

Saturday, 10th November, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL

OF INDIA

Vol. I

(1854-1855)

Council to meet this day week. Perhaps Honorable Members would prefer a longer recess than the period to which the holidays would extend ; and as the expected return of the Governor General would not leave Government House much longer available for the Council, and the Home Office, which was still under repairs, would not be ready for some time to come, and it would be necessary to provide other accommodations, he should move an adjournment until the 10th of November next.

The motion was agreed to, and the Council adjourned accordingly.

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Saturday, November 10, 1855.

PRESENT :

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

Hon. J. P. Grant, D. Elliott, Esq.,
Hon. B. Peacock, P. W. LeGeyt, Esq., and
Hon. Sir J. W. Colville, E. Currie, Esq.

THE CLERK presented the following Petitions :—

MILITARY ORPHAN SOCIETY.

A Petition from the Managers of the Military Orphan Society, praying for the passing of an Act to enable them to be registered as a corporate body, and to be empowered to sue, and be sued in the name of their Secretary for the time being ; and submitting the Draft of a Bill for the purpose.

MR. PEACOCK moved that the above Petition be printed.

Agreed to.

DISTRICT MOONSIFFS' ESTABLISHMENTS (FORT ST. GEORGE).

A Petition of Vudlamunnatty Venkatchellem, District Moonsiff of Ellore, submitting the draft of a Bill relating to the Ministerial Establishments of the District Moonsiffs.

SMALL CAUSE COURTS.

A Petition from the same, relative to the Bill "for the more easy recovery of small debts and demands."

CIVIL PROCEDURE.

A Petition from Golam Botool Tomkin, Moonsiff of Amdurah, in Zillah Beerbhoom, submitting the draft of an Act for improving the procedure in the Civil Courts.

Mr. Dorin

INHERITANCE OF LANDED PROPERTY.

A Petition from Sibnarain Chuttopadhya, a Vakeel of the Sudder Court at Calcutta, suggesting the passing of an Act to amend Regulation XI of 1793.

PETITION OF COTTAH KITCHENNAH CHETTY.

A Petition of Cottah Kitchennah Chetty, praying for the reversal of an order passed by the Sudder Adawlut at Madras, on an appeal preferred by him from a decision of the Civil Court of Salem.

THE PRESIDENT said, this was a Petition which the Council could not receive. It related to a matter not connected with the business of the Council, and must be rejected.

SMALL CAUSE COURTS.

THE CLERK reported to the Council that he had received a communication from the Secretary to the Government of the North-Western Provinces, relative to the Bill "for the more easy recovery of small debts and demands."

MR. ELIOTT moved that the papers reported this day by the Clerk, relative to the above Bill, be printed.

Agreed to.

DISTRICT MOONSIFFS' ESTABLISHMENTS (FORT ST. GEORGE).

MR. ELIOTT next moved that the Petition of Vudlamunnatty Venkatchellem, District Moonsiff of Ellore, submitting the draft of a Bill relating to the ministerial establishments of the District Moonsiffs, be printed.

Agreed to.

LIMITATION OF SUITS.

MR. ELIOTT moved that a communication received by him from the Chief Secretary to the Government of Fort St. George, relative to the Bill "to provide for the acquirement and extinction of rights by prescription, and for the limitation of suits," be laid upon the table, and referred to the Select Committee on the Bill.

Agreed to.

MARRIAGE OF HINDU WIDOWS.

MR. GRANT said, he was sorry he must postpone the motion (of which he had given

notice) for the first reading of a Bill to remove all legal obstacles to the Marriage of Hindu Widows. He had been prepared to bring it forward to-day ; but two days ago it came to his knowledge that the subject had been before the Law Commission, and he believed the Law Commission had reported upon it, though he had not yet been able to procure their report from the Home Office. He held in his hand a Circular that had been issued by the Law Commission, calling upon the Sudder Courts of the different Presidencies, for their opinions on the expediency of legalising the Marriage of Hindoo Widows, and the replies thereto from the Bengal, Agra, and Madras Sudder Courts. These replies were unanimously and strongly against the measure. They had not shaken his own opinion in the least ; but he thought he would not be doing justice to a subject of so much importance, or to the Legislative Council, if he did not append the proceedings of the Law Commission to his Statement of Objects and Reasons. He had not obtained all the necessary papers from the Home Office as yet ; but he hoped to do so before Saturday next.

LIABILITIES OF PARTNERS.

MR. PEACOCK said, he must ask the indulgence of the Council for a short time, for bringing in the Bill to limit the liabilities of partners, the motion for the first reading of which he was to have made this day. When he gave notice of that motion at the last meeting of the Council, he thought that one Bill would be sufficient ; but he now found that two Bills would be necessary,—one, applicable to private partnerships ; another, to joint-stock associations. It appeared to him that it would be better to bring in both Bills at once, and he hoped to be able to do so this day fortnight.

INSPECTOR OF PRISONS (BOMBAY).

MR. LEGGAT moved that the Bill “to relieve the Court of Sudder Fouzdarry Adawlut at Bombay, from the supervision of the Gaols in that Presidency” be now read a second time.

Motion carried, and Bill read a second time accordingly.

EMBANKMENTS (BENGAL).

MR. CURRIE moved that the Council resolve itself into a Committee upon the Bill “for the better supervision of Embank-

ments,” and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I of the Bill was passed as it stood.

Section II defined what a public Embankment was within the meaning of the Act.

MR. CURRIE moved an amendment in this Section. The word “embankment,” he said, was defined by the Section to mean “an embankment for the purpose of preventing inundation from a river or from the sea.” This, no doubt, was, speaking generally, the kind of embankments which the Act was intended to provide for ; but it had been suggested to him that, for a definition, the terms made use of were too limited.

In Section IV, Clause 2, it was provided—

“He (the Superintendent of Embankments) may also cause any private embankment, which endangers the stability of a public embankment, or obstructs the beneficial drainage of the country, to be removed.”—

Now, such an embankment might very probably be rather for retaining water for irrigation, fishing, or other purposes, than for preventing inundation from a river or from the sea. Again, there might be such a work as a cross-bund, connecting the embankments of two neighbouring rivers. He believed that a work of that description was now in contemplation, in connection with the proposed abandonment of the bunds on the right bank of the Upper Damoodah. Such a cross-bund would be intended to restrict the area of inundation, but, as it would not be in a line parallel to the river, it could hardly be said to prevent inundation. He therefore thought that it would be better to substitute the words “for the purpose of excluding or retaining water” for the words “for the purpose of preventing inundation from a river, or from the sea” which now stood in the Section.

The amendment was agreed to, and the Clause, so altered, was passed.

Sections III and IV were passed as they stood.

Section V, Clauses 1 to 3, were passed as they stood.

Clause 4 was passed, after the addition to it of Clause 6, both relating to the same subject—namely, appeals from the orders of the Superintendent of Embankments, and the Commissioner of Revenue upon objections of parties to the proceedings of the Superintendent under Section IV of the Act.

Clause 5 was passed as it stood; and the Section, amended as above, was carried.

Section VI provided that—

“Whenever the Superintendent of Embankments shall cause an embankment which any person is bound to keep up, to be taken charge of by the officers of Government, the expense of keeping up such embankment shall be charged to such person. Provided that the amount so charged shall not exceed the reasonable expense of keeping up an embankment of the size and description which such person was bound to keep up, notwithstanding the embankment shall have been enlarged or improved by the Officers of Government.”

Mr. CURRIE said, he believed this was intended to provide for such cases as those contemplated by Section IV, Clause 1, which said that the Superintendent of Embankments may cause any embankment which connects public embankments, or forms by junction with them part of a line of embankments, or is necessary for the protection of the neighbouring country, to be taken charge of and kept up by officers of Government. That, he thought, was the plain meaning of the words of the Section; but it had been suggested to him that, unless the provision was expressly restricted to such cases, it might possibly be made to apply retrospectively to bunds which were already, and had been long previously, in the charge of Government Officers. In Midnapore, and other places, embankments had now been in the charge of Government Officers for some fifty years, and there was no doubt that, within that period, several of them had been enlarged; and it would be impossible to say, at this distance of time, what was the precise size of the bunds which the Zemindars were originally required to keep up. It would be very unadvisable to have questions of that description raised, since they could not be satisfactorily determined.

After some conversation, the Honorable Member, to remove all doubt as to the effect of the Section, moved an amendment, which made it run thus:—

“Whenever the Superintendent of Embankments shall *hereafter* cause an embankment, &c.”

The amendment was agreed to, and the Section, so amended, was passed.

Section VII, Clause 1, provided compensation for damages sustained under the Act.

Mr. CURRIE said, it had been suggested to him, since he had come into the room, that it would be advisable to limit the period within which the claim for compensation might be preferred under the Section, either

to the Collector, or by a suit in the Court in the event of the claim being rejected by the Revenue authorities. He thought it would be advisable to do so, and should, therefore, propose an addition to the Section which should limit the period to three months.

After some conversation, the consideration of this Clause was postponed.

Clauses 2 to 8 were passed as they stood.

Clause 9 was passed after the addition to it of Clause 14, which related to the same matter.

The remaining Clauses of the Section were passed as they stood.

Sections VIII to XI were passed as they stood.

Section XI, Clause 1, was passed as it stood.

Clause 2 provided that the accounts of all works, the expense of which is chargeable to individuals, should be forwarded to the Collector, and proceeded to say—

“If any interested person shall object to the accounts on the ground either that the work charged for has not been performed, or that the rates of charge are higher than the estimate, the Collector shall enquire into such objection, &c.”

Mr. CURRIE said, it might happen that the work might be executed at an expense lower than the estimate, in which case the charge ought to be only the sum actually expended, and if more were charged by the subordinates in the department, of course that ought to be inquired into. He should therefore propose as an amendment, that the words “or that the whole sum charged has not been expended” be added to the words “or that the rates of charge are higher than the estimate.”

The amendment was agreed to, and the Clause, so altered, was carried.

The remaining Sections of the Bill, with the Preamble and Title, were carried as they stood.

The Council resumed its sitting.

MOCHULKAS OR PENAL RECOGNIZANCES.

Mr. LARGYTT moved that a communication received by him from the Secretary to the Government of Bombay, relative to the Bill “for the better prevention of offences against the public tranquillity, and to amend the law regarding the taking of Bonds for keeping the Peace,” be laid on the table, and referred to the Select Committee on the Bill.

Agreed to.

POLICE CHOWKEYDARS.

Mr. GRANT moved that Mr. Currie be added to the Select Committee on the Bill "to amend the law relating to the appointment and maintenance of Police Chowkeydars in cities, towns, stations, suburbs, and bazars, in the Presidency of Fort William in Bengal."

Agreed to.

ADMINISTRATOR GENERAL'S ACT.

Mr. PEACOCK said, he wished to call the attention of the Council to the Despatch, which had been read at their last meeting, from the Honorable Court of Directors in reference to the Act No. VIII of 1855 "to amend the law relating to the office and duties of Administrator General." That Despatch involved a most important principle—namely, whether the Members of this Council were bound to legislate in any manner in which they might be directed by the Honorable Court of Directors.

The Honorable Court of Directors were of opinion that the commission payable to the Administrator General of Bengal should be 5 per cent, of which three-fifths should be for the expenses and remuneration of the Administrator General, his office, and establishment, and two-fifths should be paid into the Public Treasury for the payment of the Auditors, and all other such expenses incidental to the due execution of the office of Administrator General.

Prior to Act VII of 1849, the estates of persons dying intestate were administered by the Ecclesiastical Registrar, and that Officer was entitled to a commission of 5 per cent. The Office of Administrator General was first created by Act VII of 1849; and by the 7th Section of that Act, the rate of commission was reduced to 3 per cent. The Act, which was applicable only to Bengal, was afterwards extended to Madras and Bombay, by Act II of 1850; and by that Act, the Administrator General in each of those Presidencies was declared to be entitled to retain the same rate of commission that had been charged by the Ecclesiastical Registrar—namely 5 per cent—and the lower rate fixed by Act VII of 1849 for Bengal, was not to take effect in the other Presidencies until such reduction should be directed by the local Governments. In a Despatch which was received in this country in 1852, the Honorable Court of Directors wrote as follows:—

"We are aware that Act No. VII of 1849 limits the commission to be charged by the Administrator General at your Presidency to 3 per cent, from which amount he is to defray the expenses of his establishment. This Act was framed and passed by you for the purpose of disconnecting the administration of estates of British subjects dying intestate, from the office of Ecclesiastical Registrar of the Supreme Court, and of fixing as moderate a rate of commission as would compensate the Administrator General in Bengal. Your Government, when framing the Act in question, and Act No. II of 1850, had not the means of judging whether the prescribed rate of 3 per cent would adequately remunerate the Administrator General at the Presidencies of Madras and Bombay, nor did you then take into consideration the expenses that must be incurred by Government in carrying out the measures requisite fully to insure the objects contemplated by the Act. It is not our intention to charge in this country any commission on the funds which may be remitted here, and we are of opinion that the Administrator General at all the Presidencies ought to be authorized and empowered to charge a uniform commission of 5 per cent upon all funds received by them, and that in Bengal he should be required to pay 2 per cent thereof into the Public Treasury, for the purpose of defraying any expenses which may be incurred in India and in this country, by reason of the system now adopted—a system under which the Government is rendered responsible for the safety of the Funds."

By Act VIII of 1855, as originally framed, these orders were carried out. The Bill was referred to a Select Committee, consisting of Sir Lawrence Peel, Mr. Allen, and himself; and, after fully and deliberately considering the question, they had unanimously come to the conclusion that it would not be right to raise the rate of commission payable to the Administrator General of Bengal. The commission of 3 per cent, which that Officer received, had been found to be sufficient remuneration to him for the discharge of his duties and the maintenance of his establishment. The commission of 5 per cent, which continued to be received by the Administrator General of Madras, had been found not to be more than sufficient to remunerate him for the duties which he had to discharge. In Bombay the 5 per cent. commission was considered quite inadequate, and there had been great difficulty in procuring any one to fill the office. In that Presidency the Government had been obliged to make a monthly allowance to the Administrator General in addition to his commission. That allowance was fixed at such an amount as, added to the commission according to an average of the last five years, made the aggregate income rupees 1,500 per month. He believed that was the amount, but he

was speaking merely from memory. In Madras and Bombay the whole commission was retained by the Administrators General; but it was now proposed that, when 5 per cent. should be authorized to be taken in Bengal, 2 per cent. of that amount should be paid by him into the Public Treasury to the account of Government. Since the last meeting of the Council, he had carefully reconsidered the question; but with the greatest deference to the Honorable Court of Directors, he could not concur in the reasons which they had urged, nor alter the opinion at which he had arrived when acting as a Member of the Select Committee. He for one, therefore, could not introduce a Bill for the purpose of carrying into effect the directions of the Honorable Court of Directors. He did not know whether any Honorable Member of the Council was prepared to propose a Bill for that purpose. If not, he thought it was necessary that some course should be adopted with respect to the Despatch of the Honorable Court. The Honorable Court, after expressing their opinion, proceeded thus—

“Entertaining these views, we must disallow so much of the Act VIII of 1855, as is inconsistent with our present orders, which we desire may be strictly followed out; and we think it right to add that the passing of an Act founded on these directions, though it should lead to a diminution of the emoluments received by the Administrator General, under a measure adopted in contravention of our instructions, will not be admitted by us as giving a just claim for any compensation.”

Now, there were two matters involved in these directions;—first, the Honorable Court disallow so much of the Act as is inconsistent with their present orders; and 2ndly, they direct that those orders shall be strictly followed out. There could be no doubt that the Honorable Court, subject to the control of the Board of Commissioners for the affairs of India, had power to disallow any Act passed by the Governor General of India in Council; and that, upon notice of their disallowance of any such Act, the Governor General in Council would be bound to repeal it forthwith. By 3 and 4 Wm. IV, c. 85, s. 43, the Governor General in Council was empowered to make Laws and Regulations for India. But it was provided by Section XLIV—

“that, in case the Court of Directors, under such control as by this Act is provided, shall signify to the said Governor General in Council their disallowance of any laws or Regulations by the said Governor General in Council made, then, and in every such case, upon receipt by the said Governor General in Council

of notice of such disallowance, the said Governor General in Council shall forthwith repeal all laws and Regulations so disallowed.”

If the Honorable Court of Directors had stated that they disallowed the Act No. VIII of 1855, he should have felt it to be his duty, under that Section of the Charter Act, forthwith to introduce a Bill for the purpose of repealing it. But the Council would not be carrying out the views or intention of the Honorable Court by repealing the Act altogether. Their intention was, that the commission to be charged upon estates administered by the Administrator General of Bengal, should be 5 per cent, of which 3 per cent should go to the Administrator General, and 2 per cent to the Public Treasury. But Act No. VIII of 1855 merely gave a commission of 3 per cent to the Administrator General; and by repealing that Act effect would not be given to the intention of the Honorable Court.

SIR JAMES COLVILLE begged that the Section of the Charter Act might be read again. He was under the impression that the disallowance of an Act by the Court of Directors of itself operated as a repeal.

MR. PEACOCK, with great submission to the Honorable and learned Member, thought that was not so. He again read the 44th Section, and also part of the 45th, which was as follows:—

“Provided also, and be it enacted, that all Laws and Regulations made as aforesaid, so long as they shall remain unrepealed, shall be of the same force and effect within and throughout the said Territories, as any Act of Parliament would or ought to be within the same territories, and shall be taken notice of by all Courts of Justice whatsoever, within the same territories, in the same manner as any public Act of Parliament would and ought to be taken notice of.”

Consequently (the Honorable and learned Member continued) until an Act was repealed by the Governor General in Council, it remained in full force. If the Honorable Court of Directors, under the power that had been vested in them by the Imperial Parliament, had disallowed the whole of Act VIII of 1855, he should, as he had already observed, have considered himself bound to bring in a Bill to repeal it. But it was clearly not the intention of the Honorable Court that the whole Act should be repealed. What they said was—

“We must disallow so much of the Act VIII of 1855 as is inconsistent with our present orders.”

Mr. Peacock

Another important question was, whether the Honorable Court had the power to direct the Legislative Council to repeal any portion of an Act. It appeared to him that they had not, especially if it related to one subject. They had a veto upon every Act passed by the Council, and could order that an Act of which they disapproved should be repealed entirely; but they had no power to say that they disallow certain Clauses of an Act, and that the Legislative Council must repeal those particular Clauses. Suppose this Council should think it expedient to pass an Act vesting a Court with particular power, but, considering that it would not be safe to leave the exercise of that power independent of control, should insert in it a Clause giving a right of appeal to a higher tribunal, could the Honorable Court of Directors tell the Council—"We disallow the Clause of the Act which gives the right of appeal, and tell you to repeal it?" Surely, they could not; because the repeal of that particular Clause would entirely alter and defeat the intention of the Council.

By Act V of 1851, which was passed after the defalcations of Sir Thomas Turton, the net proceeds of all estates which remained in the hands of the Administrator General unclaimed for fifteen years, were directed to be paid into the Public Treasury and carried to the account and credit of the East India Company, and it was enacted that, if a claim to any part of the amount so paid into the Treasury should afterwards be made and established to the satisfaction of the Administrator General and of the Accountant to the Government of Bengal, the said Accountant should direct the Sub-Treasurer to repay the amount out of the Treasury to the claimant. If the Administrator General and the Accountant should not admit the claim, it was left to the Supreme Court to decide the question in a summary manner. He wished to explain that the assets of unclaimed states transferred by the Administrator General to the public Treasury were not absolutely vested in the Government, but were only paid in subject to a liability to refund any portion of the amount to which any person should establish a claim.

Up to the passing of Act VIII of 1855 there was no similar law respecting unclaimed estates in Madras and Bombay; but Clauses were introduced into that Act providing a similar rule for those Presidencies; and five or six lakhs of rupees had been paid into the Public Treasury in pursuance of the Act. If it were desired that

the rate of commission payable to the Administrator General should be the same in all the Presidencies, he thought it would be better to reduce the rate in Madras and Bombay to 3 per cent than to raise the rate of commission in Bengal to 5 per cent, when 3 per cent was a sufficient remuneration to the Administrator General of that Presidency. It would be necessary, in that case, to make an allowance to the Administrators General of Madras and Bombay, in addition to their commission, as a compensation for the loss which they might sustain by reducing it from 5 to 3 per cent.

It was at one time proposed to pay the Administrator General at Bombay by salary, but he (Mr. Peacock) did not think that that mode of remuneration was advisable, because the great object was to induce the Officer to look out for the estates of persons dying intestate, in order that they might be protected, and having obtained administration to pay the creditors and next of kin as soon as possible. He ought to have an interest, not merely to take out administration, but to find out the persons who were entitled to the assets and distribute them accordingly. If the Administrator General were paid by a salary, his interest would be to administer to as few estates as possible, and, in those cases in which he might take out administration, to pay the money into the public Treasury and then leave it. Prior to Act VIII of 1855, it was the practice for the Administrator General to retain the whole commission of 3 per cent the moment he collected the assets, whereas one of the most important duties of an Administrator was to distribute the assets amongst the creditors and next of kin as soon as possible. Such distribution, however, involved considerable trouble and risk, for an Administrator was responsible if he paid away assets to persons who were not entitled to them. It was, therefore, important to pay the Administrator General in such a manner as to give him an interest in administering to as many estates as possible, and in distributing the assets as quickly as possible. It therefore appeared to him that the Administrator General ought to be allowed only a portion of his commission on collecting the assets, and the residue upon distribution. The Honorable Members who sat with him as Members of the Select Committee concurred in that view, and it was agreed that he ought to be allowed only one-half of his commission or one and a half per cent upon the collection of the assets, and the residue upon the distribution of them in due

course of administration. Thus, the Administrator General had a direct pecuniary interest, first to collect the assets, and then to distribute them, instead of having, as before, an interest in collecting only. He had shown that the rate of commission at Madras and Bombay might be reduced from 5 to 3 per cent without throwing the burthen of compensation into the general revenue of the state, and for the reasons which he had stated, he did not think it right to increase the rate of commission to be paid to the Administrator General of Bengal. He could not therefore bring in or vote in support of a Bill for that purpose. The repeal of Act VIII of 1855 would not, nor would the repeal of any part of it, carry into effect the views of the Honorable Court of Directors.

If Act VIII of 1855 were repealed, Act VII of 1849 would come into force; but by that Act the rate of commission would still be only three per cent. In order to raise the commission to 5 per cent a new Act would be necessary. This led him to consider the important question whether the Legislative Council were bound in that respect to follow out the orders of the Honorable Court.

There was a Section in the Charter Act to which he desired to call the attention of the Council. He alluded to 3 and 4 W. IV c. 85 Section LXXX, which was as follows:—

“And be it enacted that every wilful disobeying, and every wilful omitting, forbearing, or neglecting to execute the orders or instructions of the said Court of Directors by any Governor General of India, Governor, Member of Council, or Commander-in-Chief, or by any other of the Officers or servants of the said Company, unless in cases of necessity (the burthen of the proof of which necessity shall be on the person so disobeying, or omitting, forbearing, or neglecting to execute such orders or instructions as aforesaid); and every wilful breach of the trust and duty of any office or employment by any such Governor General, Governor, Member of Council, or Commander-in-Chief, or any of the Officers or servants of the said Company, shall be deemed and taken to be a misdemeanor at law, and shall or may be proceeded against and punished as such by virtue of this Act.”

The words of that Section were certainly very strong; but it appeared to him that the Section must be read in connection with all the other parts of the Act, and that it never could have been intended by the Imperial Parliament to place the Council in its legislative capacity in such a position that it should be bound to pass any Act which it might be ordered to pass. The Section was

applicable not only to the Members of Council, but to every Officer and servant of the East India Company. It extended to every Judge of the Company's Courts; all were bound equally to execute the orders and instructions of the Honorable Court of Directors, under pain of being deemed guilty of a misdemeanor. But could any one suppose for a moment that Parliament intended to empower the Honorable Court of Directors to direct a Judge of any of their Courts in this country as to how he should decide a particular case? Most assuredly not; and if the Honorable Court could not direct a Judge as to how he should decide, it appeared to him that they could not dictate to the Legislative Council as to what Laws it should pass. It was clear that they could direct the Council to repeal an Act entirely; and he apprehended that they could also direct the Council not to pass a particular Act. They might order the Council to take any particular subject into consideration; but he maintained that neither the Court of Directors nor the Board of Control had the power to direct that any laws which they might think expedient should be enacted by the Governor General in Council. The Honorable Court had an undoubted veto upon Acts passed by the Governor General in Council; but they had no power to dictate to the Council the particulars of the laws which they should pass. He had always understood, and he still held, that the office of a Member of Council was a high and honorable one; but if he believed that the constitution of this Council was such that its Members were bound to legislate in any manner that either the Board of Control or the Honorable Court of Directors might order, he should say that, instead of its being a high and honorable office, it was one which no man who had a regard for his own honor and independence could consent to hold; for his own part, he would state freely and without hesitation that he would rather resign his office than hold it upon such a tenure. The 80th Section of the Charter Act, which he had read, consisted of two Clauses;—one required obedience to such orders as the Honorable Court of Directors were authorized to give; the other provided for the faithful discharge of the duty of his office by every Officer of the East India Company. He believed that the trust and duty committed to every Member of the Legislative Council was to act according to his own judgment and conscience.

He was always ready to consider, with

Mr. Peacock

that attention which they deserved, the advice and suggestions of the Honorable Court; but he did not believe that he was bound to obey an order to pass an Act, if in his own judgment such an Act ought not to be passed. He was not prepared to bring in a Bill framed according to the instructions which the Honorable Court of Directors had sent out; and if no other Member was disposed to take the opinion of the Council upon such a measure by introducing a Bill, he thought it would be right, out of respect to the Honorable Court and in justice to the Council that a Report upon the Despatch should be drawn up and communicated to the Honorable Court. Possibly, when their attention was drawn to the subject, they might not insist upon their present orders. He should, therefore, propose that the Despatch be referred to a Select Committee. The original Select Committee, by the departure of Sir Lawrence Peel, had been reduced to two Members—Mr. Allen and himself. He did not think that it would be right to refer the Despatch to those two Members alone; but, at the same time, he for one would not shrink from responsibility in such a case. He begged to propose that the Despatch be referred for consideration and report to a full Select Committee consisting of five Members, viz., the President of the Council, the Honorable Mr. Grant, Sir James Colville, Mr. Allen, and himself.

The question being proposed—

SIR JAMES COLVILLE said, he had a very few words to offer upon this question. He had been taken rather by surprise by the discussion, not from any omission of the honorable and learned Member (Mr. Peacock) to give notice of his motion; but from his (Sir James Colville's) having landed so recently, and not had time, amid the many occupations in which he had been engaged since his arrival, to make himself fully acquainted with the subject. But he was sure that he had heard nothing from the honorable and learned Member which did not increase, if possible, the admiration and respect which he had always felt for his independence of character, as well as for his great learning and eminent ability. He could not but believe that the Despatch which was the subject of discussion, must have been worded as it was somewhat *per incuriam*. He could not suppose that the Honorable the Court of Directors really meant to hold that the Imperial Parliament, when it first conferred on the Governor General in Council the legislative power given by the Charter Act—and still less when it enlarged the

Council as it had done at a recent period, by introducing into it some who were not, strictly speaking, servants of the East India Company, or subject to the operation of the penal clause in the Charter Act quoted by the Honorable and learned Member—intended to constitute, not a Legislature properly so called—not a body of men who were bound to exercise their own judgment and act according to their own consciences in the framing of laws—but an assembly which might in certain circumstances be called upon to act as the mere instrument of the will of another body, like the Parliament of Paris under the old *regime*, the members of which, when the King held what was termed a bed of justice, were compellable to register as law the royal edicts, however repugnant such edicts might be to their reasons and their consciences. In the present case, he (Sir James Colville) was not by any means satisfied, by the reasoning of the Honorable Court in the Despatch under discussion, that the rate of commission to be charged by the Administrator General in Bengal ought to be the same as the rate of commission allowed to the Administrators General of Madras and Bombay. The reasoning seemed to proceed on a notion of establishing uniformity. The Court seemed to think that because 5 per cent was allowed in the other Presidencies, 5 per cent should also be allowed in Bengal; but the proper principle in his (Sir James Colville's) opinion was to fix in each Presidency such a rate of commission, and such a rate only, as would insure a proper remuneration for the efficient working of the office; and there was no reason why this should not vary in each Presidency just as the price of the same commodity varies in different markets. He sincerely hoped that the Honorable Court would not be unwilling to reconsider this question; and it appeared to him that fortunately the Despatch was so framed as to present no legal difficulty with respect to the continued operation of Act VIII of 1855. For although the Honorable Court stated in their Despatch that they disallowed so much of that Act as was inconsistent with their views, they had not directed the whole Act to be repealed; and assuming, for the sake of argument, that they had power to disallow or direct the repeal of particular portions or clauses of an Act, they did not here clearly define what particular clauses of the Act in question they disallowed, or desired should be repealed. At all events, he thought that the whole matter was open to the further consideration of the Court; and as, until an

Act passed by this Council was formally repealed, it remained in force, it appeared to him that no difficulty could ensue if Act VIII of 1855 were allowed to continue to be treated as law pending the result of the course which the honorable and learned Member proposed to take. The Administrator General would not have to fall back upon the old Act, nor upon a mutilated Act such as the existing one would be, were portions of it struck out and their place not supplied by the provisions which the Court desired should be substituted, but which the Legislative Council might be unwilling to pass. He would only add that he should be extremely glad to serve on the Committee proposed by his honorable and learned friend.

The question was then put and carried.

LANDS FOR PUBLIC PURPOSES.

MR. LEGEYT moved that a Select Committee, consisting of Mr. Peacock, Mr. Elliott, Mr. Allen, Mr. Currie, and the Mover be appointed to consider and report on the present state of the law for the acquisition of lands needed for public purposes in the several Presidencies, with a view to framing one general Bill for that purpose.

Agreed to.

INSPECTOR OF PRISONS (BOMBAY).

MR. LEGEYT moved that the Bill "to relieve the Court of Sudder Foujdarry Adawlut at Bombay from the supervision of the Gaols in that Presidency" be referred to a Select Committee, consisting of Mr. Elliott, Mr. Currie, and the Mover.

Agreed to.

The Council adjourned.

—
Saturday, November 17, 1855.

PRESENT :

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

Hon. J. P. Grant, D. Elliott, Esq.,
Hon. B. Peacock, P. W. LeGeyt, Esq. and
Hon. Sir J. W. Colville, E. Currie, Esq.

TRIAL OF CAPTAIN HAINES.

THE CLERK reported that he had received, by transfer from the Officiating Secretary to the Government of India in the Home Department, papers relative to the trials by the Supreme Court at Bombay of Captain Haines of the Indian Navy, late

Sir James Colville

Political Agent at Aden, for Embezzlement of Public Money.

MARRIAGES IN INDIA.

Also papers relating to the celebration of Marriages between Christians in India, in the absence of a Marriage Registrar under Act V of 1852.

MR. PEACOCK moved that the above papers be printed.

Agreed to.

DESERTION OF EUROPEAN SOLDIERS.

THE CLERK also reported that he had received, by transfer from the Officiating Secretary to the Government of India in the Military Department, a copy of a letter from the Government of Bombay on the subject of passing an Act giving the same powers for apprehending deserters from the Army and for punishing those who aid or encourage them as are given with reference to deserters from the Indian Navy by Act III of 1855.

Also a copy of a letter from Major General Steel, Commanding the Pegu Division of the Army, relating to the want of a law for the punishment of persons harboring European deserters.

MR. LEGEYT moved that the above papers be printed.

Agreed to.

ARTICLES OF WAR FOR THE NATIVE ARMY.

THE CLERK also reported that he had received from the Officiating Secretary to the Government of India in the Military Department copies of papers relative to a proposed amendment of the 122nd Article of War for the Native Army (Act XIX of 1847) so as to make it extend to every attempt to commit murder.

MR. LEGEYT moved that the above papers be printed.

Agreed to.

MESSAGES FROM THE GOVERNOR GENERAL.

The following Messages from the Most Noble the Governor General, were brought by MR. GRANT, and read :—

MESSAGE No. 55.

The Governor General informs the Legislative Council that he has given his assent to the Bill passed by them on the 8th of