PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

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1857.

on the Bill "for the acquisition of land for public purposes."

MR. ELIOTT gave notice that he would, on the same day, make the motion, which he had this day postponed, for a Committee of the whole Council on the Bill "to amend Act XII of 1851."

The Council adjourned.

Saturday, March 21, 1857.

PRESENT:

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

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

CRIMINAL PROCEDURE (BENGAL.)

THE CHIEF JUSTICE presented the Report of the Standing Orders Committee on the Petition of British Subjects in Bengal against the Bill "for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company in Bengal, for simplifying the Procedure thereof, and for investing other Courts with criminal jurisdiction," and moved that it be printed. He also gave notice that, on Saturday next, he should move that the Report be adopted.

The Motion was agreed to.

BOMBAY UNIVERSITY.

MR. LEGEYT postponed his Motion (which stood in the Orders of the Day) for the first reading of a Bill "to establish and incorporate an University at Bombay."

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA, AND HOWRAH).

MR. CURRIE moved the first reading of a Bill "to make better provision for the order and good government of the Suburbs of Calcutta and of the station of Howrah."

In doing so, he said this was the same Bill which had been read a third time and passed by the Council on the 21st of last month. The reasons which had influenced the Governor-General in withholding his assent to it, had been communicated to the Council. They did not imply any disapproval of the provisions of the Bill. The Governor-General had withheld his assent, because, at the Meeting in which the Bill was recommitted previous to the third reading, a Clause was added which, in his Lordship's opinion, ought, in the spirit of the Standing Orders, to have occasioned its republication. It would not be becoming in him (Mr. Currie), after the expression of that opinion, to make any remarks upon the added Clause. It was sufficient to observe that all that was required was that the Bill should be published for general information in its altered form; and that requirement could be fully met by carrying it anew through the several stages.

The Bill was read a first time.

CALCUTTA PORT-DUES AND FEES.

MR. CURRIE moved the second reading of the Bill "for the levy of Port-dues and Fees in the Port of Calcutta."

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

LAND REVENUE OF THE TOWN OF MADRAS.

The Order of the Day being read for a Committee of the whole Council on the Bill "to amend Act XII of 1851 (for securing the land Revenue of the Town of Madras")

MR. ELIOTT said, before moving the Council to go into Committee upon this Bill, he wished to say a few words in explanation of the objects and reasons for it, and with reference to the objections made to it as infringing the covenant under which some of the lands at Madras were held. He would first beg leave to remind the Council of the purpose of the Bill by reading a part of the Statement of objects and reasons annexed to it:—

"The object of this Bill is to supply a defect in the Act (XII of 1851) for securing the land revenue of Madras.

"That Act sets out with a declaration in the Preamble that it is expedient that the land

revenue of the town of Madras should be ascertained and collected in as summary a manner as in other parts of the Territories of the East India Company.

"In Section IX of the Act it is declared that the claim of the East India Company for revenue or rent has priority over all other claims upon the land.

"The ground-rents payable to the East India Company for lands in Madras are declared by Section XVI to be revenue within the meaning of the Act of Parliament 21 Geo. 3, c. 70, whereby they are exempted from the Civil Jurisdiction of the Supreme Court.

"But the land itself is not declared to be saleable for arrears of such revenue, as it is in other parts of the Territories, failing the recovery thereof by the process of distress and sale under the provisions of Section VII of the Act.

"From the want of a provision to this effect, it is stated that the Act (XII of 1851) intended for the purpose of securing the land revenue of Madras, does not effect that object;"—

and it was proposed by this Bill to amend the Act by making the land itself saleable for arrears as well within as without the town of Madras, and so to give full effect to the intention expressed in the Preamble to the Act.

He was aware, as he had mentioned in introducing the Bill, that Act XII of 1851 had been copied from Act XXIII of 1850 (for securing the land revenue of Calcutta,) and that a provision to make the land saleable for arrears had been advisedly omitted from the latter. But it was to be observed that an Act had then lately been passed for the survey of Calcutta (XV of 1847) which was expected to give great facilities to the Revenue Officers by distinctly defining every holding and registering the owners and occupants.

When this Bill was under preparation, a reference was made to the then Officiating Collector of Calcutta to ascertain what had been the effect of the survey in this respect; to which he answered that, from the holdings having been defined and identified, there was now no difficulty in tracing an owner and making a demand upon him.

The case was quite different at Madras. No survey had been made there; and, for the want of a correct register, great difficulty was found in getting at the real owners of land. This was explained and illustrated in a letter from the Collector of Madras which was among the printed papers annexed to the Bill, and an extract from which he begged to read:—

"The law, as at present understood, gives power to this department to distrain moveable property found on the land, or in possession of the owner or occupier wherever found. But this power is evaded in numberless instances by the parties keeping their doors shut, and at the same time no sufficient means are available for ascertaining who the owner or fairly liable party is. Lands and houses are perpetually changing hands, without any registry of the transfer being made in this office, and even without the knowledge of our officers. But the annual bills are not altered unless the registry is altered. The warrant of distress is made out against the party named in the bill, and thus it frequently happens that the warrant is served upon a party not named either in it or the Bill, and the only proof in many cases forthcoming is the assertion of the Conicopolies and Peons that he is the party liable. The suit lately filed in the Supreme Court against the Collector and others, affords an apt illustration of the working of the present law. A garden at Tondiarpett is registered in the name of Rungasawmy Naick, who appears to have been long defunct. But no transfer of the property has since been registered in this office. Part of the Quit-rent has, from time to time, been paid through the gardener, part by one P. Annasawmy Moodelly, while part remained unpaid. As only the goods and chattels found on the land could be distrained under the old law, Annasawmy Moodelly was secure against further demand. Under the new law, the Amildar obtained a warrant against Rungasawmy Naick, which was served upon Annasawmy Moodelly, who now disclaims all right to the land, and the suit was the consequence. Such was the appearance of the case to a mind conversant with English law and procedure, that, on a *primâ facie* view, the Company's Solicitor thought it 'a mass of irregularity, and most unjustifiable,' though he afterwards saw that it was a *bonâ fide* endeavor to apply the Act to the enforcement of the just claim of Government in the only way available."

He would ask leave to read also an extract from a letter which he had lately received from the present Collector of Madras to the same effect—

"In framing the Calcutta Act, he observed, it was supposed that, the demand being light, the property on the spot would always satisfy it. This is all very well for the garden houses and larger buildings in town; but our difficulty lies in collecting the rent on the smaller tenements. A man shuts his house and departs. The distraining Officer makes his way in, and finds nothing but bare walls. Again, in the little patches of cultivation, if my officers do not watch for the reaping of the crop, and detain it, (and this requires a larger establishment than I have,) how am I to collect the

rent after the crop is carried, and the owner points out a wretched hut and a few pots as all he has in the world?"

The last passage of this extract led him to advert to another important difference between Madras and Calcutta; namely, the greater extent of the limits of Madras, which comprehended an area of 26½ square miles, whereas the limits of Calcutta contained only 10¼ square miles. In consequence of the extension of the limits, the greater part of the area of Madras consisted of cultivated lands, the tax on which, as observed by Mr. Millet, was similar to the land-tax in other parts, whereas the area within the limits of Calcutta was entirely covered with buildings. The land revenue of Madras was more than three times larger than that of Calcutta, the former being Rs. 66,000, the latter about Rs. 20,000. It was owing to this difference of circumstances that a provision to make the land saleable was really necessary to secure the Revenue at Madras, while it could be dispensed with at Calcutta, for the present at least. He might observe, however, that the Collector of Calcutta, in answering the reference to which he had adverted, expressed some apprehension that, from the want of a compulsory provision for the Registry of transfers, a difficulty similar to that complained of at Madras might in future be experienced at Calcutta.

The lands of Madras for the most part were held under various deeds or instruments issued in the name of the East India Company. These deeds were called respectively Company's grants and Company's certificates, and were in several different forms. Until 1828, the documents called Company's grants were in the form of a lease for 99 years from the Company as proprietor; and the Advocate General said—

"It is quite clear that the Honorable Company, under that form, on regular demand of the Quit-rent due, had an indisputable right of re-entry, and that, after such re-entry, the ground might be sold for the Company."

In 1828, a new form was introduced, on the advice of the Advocate General of the day, the object of which was, not to assert an absolute right of property in the land on the part of Government, exclusive of every other interest, as was done in the lease, but to confirm possession already held under a good title, so far as the Company was concerned, in consideration of that title, and of a covenant by the party in possession to pay a certain sum yearly "in lieu, and as and for a commutation of the Circar's share of the produce" derivable from the ground specified, it being provided that in default of payment, the Officers of the Government might enter and distrain for the same. By those new forms, the payment to be made for the land was declared to be not landlord's rent, but revenue, or the dues of the Circar. In the form for lands acquired at first hand from the Meerassidars, the payment to be made was said to be "in lieu, and as and for a commutation of the Circar's share" hitherto payable by the Meerassidars.

Neither the forms of *certificate* in use before 1828, nor those which were then substituted for them and were now in use, had any provision touching the recovery of the Quit-rent. The old forms contained merely a certification by the Collector of the Quit-rent charged upon the land recognized by it as being in the possession of certain parties. The new forms contained, besides, an acknowledgment by the parties in possession that the land was subject to a certain rent, and that they were liable to pay the same. The number of lands and tenements held in 1852-53, under the old form, was 10,350; under the new form 11,650. These numbers, it was to be observed, comprehended the holdings under certificates as well as under grants. Besides the land held under grants and certificates, there were about 5,000 parcels of land held without such documents, as other lands of the same description were held beyond the limits. With respect, then, to much the larger portion of the lands in Madras—those held under the old forms of lease with power of re-entry, those held under certificates both in the old and new forms without any provision as to the mode of recovering the quit-rent, and those held without either grant or certificate—there would appear to be no bar in the nature of the tenure to their being declared by Law to be saleable for arrears of revenue. In fact, the lands held under the old form of grants were already saleable by the process of re-entry. The change

with respect to these would be to substitute a simple and summary process for a technical and tedious one.

The lands held without grants were in no way distinguishable in regard to tenure from lands outside of Madras liable to sale.

The *certificates*, so called, which simply specified the rent or revenue payable, presented no such bar.

But the Honorable and learned Chief Justice and the Honorable and learned Member opposite (Mr. Peacock) had objected to lands held under grants in the new form introduced in 1828 being made saleable for arrears of revenue. To use the words of the Honorable and learned Chief Justice, "every man who held land under such a document, held it under a contract which did not import the liability now sought to be imposed upon him."

But, with great deference, he would submit that, although the instrument did not in express terms import such liability, neither did it expressly exclude it; while terms were used from which it seemed to be inferrible that it had not been meant to exclude that liability absolutely, but rather to reserve it for the last resort according to the common law of India, which made the land the ultimate security for the revenue, the process of distraint being, however, indicated as that to be used primarily in all cases. Certainly, the terms "in lieu of, and as and for a commutation of the Circar's share of the annual produce hitherto payable to the Government, by the Meerassidars" were intended to have a special significancy; and what other but to remind the holders of the land that, the rent payable by them being Government revenue, when it could not be recovered by the process of distraint, the other means by which the Government revenue was recoverable from the Meerassidars would still be available. This was the construction of the Instrument which was maintained at Madras, and it would appear that the Advocate General had concurred in it when he gave his opinion that there was no legal obstacle to the passing of an Act of this description. This opinion, it was to be observed, had been given by him after he had particularly examined the terms and conditions of the several documents, and made them the subject of critical comment. It was for the Council to judge whether this was a fair interpretation.

The Honorable and learned Member opposite (Mr. Peacock) had made another objection to the Bill—that it did not sufficiently protect under-tenants. Putting the case of a lessee holding under a grant in the form in use since 1828 having erected a house on a part of the land, and having sold the house, he said he thought it would be a great injustice to a person who had purchased on the faith of the grant if Government were to come in and sell the house as well as the remainder of the land for an arrear of revenue due by the Lessee. The new Section introduced by the Select Committee, by which an under-tenant might pay the arrears of revenue and deduct the amount from the next payment of rent, he thought, would not be a sufficient protection, for the arrears of revenue due from the original lessee might amount to a considerable sum, while the rent under which the sub-lessee held his house might be a mere pepper-corn. He had communicated with the Collector of Madras on this point, and had obtained from him a statement shewing that of 11,643 parcels of land held under the new forms, no less than 11,413 were held subject to quit-rents varying from 1 to 10 Rs. per annum; and that of the remainder, there were only 39 holdings assessed at 40 Rs. and upwards, of which only 1 was assessed at a sum exceeding 160 Rs. per annum.

Considering the lowness of these rates, it would probably be thought that there was no reason to fear that under-tenants would be liable to suffer injury in the manner supposed by the Honorable and learned Member, by the land being made saleable for an arrear due by the original holder—indeed, the tenements were so small that they could scarcely be subdivided. At any rate, the under-tenants would be able to protect themselves under the new Section introduced by the Select Committee. In fact, however, it was not the practice at Madras to *underlet* portions of original lots for building or other purposes. When such lots were parcelled out for such purposes, it was usual to sell the several parcels separately, and the purchaser took out a new document in which the proportion

of the whole assessment chargeable upon the parcel purchased, was specified, and he was responsible for nothing but the quota on his own land. The statement furnished to him by the Collector of Madras, he had communicated to the Honorable and learned Member; and he believed he was satisfied on this point.

The Chief Justice had suggested that even where the process of distraint failed to realize the whole amount of revenue due, the case was not without a remedy; for the Government might sue for the balance in the Chingleput Court on the covenant to pay, and might proceed upon judgment to a sale of the land. But when it was considered how vast was the proportion of small holdings paying from 1 to 10 Rs. (11,413 out of 11,643) and that, as stated by the Collector in the extract he had read, it was with respect to such small holdings, and not the valuable garden-houses and the large pucka buildings in the town, that there was any difficulty, it would, he thought, be perceived that this remedy would not be a practical one.

With these remarks he begged to move that the Council resolve itself into a Committee upon the Bill; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended that it should be passed.

MR. PEACOCK said, before the Motion was put, he desired to make a few observations regarding the Bill.

He was very glad that the Honorable Member in charge of the Bill had consented, at the last Meeting, to postpone going into Committee upon it until this day; because, in the interim, he had had an opportunity of fully considering the subject; and he felt bound to admit, in candor, that he did not now feel so strong an objection to the Bill as he had felt before. But still, he thought that no sufficient case had been made out for the passing of such a Bill. By the 1st Section it was provided that—

"If any owner of assessed land, or any person holding land subject to a rent payable to the East India Company within the limits of the Town of Madras, shall, upon the written demand of the Collector of Madras, refuse or neglect to pay any sum at which the land is assessed, or with which it is charged as rent; and if the said Collector shall not be able to levy the same by distress and sale of any goods and chattels of the owner or lessee, or of any goods and chattels found upon the land, under the provisions of Section VII of Act XII of 1851, it shall be lawful for the Collector to cause the land to be sold for the arrear of revenue or rent which has accrued due thereon."

There was no exception made as to any lease whatever. Whenever any person held land subject to a rent payable to the East India Company, if the rent was not paid, and the amount could not be levied by distress, the land, however much it might have been improved by building or otherwise, might be sold. The Honorable Member had said that a great many of the tenements held at Madras were subject to very small rents. But if there had been a contract between the East India Company and third persons, that contract ought to be carried out. A contract was a contract, whether it was for a large sum or for a small sum; whether it was with a rich man or with a poor man; and, once entered into, however unadvisedly, it ought to be strictly observed. The Honorable Member had favored him with a copy of the various documents under which land was held at Madras. Some of them were merely certificates given by the Choultry Courts stating that two witnesses had examined into A. B.'s claim, and found him in possession of the land, stating the boundaries, subject to a quit-rent payable to the East India Company.

Then, there was another form of document, which had been given at one time by the Board of Revenue, and at another by the Collector of Customs. That form contained a declaration of two witnesses who said that they knew A. B. to be in possession of a certain piece of land with certain boundaries held at a certain quit-rent, and that they believed him to be the owner; and, upon the statement of A. B. that he believed himself to be the owner, the Board of Revenue, or the Collector of Customs, as the case might be, certified that the statement appeared to be correct.

As to the manner in which the system of quit-rent had originated, the certificates gave no information, and the Council was quite in the dark. Whether the quit-rent was revenue payable in respect of the land, or

whether it was a quit-rent originally reserved by the Zemindar, and to which the East India Company had become entitled as having succeeded to the Zemindary, there was nothing before the Council to shew. Probably, the latter was the case.

It appeared from a very elaborate Minute written by the late Mr. Millet, that the East India Company in Calcutta represented not only the Circar, but the Zemindar. They, therefore, had the same right as the Zemindar had, whatever it was: but that did not prove that they were entitled to sell the land if the rent were not paid, as in the case of the non-payment of revenue.

Then, there were building-leases, in which lands were leased for a term of 99 years at a very small rent, if demanded. In the lease which he had seen, he believed the rent reserved was only one *fanam*, or the 12th part of a Rupee per annum.

MR. ELIOTT observed that the lands upon which only one *fanam* was assessed, might be very small.

MR. PEACOCK replied that the covenant expressed in the contract was that the lessee should build a house on the land, and keep it in repair; and that if he failed to do so or to pay the rent, the East India Company might re-enter and take possession. If he fulfilled the conditions of his lease, the East India Company covenanted to renew the lease after the expiration of the 99 years, on payment of a certain fine. However small, therefore, the rent assessed might be, there could be no doubt that the intention was that a substantial house should be built on the land. If a valuable house were built upon the land, he saw no reason why the Legislature should alter the Law on the subject so as to enable the Government to sell it off-hand for this one *fanam*, if the sum could not be realised by distraint. Would it be right to sell a substantial house for the purpose of levying a mere nominal rent? The Government could exercise whatever legal rights the lease gave them. But there was no necessity for giving them more stringent powers. Many accidents might prevent the payment of the rent. The owner might be absent in England, for instance; and yet, under this Bill, the Government might sell the house if the rent were not paid, leaving the owner without any equitable relief or other remedy whatever! He (Mr. Peacock) did think that, with respect to this class of cases, it would be unjust to alter the terms of the contract.

He now came to the form of documents introduced since 1828, and in use to the present day. Those documents, like all the documents in use prior to 1828, except building leases, reserved no power of re-entry. It was possible that substantial houses had been erected upon lands held under these documents; but unless some contract existed which gave the power of re-entry and sale in these cases when the quit-rent was not paid, he thought that the remedy ought to be left to the ordinary course of Law. In 1828, the Advocate General of Madras advised the Government that the form of document then in use was objectionable, and suggested another in which the Government reserved to itself only a quit-rent, and confirmed what were supposed to be grants from Meerassidars, or from intermediate holders, in consideration of a covenant on the part of the lessee that, in default of payment of the quit-rent, the Government should have power to distrain. That form had been adopted; and its effect was, not only that it reserved no power of re-entry and sale, but that it expressly contracted that arrears should be recoverable by the process of distraint. To give the power of sale now, would be to give a greater power than was reserved by the contract on the faith of which the lessee held his tenure, and had probably laid out money in building. By the building leases prior to 1828, if the revenue was not paid, the Government had power to re-enter, and, upon re-entry, to exercise the right of sale. Fully cognizant of this right, the Government abandoned it advisedly in 1828, and introduced a form of Instrument in which it substituted, in express terms, the right of distraint only.

Then, Act XII of 1851 was passed; and by that it was provided that

"if any owner of assessed land, or any person holding land subject to a rent payable to the East India Company, shall, upon the written demand of the Collector, refuse or

neglect to pay any sum at which the land is assessed, or with which it is charged as rent, the Collector may levy the same by distress and sale of the goods and chattels, wherever found, of such owner or lessee; or, after written demand upon the tenant or occupier, and on his refusal or neglect to pay the sum lawfully demanded, by distress and sale of any goods and chattels found upon the land, in the manner appointed for regulating distresses for small rents in Calcutta by Act VII of 1847, extended to Madras by Section LXXXIX Act IX of 1850; and for the purpose of any such distress and sale, the Collector shall have all the powers of a Judge of the Court of Small Causes under Section LXXXIX Act IX of 1850 aforesaid."

It appeared to him, therefore, that, although there might be some little difficulty in collecting the rents in a few of these cases—that although, where land was waste and unoccupied, some of these quit-rents might not be realizable—it was better that the Government should bear with that evil than that the Legislature should add to existing contracts terms which would impose upon holders of tenures a liability which those contracts did not import. The Government of India, under the advice of the Honorable and learned Chief Justice, who was then Advocate General, refused to insert in Act XXIII of 1850, for securing the land Revenue of Calcutta, a clause similar to that which was now proposed to be enacted for Madras. The Honorable Mover of this Bill had said that there was a distinction between Madras and Calcutta; because, previously to the passing of Act XXIII of 1850, an Act had been passed for the survey of Calcutta, the operation of which enabled the officers of Government to trace the owners; whereas there was no such Act for the survey of Madras. But he saw no reason why, if there was a necessity for it, Madras should not be placed on the same footing in this respect as Calcutta, by passing a similar Act for Madras. Though this had not been done as yet, there was no reason why it should not be done.

Then, the Honorable Member said that the limits of Madras were much larger than those of Calcutta. But still, the Government knew what the dimensions of Madras were when it entered into the contracts of which the form was introduced in 1828. It was not as if it had inadvertently extended the limits of Madras after the introduction of the new form of contract, and so excluded itself from the right of recovering rent by means of re-entry and sale in respect of tenures which were previously subject to that right.

Under these circumstances, it appeared to him that it was better that there should be a little difficulty in recovering some small amount of quit-rents or revenue, than that the Legislature should alter the conditions of a contract which the Government had advisedly entered into. There could be no objection to reserve a right of re-entry or sale in all *future* leases. Every person who should take land under a lease reserving that power, would do so with his eyes open, and would have no reason to complain if the right should be enforced. But where persons had purchased tenures on the faith of a contract which gave no power of re-entry or sale, but only a power of distress, it would be great injustice to them and to their under-tenants to add to the contract terms which would diminish the value of their property. The question was, not what the amount of the rent assessed on the land was, but what was the amount of capital laid out on the land, and the value of the property erected upon it. In 1850, when the Act for Calcutta was under consideration, the Advocate General of the day (Sir James Colvile) said—

"The summary power of sale given to the Collector by the 12th Section of the Draft Act, as it now stands, seems to me to be novel as regards Calcutta, and one which (though its operation is limited to the right, title, and interest of the defaulter, and therefore far less extensive than the power of sale exercised by the Revenue Authorities in the Mofussil) is likely to give rise to considerable apprehension of uncertainty, if not to create actual uncertainty in titles to land, and consequently to depreciate that kind of property. It may also lead to questions of priority between them and ordinary execution sales by the Sheriff.

"It seems to me that it would be more consistent with the spirit of British Law, by which Calcutta is governed, to confine the remedies for the recovery of arrears of a rent charge (that is to say) to distress and an action of debt."

The Government of the day had acted upon this opinion, and refused to insert in the Act a clause giving the right of re-entry and sale. That power having been refused with respect to lands in Calcutta, there was no good

reason for granting it at Madras, but there were strong reasons against it.

MR. ELIOTT said, if the sum payable under the form introduced in 1828 were landlord's rent, the remedy of the Government would have been by the ordinary Law. But the Advocate General at Madras had described it as rent payable in lieu, and as and for a commutation of the Government revenue, and he (Mr. Eliott) did think that the provision as to distraint was intended merely to point out the process to be primarily adopted, and did not take away from the Government the ultimate process of re-entry and sale in failure of recovery by distraint.

THE CHIEF JUSTICE said, he did not think it necessary to assign any grounds of objection to this measure in addition to those which had already been so well stated by the Honorable and learned Member opposite (Mr. Peacock.) But as the Honorable Member who had the conduct of the Bill had adverted to certain objections which he (the Chief Justice) had made to the Bill on a former occasion, and had attempted to answer them, he felt bound to say that the Honorable Member's reasoning, however satisfactory it might appear to other Members of the Council, had not removed those objections from his mind. The substance of the Honorable Member's answer had been repeated by him in the explanation which he had just offered. He (the Chief Justice) understood the Honorable Member to contend that, in the construction of the contract in question, the right of re-entry and of sale must be taken to be implied. The objection which he (the Chief Justice) had taken to the Bill was that, in giving the Government the right of re-entry and of summary sale, it was altering a contract advisedly made with present holders of land under the forms A. and B. printed amongst the annexures. The Honorable Member said that this would not be the effect of the Bill, because the sum payable to the East India Company under those forms was payable in lieu, and as and for a commutation of the Circar's share of the produce; and that such a description of the sum payable implied the reservation of all powers for the recovery of it which the Government under the general law had in respect of any revenue assessed upon land. It seemed to him (the Chief Justice) that, if that were the case, there would be, so far as tenures under the Instruments A. and B. were concerned, no necessity for this Bill at all. But he confessed that, in the absence of any decision by a competent Court to the effect contended for by the Honorable Member, he should be slow to accept that construction. He was willing to accept the decision of any competent Court. He was willing to accept the decision of the Chingleput Court. But it certainly appeared to him that the view which the Honorable Member took of the contract was not the view which the Law Officers of the Madras Government took of it; for in one of the papers before the Council, the Advocate General treated those forms as defective, because they did not give the powers of re-entry and of sale. For himself, he repeated that, finding the sum payable to be not revenue assessed under the general Law, but a sum fixed by contract by way of commutation of the former rights of the Government to share in the produce of the land; and, further, that the same contract expressly reserved certain powers for the recovery of that sum—he thought that it required a very forced construction of the contract to import into it general Revenue Law remedies other than those which the Government had expressly reserved. The Government had expressly reserved the right of distraint, but it had not reserved the right of re-entry and of sale, and he thought the latter could not be implied. The Honorable and learned Member opposite (Mr. Peacock) had spoken of the right of Government as a right rather to proprietor's rent than to revenue arising out of the land. He (the Chief Justice) had argued the question on the other supposition, as being most favorable to the views which the Honorable Member for Madras held regarding the principle of his Bill; and he dared say that the sums which the Government received as payable to the Circar, were more in the nature of general land revenue, than of zemindary rent. But taking the right even as higher than a mere zemindary right granted by the former Sovereigns of the country, he continued to think that the power of sale on default in payment of the sum

payable to Government, was neither expressed nor implied by the contract; and that the Legislature ought not to alter or qualify existing contracts by giving the Government such a power.

MR. ALLEN said, the question on which he wished to speak was whether this Bill was, in fact, a breach of contract or not. It was utterly repugnant to his feelings to support any measure that appeared to him to amount to a breach of contract; and if he had thought that the Bill amounted to that, he would readily have voted against going into Committee. Very few things could justify the Legislature in altering the terms of a contract. But could this Bill be fairly said to be such an alteration? Land had been given by Government in Madras, under a covenant that the lessee should pay a certain rent for it. This Bill did nothing more than alter the mode of realizing that rent. Even the argument that it was a breach of contract to render the land liable to sale for arrears, when the lease gave only the power of distraint, was futile as regarded this Bill; for the Legislature had already altered that term (if it was a term) by Act XII of 1851. Section IX of that Act said—

"The claim of the East India Company for land revenue or rent has priority over all other claims upon the land, or to which property distrained upon the land may be liable."

Consequently, if land held in Madras could not formerly, under the Deeds, be sold for rent due, this Section gave the right of sale. If it was admitted that the land was saleable in any way for arrears of the Government demand, an Act which declared that, instead of resorting in the first instance to the Zillah Court, gaining a decree there, and then selling under the decree, the Government should have the power of selling on the occurrence of the arrear without going to the Court, would alter, not the substantial rights of the Government, or the terms of the contract, but merely the procedure by which those rights should be enforced. Where, for instance, the Legislature made a new offence penal, no one could be tried for committing it before the Act was passed. But suppose an Act was passed declaring that a certain offence should be tried summarily by a Magistrate instead of by a Judge with a Jury. After the passing of such an Act, a person might be tried summarily for an offence committed before the passing of the Act, and such a person would have no right to claim a trial by Jury on the ground that, at the time the offence for which he was about to be tried was committed, the Law gave no power of summary trial for that offence. A mere change of procedure comes into effect at once without injustice, and he looked upon this Bill as not altering the terms of any contract, but merely as altering the *modus operandi* for enforcing the due performance of the terms of the contract.

MR. CURRIE said, he felt very reluctant to address the Council after the observations which had fallen from the Honorable and learned Member on his right (Mr. Peacock) and the Honorable and learned Chief Justice. But as he intended to vote contrary to their opinion, he felt it incumbent upon him to state the reasons which would influence him in doing so.

The object of the Bill was to extend to a Presidency Town the provisions of a Mofussil Law—that which related to the realization of the land revenue. It seemed to him that, upon general principle, this could hardly be objected to. The Law under which the Madras and Calcutta ground-rents were now collected, avowed the principle in the Preamble of the Act, but did not give effect to it in the enacting clauses. The reason of this was that Mr. Millet, who had prepared the Calcutta Act, was of opinion that, in giving the power of distraint over all property which might be found on the land, sufficient provision was made for the protection of the public revenue. But he (Mr. Currie) observed that, when the subject, as it related to Calcutta, was before the Government, Mr. Cameron had proposed to go much farther. Mr. Cameron had proposed that, for revenue purposes, the Calcutta lands should be annexed to the Zillah of 24-Pergunnahs; and that the whole of the Mofussil Revenue Law should have operation over lands within the Town of Calcutta.

If, then, there was no objection upon principle to the extension of the Mofussil Law to a Presidency Town, it did not appear to him that there was any

thing in the circumstances of Madras which presented a bar to the measure.

He spoke with great diffidence, and should have been glad if, after the speeches of the Honorable and learned Members who had preceded him, he could have reconciled it to himself to say nothing on the subject.

The documents principally insisted upon by the objectors to the measure were those of which the form was introduced in 1828. He agreed with the Honorable Member on his right (Mr. Allen) that those documents could scarcely be considered in the light of contracts. What was their purport, and how did they affect the position of the holders? If what he had said with regard to the general principle were admitted, there could be no objection to making lands liable to sale for arrears of public revenue while they remained in possession of the Meerassidars. Then in what respect did the position of purchasers from the Meerassidars differ from that of the Meerassidars? The document granted to the purchaser, as it seemed to him, merely acknowledged the title derived by the purchase; it recognized the purchaser as personally liable for the payment of the revenue in lieu of the Meerassidar, provided that that personal liability might be enforced by distraint. But this did not affect the inherent conditions of the landed tenure. It did not annul the indefeasible right of the Government to hold the land itself liable for the public revenue assessed upon it. In a case which had arisen in Calcutta, and which had been appealed to England, the Privy Council had held that the Collector's Pottah was not a muniment of title, but only an evidence of holding; and it seemed to him that that was precisely the nature of the documents in question. They were an evidence of holding, and nothing more.

The sale of land for arrears of the revenue assessed upon it was not only the most effectual, but the most advisable mode of recovery. The only case in which objection could be taken to that procedure was that of land upon which substantial buildings had been erected by persons not the owners of the land. But by the provisions of this Bill, there must first be a distraint upon the property of the owner, and upon property found on the land; and it was only in the event of the Collector failing to realize the arrears by these means, that he could proceed to a sale of the land. Considering the very insignificant amount payable as revenue, it was extremely improbable—almost impossible—that the ultimate resource of putting up the land for sale should ever be resorted to in any such case. Besides this, tenants so circumstanced would have a further protection in the provision in the Bill which allowed them to pay the arrears of revenue, and deduct the amount from the next payment of their rent.

MR. GRANT said, after the strong objections which had been urged against this Bill by such high legal authority, he regretted that the Honorable Member for Madras thought it his duty to press it forward. The whole object of the Bill was, after all, a most trumpery one. The whole revenue or ground-rent at Madras was only about Rs. 60,000, and it was proposed, for the sake of a slight extra facility in the collection of this sum, to do that which the highest legal authorities considered equivalent to a breach of contract. He had understood the Honorable Member for the North Western Provinces to admit that a contract does exist in this case. The Honorable Member for Bengal seemed to think that the Honorable Member for the North Western Provinces had not made that admission. He (Mr. Grant) understood him to have made it. He understood him to have said that, although there is a contract, this Bill would not interfere with that contract, because it would alter, not the substantial rights of the parties. but merely the procedure for the enforcement of those rights. He could not agree with the Honorable Member in that view. At present, a man holds a valuable house at a quit-rent under a contract, and under that contract, if he fails, owing to absence or any other cause, to pay the quit rent, which appears in some cases to amount to one *fanam*, equivalent to twopence, he may be sued. The Court in which he is sued will not give judgment, until he has had notice of action, and until he has had ample opportunity of coming forward and shewing cause, if he has any cause to show, why he should not pay, or of paying the claim, and so saving his house. But by this Bill, no notice

would be given, no time would be allowed. The house might be sold over his head, immediately upon default of payment, and without his knowledge. He (Mr. Grant) could not agree that this was not an essential and substantial change in the conditions of the contract. In the one case, the owner's tenure was secure: in the other, no man alive could call it a secure tenure.

For this reason, he should vote against the motion for going into Committee upon the Bill, understanding that, if this motion were defeated, the effect would be to throw out the Bill, which it was his object to do.

MR. ELIOTT'S Motion being put to the vote, the Council divided:—

AYES—4.	NOES—5.
Mr. Currie.	Sir Arthur Buller.
Mr. LeGeyt.	Mr. Peacock.
Mr. Allen.	Mr. Grant.
Mr. Eliott.	The Chief Justice.
	The Vice-President.

So the Motion was negatived.

BOMBAY LAND CUSTOMS.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to make better provision for the collection of Land Customs on certain Foreign Frontiers of the Presidency of Bombay." In making this Motion, he thought it right to say a few words with regard to the Bill. The Council would remember that, on the 3rd of January, the Select Committee had reported that they did not think the measure should be proceeded with. He had charge of the Bill, but he had not followed the usual course with respect to the Report of the Select Committee in moving for its adoption, because he had desired to make a further reference to the Government of Bombay. That reference he had made, and the answer of the Bombay Government was before the Council in Paper No. 2, in the shape of a Resolution by the Governor in Council dated the 18th of February, and in which the reasons were set forth why they differed from the Select Committee. He did not think that he would be acting as he felt he ought to do by the Bombay Government, if he allowed the matter to drop through; and it appeared to him that the best course open to him was the one which he now proposed to take—namely, to move for a Committee of the whole Council on the Bill, upon which Motion the Council might determine either to proceed with it, or so otherwise to deal with it as it might consider best.

MR. CURRIE said, he should be very reluctant to throw any obstacle in the way of a measure which had been declared to be necessary by the Government of any Presidency; but he should feel great difficulty in voting for going into Committee upon this Bill. The Bill had not been sent up from Bombay, but had been prepared here; and he might, he believed, venture to say it had been prepared without any very accurate knowledge of the system under which inland customs were collected in Bombay. When the Bill came before the Select Committee, that body was equally without such information and had endeavoured to gather it, as it best could, from the only source open to it, the existing Law. The result of this investigation was stated in the Committee's Report. They said—

"With regard to 'the determination of the value of goods,' 'the under-valuation of goods,' and 'the misdescription of goods in application for passing'—as we understand the law, (and we suppose the practice to be in accordance with it,)—duty is not ordinarily received at the stations where the goods are passed across the Frontier, but at the Sea Custom Houses (Section IV Act II) and probably at some other places where there is a public treasury. The goods are not brought to the office of the receiver, he grants a certificate according to the specification given by the owner, and his business is merely to see that the proper amount of duty is paid according to the specification. The check is at the Frontier station, where the goods are examined and compared with the certificate; and to such a system, the provisions of the Sea Customs Law for the valuation of goods, the taking over of goods when under-valued, on account of Government, and the imposition of penalties for misdescription in the application, are clearly inapplicable. Such provisions would make it necessary that the goods should always be brought to the place where the duty is paid; and this (unless duty were taken at the Frontier) would, we apprehend, be a serious hindrance to Trade."

It appeared to him that anybody carefully considering Act II of 1852 would come to the conclusion to which the Select Committee had come. But it seemed that the conclusion was an

erroneous one. The Bombay Government said:

"The Special Committee quite misapprehend the ordinary practice at the Frontier Nakas as regards the levy of Customs duties. Duty on all imported goods is received at the station when the goods pass the Frontier. Exported goods also pay at the Frontier station unless in the rare exceptional cases in which they may have been previously subjected to an import Sea Customs duty at a British port. Rules are therefore required for the determination of value and prevention of the misdescription of goods at Frontier stations."

If the fact was as stated here, and he had no doubt that it was, then the existing Law was entirely unsuitable to the practice, and some alteration in it must be admitted to be desirable. But the Bill now proposed was also unsuitable; for, like the existing Law, it provided, by Section XII, for the grant of Certificates of payment of Customs, which were to be used in places other than those in which they were granted; and by Section XX such Certificates might be made use of at any time within thirty days,or even within a longer period if the holder procured a renewal of the Certificate. It was evident that such provisions as these were quite inapplicable to the state of things described in the communication from the Bombay Government. Nor did the Bill appear to be consistent with itself. For Section XII went on to provide that—

"If, upon examination, the goods brought to any such station be found not to correspond with the specification entered in the certificate presented with the same, the difference shall be noted on the face of the certificate, and, if the payment of duty certified therein shall not cover the entire amount of duty leviable on the goods, as ascertained at such examination, the goods shall be detained until further certificate for the difference shall be produced;"

whereas Section XIV provided that goods should be liable to confiscation if they were found not to correspond with the description given of them in the application for Certificate. It was at least as great an offence to attempt to pass goods across the Frontier under a Certificate not applicable to them, as to make an application for a Certificate in which the goods to which it related were misdescribed.

For these, and other reasons with which he thought it unnecessary to trouble the Council, it appeared to him that the Bill could not well be considered by a Committee of the Council in its present form, but that the proper course would be to refer it back to the Select Committee, who would endeavour to obtain from Bombay fuller information regarding the practice for which it was intended to provide, and amend it accordingly.

The Bombay Government said—

"It should be pointed out to Mr. LeGeyt, with reference to the Report of the Select Committee, that they have much under-estimated the value of the Revenue for the protection of which more stringent provisions are desired. This Revenue, estimated by the Committee at Rupees (30,000) thirty thousand per annum, amounts, in reality, to nearly four times that amount. The error seems to have been caused by the exclusion of the duties on imported salt from the account."

That was just the case. The Select Committee had advisedly excluded the duties on salt: the declared object of the Bill was the prevention or punishment of the under-valuation on misdescription of goods; and provisions for that object were altogether inapplicable to salt, which paid a certain specific duty according to weight. It did not appear from the papers annexed to the Bill how this salt-duty was levied. In one of the annexures it was spoken of as salt-excise. If that was a correct phrase, the excise would be paid, not on the Frontier at all, but when the salt was cleared out from the Salt Work under a Certificate. That, however, and other particulars might be ascertained from the Government of Bombay by the Select Committee, if the Bill were referred back to them.

He begged to conclude by moving as an amendment that the Bill be referred back to the Select Committee for reconsideration.

MR. LEGEYT said, he had no objection whatever to the course suggested by the Honorable Member.

He would only observe, on what his Honorable friend had stated in reference to the framing of the Bill, that it was very true he had framed it himself; but he had framed it from papers which he had received from Bombay, and the opinion of the Bombay Government regarding it was before the Council in one of the annexures. In it the Government said that, having submitted the measure to the officiating Revenue Commissioner, and having attentively

considered its several provisions, it was of opinion that it fully met the objects in view, and supplied the deficiency of Act II of 1852.

MR. PEACOCK said, he should have been glad if the Honorable Member who had the conduct of this Bill, had stated the grounds on which he considered it necessary that the Bill should be submitted to a Committee of the whole Council. The Select Committee had said in their Report—

"We have given careful attention to the provisions of this Bill, and to the circumstances under which it has been brought forward; and the conclusion to which we have come is that such a measure is not necessary."

The Report of the Select Committee concluded by saying—

"The Bill, if proceeded with, will require considerable alterations in arrangement and other details; but, for the reasons above stated, we think any legislation on the subject unnecessary."

The Honorable Member for Bombay, as a Member of the Select Committee, having told the Council that the Bill was not necessary, had to-day, without giving any reasons for changing his opinion, moved that the Council should go into Committee upon it, and this, notwithstanding the Select Committee, upon the ground that legislation was not required, had not thought it necessary to make the alterations which would be necessary if the Bill were proceeded with. The Bombay Government, since the publication of the Select Committee's Report, had stated—

"That the annual revenue for the better protection of which the Bill was desired, and which the Select Committee estimated at Rs. 30,000, amounted, in reality, to nearly four times that amount."

This he considered to be no reason at all for proceeding with the Bill.

It was very objectionable that the time of the Council or of Select Committees should be occupied in settling Bills which were unnecessary; and he thought that those Members of the Select Committee on this Bill who now proposed that the Bill should be discussed in a Committee of the whole Council, or re-considered by the Select Committee, should satisfy the Council that there were sufficient reasons for proceeding with the Bill. At present, he had not heard any thing which satisfied him that the measure was necessary now if it were not necessary when the Select Committee made their Report.

MR. CURRIE said, he was unfortunate in not having made his meaning clear to the Honorable and learned Member. The Select Committee had reported upon the Bill on the assumption that the practice was in accordance with the existing Law, and, on that assumption, had said that the existing Law was sufficient, and that no further legislation was necessary. The Government of Bombay had explained that the Select Committee were in error in their assumption, and that the practice was altogether different. In the remarks which he had just made, he had endeavoured to point out that the practice being such as the Bombay Government described it, the existing Law was altogether inapplicable to it, and that therefore an alteration in that Law was desirable. The amount of land customs on foreign frontiers in Bombay was small; but if it was to be collected at all, the Law under which it was to be collected should be suitable to the actual circumstances.

For the reason stated by the Bombay Government, which was not before the Select Committee when they made their Report, he thought it desirable that the Bill should be referred back to them for re-consideration.

MR. PEACOCK said, he did not quite understand the Honorable Member's position even now. The Government of Bombay had said:—

"The Special Committee quite misapprehend the ordinary practice at the Frontier Nakas as regards the levy of Customs duties. Duty on all imported goods is received at the station when the goods pass the Frontier. Exported goods also pay at the Frontier station unless in the rare exceptional cases in which they may have been previously subjected to an import sea customs duty at a British port. Rules are therefore required for the determination of value and prevention of the misdescription of goods at Frontier stations."

The Select Committee, in their Report, said—

"We remark that Section III of Act II of 1852 authorizes the establishment of Customs Stations, and gives the necessary powers to the Station Officers; and Sections IV and V provide for the appointment of Officers to receive payment of Customs Duties, and grant

certificates. We do not perceive what more is necessary. We are of opinion, however, that the general provisions of Act I of 1852, where the operation of those provisions is not expressly or by necessary inference restricted to the collection of Sea Customs Duties, which is the more peculiar subject of the Act, are applicable to Customs generally; and thus we think that a Commissioner of Customs appointed under Section III of Act I might, if the Governor-in-Council should so direct, exercise a control over the Officers appointed under Act II."

If that were so, this Bill was not necessary, and there was no reason why the Council or the Select Committee should be detained upon it. If, however, there were any reason for thinking that the Bill was necessary, he should not object to its being referred back to the Select Committee for report.

MR. CURRIE said, the passage which the Honorable Member had quoted applied solely and exclusively to the appointment of Land Customs Officers. The point upon which the Select Committee had, it appeared, come to a mistaken conclusion, and upon which he thought further enquiry necessary, was, as he had stated, the mode in which the duty was collected. Act II of 1852 distinctly provided that the duty should be paid to an officer of Sea Customs, or an officer specially appointed to receive Customs duties, and that he should give a certificate of the payment. Under that certificate, the goods mentioned in it would be taken to the Frontier, and would there be compared with the description in the certificate. The Bombay Government stated that, in practice, duty is received at the station when the goods pass the frontier. The Law and the practice were therefore at variance, and either the practice should be altered so as to make it conform to the Law, or the Law should be accommodated to what might have been found to be necessary in practice.

THE CHIEF JUSTICE said, he understood the Honorable Member for Bombay did not wish to press the Motion that the Council should go into Committee on his Bill. The only question, therefore, now was, whether the Council should adopt the proposition of the Honorable Member for Bengal, or should throw the Bill out altogether. He did not presume to say that the reasons assigned for a change of opinion on the part of the Members of the Select Committee were satisfactory or unsatisfactory. He had not studied the subject, and was unable to form an opinion either way. But as the Honorable Member for Bengal clearly thought a new state of circumstances existed, and desired to have an opportunity of reconsidering his former conclusion, he (the Chief Justice) thought it would be far better to refer the Bill back to the Select Committee than to reject a measure which the Government of Bombay considered necessary, and which the Select Committee, as now advised, was no longer prepared to treat as unnecessary.

MR. LEGEYT'S Motion was, by leave, withdrawn.

MR. CURRIE moved that the Bill be referred to a Select Committee consisting of Mr. Eliott, Mr. LeGeyt, and Mr. Currie.

Agreed to.

LANDS FOR PUBLIC PURPOSES.

MR. ALLEN postponed to Saturday the 28th instant the Motion (of which he had given notice for this day) for a Committee of the whole Council on the Bill "for the acquisition of land for public purposes."

MR. ELIOTT moved that a communication received by him from the Government of Fort St. George relative to the above Bill be laid upon the table and printed.

Agreed to.

NAWAB OF THE CARNATIC.

MR. ELIOTT moved that two communications received by him from the Government of Fort St. George be laid upon the table and referred to the Select Committee on the Bill "for repealing Act I of 1844 (for securing certain immunities and privileges to His Highness the Nawab of the Carnatic, his family, and retinue.")

Agreed to.

CALCUTTA PORT-DUES AND FEES.

MR. CURRIE moved that the Bill "for the levy of Port-dues and fees in the Port of Calcutta" be referred to a Select Committee consisting of Mr. Grant, Mr. Eliott, and Mr. Currie.

Agreed to.

The Council adjourned.