that he should postpone going into Committee upon the Bill until that day fortnight.

THE PRESIDENT said, the Honorable Member for Bombay had handed in his motion as an amendment under the supposition that the motion to go into Committee upon the Bill had been previously made. He (the President), on the other hand, imagined that the Honorable Member for Bombay had taken up the Bill, and had withdrawn it at once, by the motion for a postponement. Under the 113th Standing Order, it appeared to him (the President) that it was competent to the Honorable Member for Bombay to submit his motion in a modified form ; that is to say, in the form of an original motion, thus :—" That the consideration of this Bill in Committee be postponed until this day fortnight." As it now stood, it was worded as if it was an amendment of an original motion already made ; whereas, in point of fact, there was no motion before the Council to amend.

MR. LEGEYT then altered his motion according to the above suggestion, and the President proposed it to the Council.

MR. PEACOCK said, he readily assented to the postponment, and begged that the observations which he had made when it was first moved for, would be understood as coming here.

MR. ALLEN then said, the Bill, as amended by the Select Committee, had received such important alterations, that its principle had been affected ; and this being the case, he thought that so important a Bill should be re-published for general information in its altered form, in order that the different Governments and the public might have an opportunity of sending in their opinions upon the amendments before the Council came to discuss the Bill in Committee. The original Bill left it to the Executive Governments to introduce Small Cause Courts wherever they should consider it expedient ; that is to say, wherever they should find men qualified to exercise the jurisdiction. The amended Bill gave to every Moonsiff's Court in every Presidency the jurisdiction of a Small Cause Court. This amendment had not been agreed to by all the Members of the Select Committee, but had been carried by a majority. Both Mr. Harrington and Mr. Mills, who had prepared the Bill, and Mr. Mills when on the Select Committee, had strongly opposed this important alteration ; but the other two Members of the Select Committee had decided upon it on two grounds. The first ground was, that in the Presidency of Madras, District Moonsiffs generally had exercised summary jurisdiction in suits to the amount of 20 Rupees for a period of 40 years in a manner which showed that it would be perfectly safe to invest them, and also District Moonsiffs in the Presidencies of Bengal and Bombay, with summary jurisdiction in cases to the amount of 50 Rupees. The second reason was based on theoretical grounds. It would be unjust, the Select Committee said, to confine the proposed summary jurisdiction to particular places, since, if it was right to give it to one town, it must be equally right to give it to every other town ; and, if the Moonsiff of any district was not qualified to exercise the jurisdiction, a competent man should be provided in his place. With regard to the first ground, when the original Bill was sent to Madras, the Judges of the Sudder Adawlut there recorded

" their opinion that the principle upon which the enactment proceeds of constituting Courts for the adjudication of Small Causes, whose decisions should be unappealable as far as regards the appreciation of the evidence upon which they are founded, cannot at present be applied with safety to native judicatories to the extent proposed. Such powers as those with which it is intended to invest the projected Small Cause Courts, should only be entrusted to a class of Judges whose honesty is unimpeachable, and in whose efficiency in the discharge of their duties every reasonable confidence may be reposed. In both these respects, the native Judges of this Presidency have, of late years, considerably improved ; but, notwithstanding the improvement which has taken place, decisions occasionally come before the Court which convince them of the necessity of retaining the safe-guard provided by the supervisions of the appellate Courts. The Judges would therefore continue the right of appeal in all but the most trivial class of cases."

The Government of Madras referred the question a second time to the Sudder Court, with reference to certain remarks made by the Government Pleader there ; and when thus pushed, they did consent to recommend the increase of the summary jurisdiction of District Moonsiffs to 50 Rupees ; but even then, it appeared, that they were not unanimous ; for one of the Judges, Mr. Strange, objected, he being opposed to any extension of the final jurisdiction of those officers beyond that now authorized by s. 43 of Regulation VI of 1816.

With regard to the second, or theoretical ground, the Select Committee had themselves thrown it aside ; because, while they extended the summary jurisdiction of District Moonsiffs generally to 50 Rupees, they gave the right to local Executive Governments to extend the summary jurisdiction of any particular Moonsiff's Court to 300 Rupees, and of any Civil Court of the East India Company now existing, or hereafter to be established, to 500 Rupees, at their will and discretion. Surely, the same argument of cheap and speedy justice for the people which made it imperative to extend the summary jurisdiction of all Moonsiffs to 50 Rupees, would apply equally to the question of extending the jurisdiction to 500 Rupees ; and if it were expedient to give the Executive discretionary power in one case, it was expedient in the other.

With regard to this principle, he would observe that it was not the custom of the Legislature of this country, when giving an extraordinary jurisdiction or an extraordinary Court, to extend that jurisdiction to all parts at once. When, for example, Moonsiffs' Courts in their present form were first instituted by Regulation V of 1831, it was provided therein that the Executive Government should extend the provisions of that Regulation, only to those places where it should appear to the Government to be expedient to do so. And the same course had been taken in regard to Deputy Collectors, Deputy Magistrates, and other Officers. Even in England, when the Act for the establishment of Courts of Small Causes there was passed, the Legislature declared that the Act should come into operation, not everywhere, but only where it would be deemed expedient by the Queen in Council. This point had been strongly pressed by Mr. Harington and Mr. Mills, who were well informed respecting the capacities of Moonsiffs, and the requirements of the Mofussil. The Lieutenant Governor of Agra, too, and the Lieutenant Governor of Bengal, had expressed the same opinion upon the subject. All were anxious that the summary jurisdiction of Moonsiffs should be enlarged to the extent proposed in this Bill ; but they objected most strongly to the provision that every Moonsiff in the country should be invested with such enlarged jurisdiction. Would it be advisable for this Council to go counter to the opinions of such men ? He certainly thought not, and considered that the Bill in its amended form should be published, so that the different Governments and the public might have an opportunity of communicating to the Council their views and sentiments upon the specific alterations which had been made in it by the Select Committee. Important as this Bill was, the representations regarding it from the public had been very few indeed. This was, possibly, owing to an idea that the Bill did not affect them materially. In its altered form, however, it affected them most materially ; and he should move, as an amendment, that the Bill, as amended, be published for general information.

THE PRESIDENT said, before putting the Honorable Member's amendment, he would call his attention to Standing Order No. LXXXV, from which it appeared to be doubtful whether it was competent to him to make his motion until after the Bill should have been considered by a Committee of the whole Council. The Standing Order said :—

> " Any Member may likewise move in Council that the draft be re-published for general information, on the ground that the amendments which may have been adopted are of so new and important a nature that the Act ought not to be passed without being previously published for general information ; and if the motion be carried, the amended Bill shall be published, *and notice may be given of a day on which the third reading and passing of the Bill will be moved.*"

The necessary implication here was, that the Bill must have previously passed through a Committee of the whole Council ; for the Order expressly said, notice may be given of a day for the third reading and passing of the Bill, which could not be done until the Bill had passed through a Committee of the whole Council. He would, therefore, submit to the Council whether, under the 85th Standing Order, it was competent to the Honorable Member to move his amendment now.

MR. ALLEN said, he did not put his amendment under any Standing Order at all, but as a substantive proposition ; just in the

same way as the Honorable Member for Bombay had moved that the consideration of the Bill in Committee should be postponed.

MR. PEACOCK said, the motion of the Honorable Member was very premature, whether he put it under the Standing Orders or not; for he spoke on the assumption that the Select Committee had altered the Bill, whereas they had done nothing of the kind, nor had any power to do so. They had merely suggested certain alterations for the consideration of the Council; but the Council had not yet adopted those suggestions. It might never adopt them. It might reject them altogether. He (Mr. Peacock) did not know whether it would do so or not; possibly, it might. If the Council should adopt the suggestions of the Select Committee, and alter the Bill accordingly, the Honorable Member could make his motion for the re-publication of the Bill; but it was certainly premature to move that the Bill be re-published upon the ground of alterations which had not been made. The question now before the Council was, whether the Council should postpone the consideration of the Bill for a fortnight. The Bill at present was in the same state as when it was first published. Whenever the Council should go into Committee, the Honorable Member might oppose any of the alterations suggested by the Select Committee. If the Council should consent to consider the Bill in the form recommended by the Select Committee, instead of in the form in which it was first published, it would be merely for the sake of convenience: the effect would be the same; the Honorable Member would still have an opportunity of opposing the amendments recommended; and if he should succeed in his opposition, there surely would be no occasion to re-publish the Bill.

With regard to the Standing Orders, he observed that Order No. LXXXIV said, if any amendment of a Bill "be made in Committee of the whole Council, any Member may move that the Bill so amended shall be printed;" and immediately after that, followed the Order to which His Honor the President had referred, and which said—

"Any Member may likewise move in Council that the Draft be re-published for general information, on the ground that the amendments which *may have been adopted* are of so new and important a nature, that the Act ought not to be passed without being previously published for general information; and if the motion be carried, the amended Bill shall be published, and notice may be given of a day on which the third reading and passing of the Bill will be moved."

The Honorable the President had drawn attention to the concluding words of that Order, which, as well as the early part of it, coming as it did after Order No. LXXXIV, did, in his opinion, preclude the Honorable Member from making his motion at this stage of the Bill. If, however, it should be held that the Standing Orders did not so preclude him, he (Mr. Peacock) contended that the motion was premature in point of fact.

SIR JAMES COLVILE said, there was no Bill before the Council except that which had been referred to the Select Committee. What the Honorable Mover of the amendment sought to publish to the world, was the Report of the Select Committee, containing certain suggestions which might, or might not, be adopted. The Honorable Member might move anything he pleased by way of amendment upon an original motion; but, as a mere point of order, he (Sir James Colvile) was clear that what he had now moved, was not a proposition to which the Council ought to agree. To order the publication of such a paper, would be to imply that that which was published, had been adopted by the Council. If the amendments proposed were hereafter adopted by a Committee of the whole Council, and their effect was such as to render the re-publication of the Bill before it became law desirable, the Honorable Member would have an opportunity of moving, according to the Standing Orders, for that re-publication.

THE PRESIDENT ruled, that, under the wording of Standing Order No. LXXXV, it was not competent to the Honorable Member for the North-Western Provinces to make his motion.

MR. LEGEYT'S motion for the postponement of the consideration of the Bill in Committee, was then put, and carried.

PARDONS, REPRIEVES &c.

MR. PEACOCK then moved that the Council resolve itself into a Committee upon the Bill "to remove doubts relating to the power to grant pardons, and reprieves, and remissions of punishments in India." He said he had made all the observations which he considered necessary on the subject of this Bill at the last Meeting of the Council, and he should, therefore, make no further remark upon it on this occasion.

Motion carried.

The Bill was agreed to as it stood.

The Council having resumed its sitting, the Bill was reported to it, as settled in Committee.

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

Motion carried, and Bill read accordingly.

MR. PEACOCK moved that Mr. Grant be requested to carry the Bill to the President in Council, in order that it may be submitted to the Governor General for his assent.

Agreed to.

CONSERVANCY (FORT ST. GEORGE).

MR. ELLIOTT moved that a communication which he had received from the Government of Fort St. George on the subject of regulating burial grounds, be laid upon the table, and referred to the Select Committee on the projects of Law relating to the Police and Conservancy of Calcutta, Madras, and the Straits Settlements.

Agreed to.

BANKS OF BENGAL, MADRAS, AND BOMBAY.

MR. LEGEYT moved that a communication which he had received from the Secretary and Treasurer to the Bank of Bombay, relative to the Bill "to enable the Banks of Bengal, Madras, and Bombay to transact certain business in respect of Government Securities and Shares in the said Banks," be laid upon the table, and referred to the Select Committee upon the Bill.

Agreed to.

NOTICE OF MOTION.

MR. LEGEYT gave notice that, on Saturday next, he would move 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."

POINTS OF ORDER.

MR. GRANT said, he had a motion to make in reference to the two points of order which had been raised this day, as they appeared to him to be points of very great importance. His motion was—

"That the Standing Orders Committee be directed to examine the Journals, and to report upon the practice of the Council upon the two questions of order which arose to-day upon the Order of the Day for Committee of the whole Council 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' being called on."

The learned Member opposite (Mr. Peacock) had given notice of a motion that the Council should resolved itself into a Committee upon the Bill of which he had charge; and that motion had therefore been duly entered as an Order of the Day. But when that Order of the Day was called on, the motion had been taken out of his mouth by another Honorable Member, who, without having given any notice, had risen before the Honorable Member whose motion was on the paper, and had made a motion which was not in the Orders of the Day at all. That motion, nevertheless, had been proposed from the Chair. His (Mr. Grant's) impression was, that this course was not consistent with the practice of the Council and the Standing Orders. His impression was, that the proper course would have been, when the Order of the Day of which notice had been given was called on, for the Honorable Member who had given the notice to make his motion, if he desired to bring on the question, or to postpone it, if for any reason he desired to postpone the question. He would read the Standing Order under which the entry in the Orders of the Day had been made:—

"When the Report of the Select Committee shall be presented to the Council, it shall be laid upon the table; after which notice may be given of a day on which it will be moved that the Council do resolve itself into a Committee of the whole Council on the Bill."

The Report of the Select Committee upon this Bill had been presented to the Council, and laid upon the table; the Honorable Member opposite (Mr. Peacock) had given notice of a day—namely, this day—on which he would move that the Council should resolve itself into a Committee upon it; and the Clerk had therefore duly inserted the notice of motion for the committal of the Bill in the Orders of the Day. When the time came for that Order of the Day to be called on, and the Order was called on, he (Mr. Grant) was under the impression that no other motion could be proposed than the motion of which the Honorable Member opposite had given notice. If this were not so, the Standing Orders of the Council might as well be thrown aside altogether. If, in a case requiring notice of motion, any Honorable

Member might jump up, and make a motion of which he had given no notice, in the place of another motion of which notice by another Honorable Member had been duly given, why did the Standing Orders require notice of motion at all? This appeared to him a very important question of Order, as the precedent might affect the future proceedings of the Council injuriously. For this reason, he wished the Journals of the Council to be referred to, in order that it might be seen what the practice had been upon this point. If he remembered correctly, Lord Dalhousie, when presiding at the Council, had once, if not twice, in a somewhat similar case, ruled that no other original motion could be proposed in regard to a Bill than that of which notice had been given.

The other point of order was this. The Honorable Member near the gang-way (Mr. LeGeyt) having been allowed to make his motion as an original motion, and that motion having been proposed as such from the Chair, the Honorable Member to his right (Mr. Allen) had moved an amendment upon it; but it had been ruled that the amendment could not be put. Now, his (Mr. Grant's) impression was, that whenever any motion was proposed, a Member might move any amendment upon it that he pleased. For what was an amendment? It was a proposition that a motion should not be put in the form in which it was framed; but that it should be put in another form. It was obvious that the Council could not be bound down to say barely "yes" or "no" to a motion in any particular form of words. He might not wish to vote against a motion proposed; yet, he might, or he might not, approve of the form of the motion. And was he, if he disapproved of the motion being put in that form, and preferred that the motion should be put in another form, and the majority of the Council agreed with him—to be deprived of the right of having the motion put in the form which the majority preferred?

He considered both the questions of order which had arisen to-day to be very important, with a view to the future; and therefore, he thought it his duty to make this motion.

THE PRESIDENT, before putting the motion, observed that he desired to say a few words upon it. The mistake which had occurred as to the first point of order, had originated with himself, from his not being aware, at the time, that the Order of the Day was in charge of the Honorable Member to his left (Mr. Peacock). He was under the impression that it was in charge of the Honorable Member for Bombay, and that the Honorable Member, while explaining why he asked for a postponement, was speaking upon his own motion. In that had originated the error. Had he known then that the Bill was with the Honorable Member to his left, he should have checked the error at once.

MR. GRANT said, if it was understood that what had been done to-day was not to stand as a precedent, and that, in future, in similar cases, no motion should be put from the Chair before that of which notice had been given, and which was in the Orders of the Day, he had no wish to press his motion.

MR. PEACOCK said, he should much prefer it if the motion were put and carried; for he likewise should wish to know what the practice had been in regard to the points referred to. If a Member gave notice that he would move to go into Committee upon a Bill on a particular day, but afterwards had reason to see that he ought not to go into Committee upon it on that day, it would be very hard and very inconvenient to compel him to do so; and yet, that would be the effect if the view taken on the opposite side were correct; for then, the Member must move that the Council should resolve itself into a Committee; and as he could not move an amendment upon his own motion, he would find himself, if his motion were not opposed, under the necessity of carrying the Bill through Committee. In the present case, he (Mr. Peacock) was anxious to see the observations which had been made upon the Bill by the Government and the Sudder Adawlut of Bombay, and so, he had no doubt, was every other Member of the Council; but the course contended for by the Honorable Member opposite (Mr. Grant,) might have precluded them from seeing those observations before discussing the Bill in Committee. It was true that the Select Committee on the Bill had gone on and reported upon it without having seen the objections of the Government of Bombay; but if that Government had written to the Clerk intimating that they had any objections to offer against the Bill, the Committee would have waited for them. It had not done so. Now, however, that objections had come in, and that he knew they had come in, he should not think he would be doing his duty to this Council or to the public in forcing on the Bill. Had he moved that the Council

should go into Committee upon it, and had the majority of the Council agreed to that, he could not have voted against his own motion; and therefore, he should have been in the very awkward position of having to take a Bill into Committee after new facts had come to his knowledge which made him anxious that its consideration in Committee should be postponed.

If the view taken by the Honorable Member opposite (Mr. Grant) were correct, he thought that the Standing Orders should be re-considered and amended.

SIR JAMES COLVILE said that, not being a Member of the Standing Orders Committee, he would take this opportunity of saying a few words upon this subject.

He should certainly vote for the motion which had been proposed by the Honorable Member to his left (Mr. Grant,) and he had no doubt that it would receive the best consideration of the Standing Orders Committee.

With regard to the inconvenience that had been suggested by the Honorable Member opposite (Mr. Peacock), it could, practically, be met in this way. If a Member gave notice that he intended to move any stage of a Bill on a particular day, there was nothing to prevent him, when that day arrived, from asking leave of the Council to postpone his motion, either for his own convenience, or for other reasons which, he might consider, made a postponement expedient. This was constantly done, nor was there any reason to suppose that the Council would ever force a Member to bring on a motion against his will.

Another and equally simple mode of meeting the difficulty, would have been for the Honorable Member to move the Order of the Day according to notice, and for the Honorable Member for Bombay then to move by way of amendment that the further consideration of the Bill be postponed. He thought either course more convenient, and more consistent with the Standing Orders, than that which had been followed that day.

MR. GRANT said, in reply to the Honorable Member opposite (Mr. Peacock,) he must explain that he had intended to confine his observations entirely to the general points of order raised. He did not wish to refer to the particular course taken to-day in terms either of approval or disapproval. But it was very necessary to have both points of order settled generally, for the guidance of the Council in future; and as the Honorable Member wished that his motion should be put, he (Mr. Grant) should press it.

The Honorable Member had said that it would be extremely inconvenient if, after he had put into the Orders of the Day a particular motion, he should be obliged to make it although circumstances might have come to his knowledge in the meantime which made him anxious to postpone it. He (Mr. Grant) saw no reason to fear any such inconvenience. As the proverb said, one man may take a horse to the water, but twenty men cannot make him drink. So, the Clerk of the Council may insert in the Orders of the Day a motion of which an Honorable Member has given notice; but the whole Council cannot force such Honorable Member to get up and make the motion, unless he chooses to do so. It had frequently happened in the case of motions entered in the Orders of the Day upon notice, that the Member who had given the notice, when the Order of the Day was called on, instead of making his motion, had merely stated to the Council that he intended to postpone it, either because he was not prepared to bring it on, or for some other reasons which appeared to him to require a postponement. The Honorable and learned Member opposite might have done that to-day as to the Bill in question. Or, he might have made his motion, and the Honorable Member for Bombay might have moved a postponement, by way of an amendment, to which the maker of the original motion might have consented. He (Mr. Grant) thought that the Standing Orders upon this point are well framed as they stand. They had been framed upon the model of the Standing Orders of the House of Commons; and he did not see how the difficulty apprehended could ever be felt in practice, if they were acted upon to the letter.

MR. Grant's motion was then put, and carried.

The Council adjourned.

Saturday, May 12, 1855,

PRESENT:

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

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

THE CLERK reported that he had received from the Private Secretary to the Governor General a letter stating that he had