PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1857.

VOL. III.

Published by the Authority of the Council.

CALCUTTA:
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1857.

Company shall sue or be sued, are required to be made, served, or given for any purpose whatsoever to the said Company, shall and may be made, served, and given, in addition to all ways and means by which the same may otherwise be legally made, served, and given, upon or to the Managing Agent for the time being of the said Company resident in Calcutta, or by leaving the same addressed to such Managing Agent at the office in Calcutta of the said Company."

Agreed to.

Section XLIII laid down a procedure for the recovery of penalties and damages. The greater part was omitted on the motion of Mr. Currie, as being unnecessary under the provisions of the new Police Act.

Section XLIV was passed after verbal amendments.

Section XLV was passed after an amendment.

Section XLVI gave power to Justices of Peace or Magistrates to summon witnesses, and provided the penalty for not appearing.

MR. CURRIE said, it was not necessary to retain this Section, as the new Police Act provided the procedure in such cases.

The Section was put and negatived.

Section XLVII, which related to convictions, was also negatived for the same reason.

Section XLVIII limited the operation of the Act to the 31st of December, 1876.

MR. CURRIE said, as the incorporation Clauses had been struck out, there was no necessity for limiting the operation of the Act. It appeared to him that the Section should be omitted.

The Section was put and negatived.

Section XLIX was passed after amendments.

On the motion of Mr. Currie, amendments were inserted in the Preamble which made it conform to the Bill in its altered shape.

The Title was passed after the amendment indicated by Mr. Currie.

The Council having resumed, the Bill was reported.

NOTICES OF MOTIONS.

MR. PEACOCK gave notice that, on Saturday next, he would move the second reading of the Bills to simplify the Civil Code of Procedure in the several Presidencies and in the North Western Provinces.

BOMBAY TOBACCO DUTIES.

MR LEGEYT moved that Mr. Grant be requested to take the Bill "to amend the Law relating to the duties payable on Tobacco, and the retail sale and warehousing thereof in the Town of Bombay" to the Governor-General for his assent.

Agreed to.

NOTICE OF MOTION.

MR. CURRIE gave notice that, on Saturday next, he would move the third reading of the Bill "to confer certain powers on the Oriental Gas Company, Limited."

The Council adjourned.

Saturday, February 7, 1857.

PRESENT:

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

Hon. Major General J. Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq.,
D. Eliott, Esq.	and Hon. Sir A. W. Buller.

MUNICIPAL ASSESSMENT (BOMBAY.)

THE CLERK presented to the Council a Petition of the Bombay Chamber of Commerce against those Sections of a Bill (about to be laid before the Council) "to amend and consolidate the laws relating to the Municipal Taxes in the Islands of Bombay and Colaba," which propose the levy of Town dues on Merchandize and Shipping.

MR. LEGEYT moved that the Petition be printed.

Agreed to.

CATTLE TRESPASS.

The following Message from the Governor-General was brought by Mr. Peacock and read:—

MESSAGE No. 96.

The Governor-General informs the Legislative Council that he has given

his assent to the Bill which was passed by them on the 24th January 1857, entitled "A Bill relating to trespasses by Cattle."

By order of the Right Honorable the Governor General.

(Sd.) CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 31st Jan. 1857.

HINDOO POLYGAMY.

THE CLERK also presented to the Council a Petition of Hindoo Inhabitants of Dacca praying for the abolition of Hindoo Polygamy.

MR. GRANT moved that the Petition be printed, and took that opportunity of saying that he hoped very shortly to introduce a Bill on the subject.

The Motion was agreed to.

BOMBAY CENSUS.

MR. LEGEYT presented the Report of the Select Committee on the Bill "for taking account of the population of the Town of Bombay."

CIVIL PROCEDURE (BENGAL).

MR. PEACOCK moved the second reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bengal."

MR. GRANT said, he should have been glad if he could have given a silent vote in support of the Motion for the second reading of this Bill; but he could not do so without laying himself open to misconstruction. He thought it entirely proper, considering the circumstances under which the Bill had come before the Council, that it should be referred in its integrity to a Select Committee for mature consideration and report; but after the best consideration that he could give to the subject, he had strong objections to a large part of the measure—to so large a part of it, that, if it had been an ordinary Bill, and had been brought forward in the ordinary course, he should have felt it his duty to object to the second reading.

The part of the measure to which he objected, had no reference to Procedure. He had not given much attention to the part relating to Procedure; but he had seen that others, who were infinitely more qualified than himself to form an opinion respecting this part of the measure, and who had fully considered it, approved of it, and he had no doubt that, with some amendments perhaps, it would be a very great improvement upon the existing system of Civil Procedure. But the part to which he objected was more important than Procedure—it was that which regulates the system of tribunals, and of appeals.

If we have good Courts, whatever be the system of Procedure, we shall have good decisions; but if we have bad Courts, whatever be the system of Procedure, we shall often have bad decisions. He had always felt that the great practical objection to our system was the deficiency of the Courts of original jurisdiction—their deficiency, not only where cases of small amount are tried, but also where cases of the greatest possible importance are tried. This Bill does not improve, or attempt to improve, our Courts of original jurisdiction in the least degree. It rather makes them worse. It leaves the Moonsiff's Court exactly what it is now, and it greatly enlarges the pecuniary limitation of his jurisdiction. It leaves the Court of the Principal Sudder Ameen exactly what it is now; and it leaves the Court of the Zillah Judge exactly what it is now. So far from improving the system of original jurisdiction in these two Courts, its practical effect would be to make it worse, by throwing the whole original business on the inferior of the two Courts; whereas now the superior Court can try, and does try, some of the more important original suits. By throwing on the Zillah Judge alone the whole of the Zillah appeals, and thus overwhelming him with appeal business, the Bill would place it quite out of his power to try a single case in the first instance. This would make our existing system worse in that very part of it which is most defective, and gives most dissatisfaction now, and which, therefore, it should be our chief endeavor to make as much better as we can.

Then, as to the system of appeals. In all suits above 1,000 Rs., the Bill

provides that the appeal shall be to the Sudder Court. He supposed it was imagined that this provision would do away with any objection to the Bill on the ground that it leaves the tribunals of first instance unimproved, inasmuch as it would bring their decisions in all cases above 1,000 Rs. under the immediate supervision of the Sudder Court. He was of entirely a different opinion. He thought that the appeal of a case upon the facts from a Court which has heard the evidence to a Court which does not hear it, was no proper appeal at all. He thought that every important case ought to be tried in the first instance by a Court competent to give a decision upon the facts which would satisfy the Public. That was not provided, or attempted to be provided, by this Bill.

To the appeal work which the Bill would throw on the Sudder Court, he had two objections. It appeared to him almost an absurdity to send up a case of 1,000 Rs. to be decided by the Sudder Court on the whole merits in regular appeal. A case of 1,000 Rs. may have as much matter in it as a case of 5,000 Rs., and its decision may take up as much time. It was a common occurrence for the hearing ot a regular appeal in the Sudder Court to last two days. Imagine a case for 1,000 Rs., taking up the time of the Sudder Court, or the High Court which may replace it, for two days, with an English Lawyer and a Native Vakeel—for it will come to that—on each side! The fees of the Lawyers and the Vakeels on both sides would eat up as much as the whole value of the case.

His second objection was that the Bill as presented throws so much work on the Judges of the Sudder Court, or the High Court—whichever it may be—that it would be impossible for the present number of Judges to do it. The scheme recommended by Her Majesty's Commissioners proposed that the High Court should consist of the three Judges of the Supreme Court, and the five permanent Judges of the Sudder Court. Now, there was hardly one of these Judges who had not intimated his opinion that the work proposed to be assigned to them would be too much for this number. He himself believed that the work cut out forthe High Court would take up the time of at least sixteen Judges. For sixteen Judges, we have not the money; and for sixteen Judges, we have not the men. It was not always easy to get five men in the Service, who had worked their way up from the lower ranks, and had acquired the requisite knowledge and judicial experience, holding such an eminent position as Judges, as ought always to be the qualification for the Sudder Court; and he was quite certain that, if we tried permanently to get a very much larger number, we should often fail, and the men selected as Sudder Judges would often not command the confidence and respect which every Sudder Judge ought to command.

He did not wish to go into the Bill at any great length. He only wished to explain to the Council the fundamental objections which he felt to an important part of it. There was one minor objection, however, which he would specify. By this Bill, a Judge of the Sudder Court or the High Court would never know anything of the quality of the work of the Zillah Judges. It provided, indeed, that, in original suits, the appeal from the decision of the Zillah Judge should be to the Sudder Court; but in practice it was certain that a Zillah Judge never would, and never could, try a single original suit. All his business would be appellate; and from his decisions in that business there is no appeal. Therefore, we should have in the Zillah Judge a man in the happy position of one as to whom, whether he does well or whether he does ill, whether he does something or whether he does nothing, nobody above him would know. That is not the position in which a Zillah Judge, on whom the good working of the judicial administration of a whole district depends, ought to be placed.

He would very shortly sketch a system of tribunals and appeals which he very much preferred to the one now proposed. He would give strength where we were weakest. He would improve the Courts of original jurisdiction in the Mofussil, and so improve them that the most important cases should always be tried originally by Courts whose decisions the Public would respect. The plan which he proposed to adopt was, he believed, the plan of Mr.

John Colvin, and had been approved by the whole of the Judges of the Sudder Court. A judicial plan of Mr. Colvin's came before this Council under good auspices; for, great as had been the services of that eminent gentleman in every office that he had filled, and great as he (Mr. Grant) hoped they would continue to be in the high office which he held at present, he never had done, and no one ever could do, better service than he had done during the few years that he sat on the Bench of the Sudder Court of Bengal.

The plan which he (Mr. Grant) proposed should be adopted was that there should be a Chief Judge of every Commissioner's division, who would hold in the Judicial Department a rank corresponding with that which the Commissioner holds in the Executive Department. He should go on circuit to each district of his division, and, sitting in full Bench with the Judge and Principal Sudder Ameen of the district, should decide all original suits of great importance. These should be so decided once for all, and there should be no appeal on the facts. The decisions might be open to review, and occasionally there might be new trials; but his plan would do away with the system, which this Bill proposed to continue, of allowing appeals upon the facts from a Judge who hears the evidence to a Judge who does not hear it.

In the same manner, the more important appeals from the lower Courts of each district should be tried by a Bench of more than one Judge, in which the Chief Judge of the division should always preside. By this means, he (Mr. Grant) thought that we should improve our whole system of original jurisdiction immensely, and improve at the same time the Mofussil appellate jurisdiction to a very great extent.

The question of how to bring forward his counter-project for discussion, had given him a little trouble. He had never thought of voting against the second reading of this Bill, for he believed it to be, on every account, prepared as it had been, a most proper measure to be referred to a Select Committee of the Council. But as his project would in no way interfere with the procedure provided by this Bill, perhaps the Council would allow him to introduce, on a future occasion, a Bill to regulate our tribunals and system of appeals as he would have them regulated. That Bill might be read a first time, and, unless the Council should manifest any strong objection to its principle, it might be allowed to be read a second time, and referred to the same Select Committee which would be appointed to consider the present Bill. This might be done without committing any Honorable Member to the measure, any more than he (Mr. Grant) was committed to the present Bill. The Select Committee might then report upon both projects, and, at the same time, upon any other project which any Honorable Member might think fit to propose.

He had made these observations merely to set himself right with the Council, and to make it known to them that, in giving his vote for the second reading of this Bill, he did not commit himself to that large and important portion of the measure upon which he had remarked. On the contrary, he committed himself to a strong opposition to it.

MR. PEACOCK'S motion was carried, and the Bill read a second time.

CIVIL PROCEDURE (N. W. PROVINCES.)

MR. PEACOCK moved the second reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in the North Western Provinces."

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

CIVIL PROCEDURE (MADRAS.)

MR. PEACOCK moved the second reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Madras."

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

CIVIL PROCEDURE (BOMBAY.)

MR. PEACOCK moved the second reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay."

MR. LEGEYT said, he desired to make a few observations upon this Bill

before it was read a second time, with the view, not of opposing the second reading, but of drawing attention to some portions which struck him as of importance to be placed before the Council and the Public at the present stage.

The Presidency of Bombay had had the advantage of possessing a Code, and a tolerably good Code, of Civil Procedure for the last thirty years. It had been his lot to be employed during nearly all those years in administering that Code, and he had found it to serve its purposes with tolerable efficiency. The Code now proposed for Bombay was not, in most material respects, different from the first ten Regulations of the Bombay Code of 1827. It made some alterations, however, in certain particulars, and a few additions; but he thought that it still left some defects of the existing Regulations unremedied.

In unison with the Honorable Member who had introduced this Bill, he would not now attempt to open the question of the constitution of the Sudder Courts; but he must say it did appear to him that, if the amalgamation of the Supreme and Sudder Courts recommended by Her Majesty's Commissioners were not carried out, it would be desirable, in promulgating to the country at large a new Code of Civil Procedure, to provide that some changes should be made in the present constitution of the Sudder Courts. What those changes should be, might hereafter be determined; but if this Code should pass into Law as it stood, the first fifteen Sections of Regulation II of 1827 of the Bombay Code would still remain; and they, he was disposed to think, might be improved upon, and he hoped that the silence of the Bill in this behalf would not prevent suggestions being made to the Select Committee.

The Bill did provide a new constitution for Zillah Courts. It provided that there should be three grades of Judges in each zillah or district—Zillah Judges, Principal Sudder Ameens, and Moonsiffs. At present, in the Presidency of Bombay, subsidiary to the Courts of the Zillah Judges, were two classes of Courts presided over by Assistant Judges. By this Bill, these subsidiary Courts were abolished. This was a very important alteration, and one which he considered to be of very questionable expediency. It would abolish a class of Courts which had existed at Bombay he believed since 1796, and which formed the only school of training which Bombay had for Zillah Judges. If they were abolished, we should have men put into the office of Zillah Judges and Sessions Judges who had never probably decided any suit involving questions of Law, or performed any duty which qualified them to sit as Presidents in Courts of Justice. And not only would these men come in as Presidents of Courts of Justice, but every case which they would have to decide would be a case brought up on appeal from a Judicial Officer who had probably been twenty or thirty years employed in the administration of Justice, and who, nobody could say, was not better qualified to deal with the case than an Officer without any judicial experience whatever. He (Mr. LeGeyt) believed that this Code would restrict the decision of appeals to European tribunals; and it appeared to him that the Council ought carefully to consider whether it would be right to abolish all these subsidiary Courts. He believed that the same observation applied to Madras where there were also two classes of Assistant Judges' Courts.

Then, again, the Bill abolished one class of Native Courts. At present, we had the Courts of Principal Sudder Ameen, Sudder Ameen, and Moonsiff. The Bill abolished the Courts of Sudder Ameen. He also questioned the advisability of that measure. The pay of a Sudder Ameen was considerably higher than that of a Moonsiff. The office was, therefore, an object of ambition to Moonsiffs, and was given to deserving officers of that class as a reward for good service. The same stimulus to meritorious discharge of duty might, it is true, be supplied by forming several classes of Moonsiffs; but he was sure that those who now held the office of Sudder Ameen, would feel it a great grievance to be reduced to the grade of Moonsiff. After all the Bills relating to Civil Procedure were published, he hoped that communications would be received from the different Presidencies which would enable the Select Committee to come to a right conclusion upon this point.

By Section 3 of Chapter II, it was enacted that "the appointment, suspension, and removal of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be regulated by such rules and orders as the Governor General in Council shall, from time to time, pass." This provision certainly was a new feature in the constitution of the Civil Courts, which had hitherto been filled by nominations of the local Governments and Sudder Adawlut Judges. He thought it was a provision which required consideration. He should have been very glad to have seen it accompanied by some definite statement of the qualification that would be required in the officers to be selected. If the Courts of Assistant Judges in Bombay were abolished, a definite qualification for judicial office would be more than ever required, and he would like to see it defined by Law.

He then begged to call attention to Section 6 of Chapter II, which provided for the appointment of Ministerial Officers. He quite agreed with the Honorable Member to his left (Mr. Grant) in the opinion which he had expressed as to the present weakness of our subordinate Courts. He fully admitted that the same weakness did exist in the Presidency of Bombay; but he did not think that it existed so much in the men who presided over these Courts, as in the inferior and wretchedly paid establishments which were allowed to them; and he felt convinced that, unless there were some well paid servants on these establishments, the Courts never would be what they ought to be, and never would command public confidence and respect. The Nazir of a Moonsiff's Court, to whom was entrusted the execution of decrees to any amount—it might be, to the amount of lakhs of Rupees—received a salary of about 8 to 12 Rupees per month. The Sheristadar, who was the Clerk of the Court, and had the custody of documents of, it might be, immense value, received a salary of 12 Rs. a month in some Courts, and of 10 Rs. a month in others. The consequence was that these men were frequently found tripping, the temptations placed before them being too strong for persons on such pittances to resist. He thought their present position required the greatest consideration. He believed that, until the subordinate Courts were provided with efficient and adequately remunerated establishments, and also until an efficient Bar should, to some extent, appear in the Courts, the Courts would not be what all of us desired that they should be. The former improvement was in the hands of the Government: the latter he hoped would be one of the fruits of Education now spreading throughout the country.

He would next call attention to Sections 38 to 42 of Chapter IV, which provided a special process for issuing summonses to Government officers for acts done in their official capacity. He did not think that these provisions were necessary; nor did he see any reason why Officers of Government should be placed in a different position from other defendants. If any differential course was considered necessary as to them, he thought that the simple procedure which now obtained in Bombay was much better than the one proposed by this Bill. That procedure was as follows:—

"If the suit be against a Collector of the land revenue, or other officer in charge of the interests of Government in any department, or any Assistant to such Officer, the Judge shall transmit a copy and English translation of the plaint to the Governor in Council for his consideration; and, at the expiration of (90) ninety days from transmission, or at any earlier period when he may receive intimation from Government that it has decided not to grant to the plaintiff the redress sued for, the Judge shall forward a copy of the plaint to the Officer concerned, in a blank cover, bearing his address, and the delivery thereof shall be held to be of the same effect as the serving of a summons in other cases."

Section 2 of Chapter IV p. 11 provided that the application for a summons should be made to the Clerk or other proper Officer of the Court. He thought that an objectionable provision. Unless our subordinate Courts were reformed and their establishments improved, it would be a very unsafe measure to entrust such power to the ministerial officers of the lower Courts.

Section 9 of the same Chapter, p. 16, provided that the person applying for a summons "shall state, at the time of his application, whether he requires a summons for the first hearing and settlement of issues, or for the final disposal of the cause." He should be sorry to

see that provision adopted. He should much rather prefer the present system in use at Bombay, and he believed elsewhere, of summoning a defendant to answer the plaint, and of the Judge settling the issues upon the appearance of the defendant on such summons. This Bill provided two distinct courses —one, a summons for the first hearing and settlement of issues; another for the final disposal of the cause. His opinion was that it would be very much better to provide one course—namely, the issue of a general summons to defendant to appear: on his appearance, the Judge to settle the issues from the contents of the pleadings recorded, and, if it were practicable, to pronounce a decision; but if the issues required to be proved by evidence, that the case be adjourned, and summonses for witnesses and evidence issued. He had seen many Courts, although the Regulations clearly provided for the determination of issues before the trial of the suit, take no notice of that wholesome provision; and the consequence was that, in the investigation, the record was entirely departed from; the proceedings were drawn out to an inordinate length; and great confusion followed. For some years past, the superior Courts had insisted upon Moonsiffs uniformly determining the issues before the witnesses were examined, and then, at the trial, confining themselves strictly to the matter before them; and this had had the effect of diminishing the work of the Moonsiffs, in many instances by one-half.

Section 100 of the same Chapter, page 63, provided that "if either party is dissatisfied with the issues as finally framed by the Court, such party may appeal upon that ground *after the decision of the case.*" If the appeal on the issues was made and decided as a summary appeal when the issues were drawn, he did not object to this part of the Bill. But if the right of appeal upon the ground that the issues were wrong, was preserved till after the decision of the case, it would in a great measure do away with the utility of settling issues, and appeals would constantly be made by unsuccessful litigants for the mere sake of gaining time and beginning the proceedings anew. He hoped that this enlargement of the present course of appeal would not be adopted.

The next part of the Bill to which he would advert, was Section 130 of the same Chapter, page 76, which provided that "all witnesses shall be examined without oath or affirmation, or any warning as a necessary preliminary to their giving evidence." This provision struck him as involving a very grave question, and one which required to be considered very carefully indeed. We had heard a great deal about the untruthfulness of Native witnesses. Was it supposed that the measure here proposed would impart a greater truthfulness to them? He confessed that he did not place much reliance on any opinion which the Natives had of the sanctity of the affirmation provided by Act V of 1840. He believed that they were not deterred by any religious feeling from violating such affirmation. They looked upon it as a form of declaration which the English had invented, and did not fear it as they feared their own forms of oath. But however that might be, he should be very sorry to see the warning with which an affirmation was accompanied, abolished. All of us knew how careless and apathetic Natives generally were in giving an account of what they had witnessed, or, where they were not careless and apathetic, how prejudiced they were in favor of one side or the other, and how apt they were to give a color to their testimony to suit their bias. His belief was, that, if a Native were brought before a Court of Justice, and, without any warning, asked to describe what he had seen, he would feel himself at liberty to say almost any thing he pleased—a feeling which must materially deteriorate the value of Native testimony. He was not very anxious about affirmations; but he *was* anxious about *warnings*, because he thought that a witness who gave his evidence under a warning, would give it under a recently awakened dread that he would be liable to punishment if he did not speak the truth.

Section 143 of the same Chapter, page 84, which prescribed what a decree should contain, appeared to him to alter the present Law for the worse. After providing that it should contain entries of the date of Judgment, the names of

the suitors, &c., it said—

"It shall also contain an exact copy of the *ordering* part of the Judgment, or a translation thereof, in the language in ordinary use in proceedings before the Court, and shall be sealed with the seal of the Court and signed by the Judge."

This altered part of the provisions of Act XII of 1843, which was one of the best Acts passed in connection with the Civil Procedure of this country. The 1st Section of that Act said—

"It is hereby enacted that in all the Presidencies so much of all Decrees as consists of the points to be decided, the decision thereon, and the reasons for the decision, and all injunctions for the revision of decrees in regular suits, and all orders for Reviews of judgment, which shall be passed by Judges of the Sudder Courts, or by Judges of Zillah and City Courts, or by Subordinate or Assistant Judges of Zillahs, shall be written originally in English, and signed by the Judge or Judges at the time of pronouncing such decision and orders, and shall be translated into the vernacular language commonly used in the Court wherein the suit to which the decree or order relates, shall have been instituted; and the translation shall be incorporated in the decree."

Every decision must shew the reasons for which the decision had been come to. He questioned very much whether decrees drawn under Section 143 of Chapter IV of this Bill would contain such reasons. He hoped that the point would be considered by the Select Committee to whom the Bill might be referred; and that they would also consider whether it was not advisable to retain so much of the present Law as required that the reasons of a decision should invariably form part of a decree.

Chapter V related to the execution or enforcement of decrees. He would beg the attention of the Council to Sections 30 and 31 of this Chapter, at pages 102 and 104. Section 30 prescribed the mode in which claims and objections to sale of attached property should be investigated: Section 31 provided that claims and objections should be preferred at the earliest opportunity. He did not know what the fact might be in Bengal; but, at Bombay, the sale of attached property in satisfaction of decrees was one of the points in which the Code of Civil Procedure was most defective. A plaintiff at Bombay obtains a decree within a reasonable time after the institution of his suit—namely, three or four months. He applies within a month to get it executed, and the defendant's property pointed out by him is attached under the decree. But if, before the sale, a third person intervenes and claims the property as his own, he can put off the sale until his claim is tried and disposed of. This was a common occurrence; and he (Mr. LeGeyt) knew of several suits which had remained pending under the operation of the existing state of the Law for 4, or 5, or 6, or 7 years, thereby rendering the decree in the hands of the first plaintiff an utter nullity, and defeating his just claim by what probably was a false and collusive one. A remedy for this evil was urgently needed. The procedure provided seemed to him to leave matters very much as they were. The alternative of selling the property subject to the claim brought forward was found to cause that property to be sold at a very depreciated price, and defendants would often resort to collusive sales, and buy back their own property under false names at a nominal price. He hoped that, in the new Law before the Council, such a provision would be made as would give to honest creditors a prospect of relief. He believed that this difficulty was managed much better within the limits of the jurisdiction of Her Majesty's Supreme Court, where the Sheriff had authority to withhold sale under the attachment until he got an indemnity from the plaintiff to defray the costs and satisfy the verdict in any action of trespass which might be brought against him (the Sheriff) by any person other than the debtor claiming a right or interest in the property. He was quite aware there were drawbacks to this course also; but it was a matter to which he desired to call attention in the hope that some real reform might be suggested to the Council.

Chapter VI of the Code, page 116, related to contempts and disobedience of orders. By the present Law in Bombay (Section 51 of Reg. IV of 1827), any person who employs terms of abuse in pleading, or wilfully prevaricates when examined as a witness, may immediately be punished by the Court with fine or imprisonment, or both. And Section

54 provided that when a Court is satisfied that a suit has been instituted groundlessly, or for vexatious purposes, it may punish him with fine, and, in default of payment, with imprisonment. In Chapter VI of this Code, he could find no provision for the punishment of contempts of this nature. He could say, from his own experience, that, at Bombay, the provision of Section 51 had been found to operate as a wholesome check upon parties before the Court, and that there had been frequent occasion to resort to it. To suppose that a Moonsiff in whose Court the offence might be committed would send the offender up to the Sessions Court on a charge of perjury, was idle. The Moonsiff would not have time to do it; or, if he should have time, the cases sent up would so often fail in the Sessions Court, that the virtue of the mere power to send up would be *nil*.

He was much obliged to the Council for its kindness in having listened with so much patience to his remarks, and should conclude by saying he trusted that the effect of the publication of the Bill would be to elicit such valuable opinions and suggestions from the Judicial Officers in the Presidency of Bombay, and from others, as would enable the Select Committee to present the Bill to the Council in such a form as would render it really beneficial to the administration of Civil Justice in that Presidency.

MR. PEACOCK'S Motion was carried, and the Bill read a second time.

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE moved the second reading of the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah."

The Motion was carried and the Bill read a second time.

ORIENTAL GAS COMPANY.

The Order of the Day for the third reading of the Bill "to confer certain powers on the Oriental Gas Company, Limited" being read—

MR. CURRIE moved for the re-committal of the Bill.

Agreed to.

The Bill passed through the Committee after a few slight alterations, and was reported.

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

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

CIVIL PROCEDURE (BENGAL.)

MR. PEACOCK moved that the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bengal" be referred to a Select Committee consisting of the Chief Justice, Mr. Grant, Mr. Currie, and the Mover.

Agreed to.

CIVIL PROCEDURE (N. W. P.)

MR. PEACOCK moved that the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in the North-Western Provinces" be referred to a Select Committee consisting of Mr. Eliott, Mr. Allen, and the Mover.

Agreed to.

CIVIL PROCEDURE (MADRAS.)

MR. PEACOCK moved that the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Madras" be referred to a Select Committee consisting of Mr. Eliott, Sir Arthur Buller, and the Mover.

Agreed to.

CIVIL PROCEDURE (BOMBAY.)

MR. PEACOCK moved that the Bill "for simplifying the Procedure of the Courts of Civil Judicature of the East India Company in Bombay" be referred to a Select Committee consisting of Mr. Eliott, Mr. LeGeyt, and the Mover.

Agreed to.

MESSENGER.

MR. CURRIE moved that Mr. Grant be requested to take the Bill "to confer certain powers on the Oriental Gas Company, Limited" to the Governor-General for his assent.

Agreed to.

MUNICIPAL ASSESSMENT (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE moved that the Bill "for raising funds for making and repairing roads in the Suburbs of Calcutta and the Station of Howrah" be referred to a Select Committee consisting of Mr. Eliott, Mr. Allen, and the Mover.

Agreed to.

NOTICE OF MOTION.

MR. CURRIE gave notice that he would, on Saturday the 14th Inst., move that the Council do resolve itself into a Committee on the Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the Station of Howrah."

The Council adjourned.

Saturday, February 14, 1857.

PRESENT:

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

Hon. the Chief Justice,	D. Eliott, Esq.,
Hon. Major Genl. J. Low,	C. Allen, Esq.,
	P. W. LeGeyt, Esq.,
Hon. J. P. Grant,	E. Currie, Esq., and
Hon. B. Peacock,	Hon. Sir A. W. Buller.

MESSAGE FROM THE GOVERNOR GENERAL.

The following Message from the Governor-General was brought by Mr. Grant and read:—

MESSAGE No. 97.

The Governor-General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 31st January 1857, entitled "A Bill to amend the Law relating to the duties payable on Tobacco and the retail sale and warehousing thereof in the Town of Bombay."

By order of the Right Honorable the Governor-General.

CECIL BEADON,
Secy. to the Govt. of India.

FORT WILLIAM,
The 9th Feb., 1857.

HINDOO POLYGAMY.

THE CLERK presented a Petition from Hindoo Inhabitants of Baraset praying for the abolition of Hindoo Polygamy.

MR. GRANT moved that the Petition be printed.

Agreed to.

DESPATCHES FROM THE COURT OF DIRECTORS.

THE CLERK reported to the Council that he had received from the Officiating Under-Secretary to the Government of India in the Home Department a copy of a Despatch from the Honorable the Court of Directors reviewing the Acts of the Legislative Council from No. XV of 1854 to No. XXXVIII of 1855; together with an extract of a Despatch from the Honorable Court regarding the arrears of business in the Sudder Court at Calcutta.

IMPRESSMENT OF CARTS FOR MILITARY PURPOSES.

THE CLERK also reported that he had received from the Officiating Secretary to the Government of the North-Western Provinces a communication regarding the impressment of Carts for Military purposes.

MR. GRANT moved that the above communication be printed.

Agreed to.

PORT-DUES AT PENANG.

THE CLERK also reported a communication from the Straits Government forwarding a copy of a letter from the Chamber of Commerce at Penang against the levy of Port-dues at that Port.

MR. GRANT moved that this communication be printed.

Agreed to.

SUBSISTENCE OF SMALL CAUSE COURT PRISONERS.

MR. LEGEYT moved the first reading of a "Bill to amend Act IX of 1850," which is the Act which constitutes the Small Cause Courts in the Presidency Towns. The object of the Bill, he said, was to give relief to debtors in prison under writs from the Small Cause Courts in the matter of subsistence-money. A Petition had lately been presented to the Government of Bombay from thirty-