PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

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1857.

Saturday, March 28, 1857.

PRESENT:

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

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

MOFUSSIL MUNICIPAL LAW.

THE CLERK presented to the Council a Petition of Inhabitants of Dacca against the system now in force for managing the Conservancy of that City. The Petitioners prayed for the enactment of such Laws as would prevent the abuses complained of by them.

BOMBAY UNIVERSITY.

MR. LEGEYT said, he had now to move the first reading of a Bill "to establish and incorporate an University at Bombay." The Bill almost exactly followed the Act lately passed by the Council for establishing and incorporating the University of Calcutta. The Senate of the Bombay University, like the Senate of the Calcutta University, was composed of ex-officio and other Fellows,—the Governor of Bombay was Chancellor, the Chief Justice Vice-Chancellor, and the Bishop and Members of Council ex-officio Fellows. To these had been added other Fellows selected from different sections of the community, and whose presence in the Senate would render the University catholic in its character.

The objects of an University, and its intended mode of operation, had been so recently brought to the attention of the Council by the Honorable and learned Chief Justice in the lucid and able speech with which he introduced the Bill for Calcutta, that he felt it would be a mere waste of time on his part to go over the same ground. The objects of an University at Bombay were precisely identical with the objects of a University at Calcutta. The field for such an Institution was necessarily much more limited in Bombay than in the Metropolis of British India; but small as the Western Presidency was both in territory and population when compared with the vast and populous Provinces subject to the Presidency of Fort William, he was happy to be able to say that a lively interest had long been taken in Bombay in the cause of Education by all classes who were able to appreciate the benefits which it conferred.

It was probably in the knowledge of some Members of the Council that, towards the beginning of the last year, a shadow had been cast on the educational system in Bombay. It was impossible to deny that that shadow had been justly cast. But he believed he might safely say that the result had been one of unmixed good. From the year 1836, the educational system in Bombay had been administered by a Board of Education composed of European and Native gentlemen, who had under them three or four English Colleges and ten English Schools besides numerous Vernacular Schools. In these Colleges and Schools, annual examinations were held, and Reports were furnished from each to the Board purporting to give the results attained in it during the year. Up to last year, the examinations were conducted, and the Reports written, by persons connected with the Institutions the students of which were examined; and certainly it must be confessed that these Reports invested the Institutions with a much higher degree of merit than, last year, they were seen to deserve. A Director of Public Instruction was appointed early in 1855, and one of the results of that appointment was the election by Government of independent Examiners to the Institutions which had been under the supervision of the Board of Education. The Reports sent in by these Examiners respecting the Elphinstone College at Bombay and the Poona College in the Department of English Literature were eminently unsatisfactory. But he trusted that the shadow cast, at that period, over the system of Education in Bombay, had now passed away, and given place to a better state of things. The gentleman who had reported on the College at Bombay, and who had gone deepest into the system in operation, had since been appointed Director of Public Instruction in the Presidency; and there was no reason to suppose that he would throw a gloss

over the real state of any of the Institutions under him so as to conceal any real defects.

The Colleges and Schools which were under the supervision of the Board of Education would be affiliated at once to the University. Their number was small; but he believed they would soon be followed by many other Institutions which were supported by Societies and private endowments, and which would hail with great satisfaction the University as their Alma Mater.

He could not, he thought, over-estimate the benefits which the establishment of an University on the principles proposed were likely to confer on the community at large.

He considered, too, the present moment had been most happily chosen for the development of the plan set forth in the Honorable Court's memorable Despatch of the 18th of July 1854. Taken in connexion with the great State questions of judicial administrations which the Council had just sent forth to the Public in the shape of the proposed new Codes of Civil and Criminal Justice, he could not but believe that the Universities must and would be found, under proper management, to be most useful aids to the success of those great measures. We had been emphatically told that our Mofussil Courts and our Mofussil Bar did not enjoy the confidence of the Public, because the Judges of those Courts were ignorant of Law and uneducated, and the Pleaders, with a few honorable exceptions, skilled only in legal chicanery and evasion. This state of things need no longer exist when there were Universities at hand with the power of certifying to the judicial knowledge and fitness of every man who chose the administration or practice of Law for his future occupation in life. And he hoped the day was not far distant when it would be either a law of the land or an inflexible rule not to admit Pleaders into our higher Courts in the Mofussil who had not previously graduated in one of the Universities in the Department of Law. He would also rejoice to see that the choice of persons for the office of Moonsiff would likewise be restricted to graduated Pleaders who had practised a certain time in the Courts. At present, the Moonsiffs were chosen occasionally from the Native Bar, much oftener from amongst the Cutcherry servants. It could not be contended that the present state of the Native Bar, or the antecedents of the Cutcherry servants as a body, were the best guarantees for fitness for the office of Judge. The Cutcherry servants entered service at a very early age in the lowest grades of office. Some of them, it must be admitted, rose by unflagging industry and uniform good conduct; but how many more of them had crept up to the judicial seat by nepotism, by cringing, and by other unauthorized and sordid means! It was not possible that men so selected could enjoy the confidence of the Community amongst whom they had lived all their lives, and who were perfectly acquainted with all their antecedents. Yet, it was no less the truth that many Native Judges now in the Mofussil were persons who had been taken from the ranks of the Cutcherry and Adawlut Servants, and now filled their important offices—some worthily, to their own honor, but the great majority in a manner which did not give the satisfaction and inspire the confidence which every Judge ought to command. His Honorable and learned friend (Sir Arthur Buller), who was not present to-day, had said, in his admirable speech the other day on the Bill relating to Criminal Procedure, that the great want in our Mofussil Courts and in our Mofussil Bench was the absence of all legal training. The Universities to be established, would supply an easy remedy for this defect. Why should not European aspirants to the Bench in the Mofussil be compelled to take a degree in Law, in addition to the required acquisitions in other branches of knowledge which were now exacted from them? It was an acknowledged fact amongst all civilized nations that the best course of training for the Bench was practice in the Bar. Then, why should not a young covenanted officer who selected the judicial line for his walk in life, be compelled to graduate in Law in one of the Indian Universities, and why, after he had so graduated, should he not be appointed to the post of Public Prosecutor in a Mofussil Court—an appointment which his Honorable and learned friend (Sir Arthur Buller) had stated he considered to be a most desir-

able element in our civil and criminal administration? A graduate of one of the Universities might be most advantageously sent to a Mofussil Court as a Government Advocate to conduct criminal prosecutions, advise Magistrates in the conduct of cases, and take charge of all civil suits in which the Government was concerned. Such a school of training for the Bench would be as good a one as had ever yet been attempted; and he would make that training the road, and the only road, to the Mofussil Bench.

In conclusion, he thought that, if the establishment of Universities would do nothing more than give these facilities for the improvement of the judicial system, it would be hailed by the community of India as one of the greatest boons that had ever been conferred on the country. But it was clear to him that it would ensure many more advantages for the Public.

With these observations, he begged to move the first reading of the Bill.

The Bill was read a first time.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA AND HOWRAH.)

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

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

ACQUISITION OF LANDS FOR PUBLIC WORKS.

MR. ALLEN moved that the Council resolve itself into a Committee on the Bill "for the acquisition of land for public purposes;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

In doing so, he said, since the Bill had been reported on by the Select Committee, two communications had been received respecting it—one from the British Indian Association, the other from the Government of Madras. The communication from the British Indian Association went against the whole principle of the Bill, and sought to introduce into this country the English custom of passing a separate Act for every case of taking land for a public work. The whole Petition, in fact, was directed against the principle of the Bill; and as the Council had affirmed that principle by its vote in favor of the second reading, he did not think it necessary to make any further remarks upon the Petition.

With regard to the suggestions and objections contained in the communication from Madras, he might mention that they were not of any great importance. Several had been anticipated by the Select Committee, and he was prepared with Motion Papers which would meet others.

The Motion to go into Committee on the Bill was carried.

Section I was passed after an amendment.

Section II provided that land may be taken by Government under the Act after a declaration that it is needed for a public purpose.

MR. PEACOCK said, he had an amendment to move in this Section. The Section must be considered together with Section XXIX. It said—

"Whenever it appears to the local Government that any land is needed for a public purpose, a declaration shall be made to that effect."

The declaration was to be conclusive that the land was required for a public purpose, and to bring into operation the procedure provided by the Act.

Section XXIX provided:—

"When any person, with the sanction of the Governor General of India in Council, shall undertake at his own cost any work of public utility, the local Government may declare, in the manner prescribed by Section II of this Act, that any land required by such person for the execution of the work, is needed for a public purpose; and thereupon such land may be taken under the provisions of this Act, and the local Government may vest such land in such person on his paying the compensation awarded under this Act, and all other expenses incurred in the acquisition of the land."

These two Sections included two classes of cases. Section II related to cases in which the Government might take land at its own expense for works to be conducted by itself, or in which it was so interested that it would provide the land required for them; and Section XXIX to cases in which the Government might take land for works of public utility undertaken by individuals as a matter of mere private speculation.

Where land was wanted entirely for Government works, or for works in which the Government was so interested that it would pay for the land out of the revenues of the State—as, for instance, in the case of the existing Railways—it might be right to leave it to the Government to declare that the land was needed for such purpose; but where land was wanted for works which, though they might be of public utility, were undertaken by private individuals for their own benefit, it ought to be left to the Government of India, not in its executive capacity, but in its legislative capacity—that was to say, to this Council—to make the declaration. There would be no difficulty on the score of expense, or on any other ground, in applying to this Council for a private Bill for the acquisition of land needed for a work of public utility. Under the Standing Orders, the Bill would be published for general information, and every person would then have an opportunity of expressing his opinion whether the work for which the land was required ought to be carried out or not. If it should appear, in any case, that the delay in carrying a private Bill through the several stages in the ordinary mode would frustrate the object—which, however, was not likely to be the case—the Council had the power of suspending the Standing Orders.

It appeared to him, therefore, that Section XXIX ought to be omitted; and that where a private individual wished to undertake a work of public utility at his own expense, he ought not to be put in possession of the land which he required for that work, except under a private Bill passed by this Council. He (Mr. Peacock) should, accordingly, move as an amendment that the word "needed" in line 11 of Section II be left out, in order that the words "required to be taken by Government, at the public expense, and for public purposes" be substituted for it. At the proper time, he should further move that Section XXIX be left out of the Bill.

The amendment was carried, and the Section then passed.

Sections III and IV were passed after amendments.

Sections V and VI were passed as they stood.

Section VII was passed after an amendment.

Section VIII was passed as it stood.

Section IX Clause 1, was passed as it stood.

Section IX, Clause 2, was passed after amendments.

Section X was passed after an amendment.

Sections XI to XV were passed as they stood.

Before Section XVI was proposed—

MR. PEACOCK suggested that the Bill contained no Section which stated how witnesses appearing before the Arbitrators, were to be examined. He did not know whether the intention of the Honorable Mover of the Bill was to recommend that the proposition of Her Majesty's Law Commissioners that witnesses should be examined without oaths or affirmations should be adopted; but he thought it would be well not to prejudge that question. Section XV provided that, on the application of the Arbitrators, the Collector should summon witnesses to be examined before the Arbitrators, and that such witnesses should be subject to the general Law "regarding persons summoned as witnesses before the Collector when acting judicially." If it were intended to retain the practice of administering oaths or affirmations to witnesses, there would be inconvenience in a provision which required that oaths or affirmations to witnesses at arbitrations under this Act should be administered by the Collector. It would be much more convenient to allow the Arbitrators to administer the oath. The Collector might not be at the place where the arbitration was held, and it would be very inconvenient to compel witnesses to go to the Collector's Cutcherry in order to be sworn. Formerly, where a Court of Law in England directed a reference to arbitration, the witnesses to be examined before the Arbitrators were sworn before the Court directing the reference, or a Judge of the Court, that they would speak the truth in their evidence at the arbitration. That practice had been found to be inconvenient and objectionable, and an Act was passed to enable the Arbitrators to swear the witnesses. It was much better that a witness who was to be examined upon oath should be sworn

at the time and place at which he was examined, than that he should be sworn before one person at one place to give true evidence on some future occasion when examined before a different person at another place.

He should, therefore, move that the following new Section be inserted after Section XV :—

"Every witness examined before the Arbitrators, shall be examined upon oath or affirmation, to be administered by, or made before, the said Arbitrators."

MR. CURRIE said, if the general Law should dispense with oaths and affirmations, the Section proposed would conflict with it. The Select Committee had left out the words in the margin of Section XV, and substituted the words in italics for them with the view of leaving the case to be governed by the general Law. On the other hand, he quite saw that there would be the inconvenience to which the Honorable and learned Member had alluded if the general Law should not dispense with oaths and affirmations.

THE CHIEF JUSTICE said, the object of the words in italics at the end of Section XV, clearly was to make, in a different way, the same provision which the words in the margin made—namely, for punishment for perjury. But the words in italics were—"Persons so summoned shall be subject to all the provisions of the Laws in force regarding persons summoned as witnesses before the Collector when acting judicially." Assuming that this implied that any person who gave false evidence before Arbitrators would be liable to punishment for perjury, he could only be so punished by his being brought within the category of persons summoned as witnesses before them when acting judicially.

The new Section moved by Mr. Peacock was then put, and carried.

Section XVI provided that the award of the Arbitrators should specify the amount of compensation to be given, the persons entitled thereto, and the proportions in which they were entitled. Further, that it should declare the costs of the arbitration, and by whom, and in what proportion they should be paid.

MR. PEACOCK said, he did not think that there was any provision in the Bill that, as a general rule, the Government, where it took land for public purposes, should pay the costs of an arbitration if a larger sum than that which had been previously offered by Government were awarded. It appeared to him that there ought to be a Clause to that effect. A man whose land was required of him by Government for public purposes, and who was compelled to go to arbitration about its value, and succeeded in obtaining a larger sum than Government had offered, was certainly entitled to the costs of the reference. It would not be fair to leave it to the discretion of the Arbitrators to impose the costs of the proceeding upon him. There might, probably, be some cases of unreasonable opposition, or of vexatious conduct during the enquiry. But, as a general rule, he thought that the costs of an arbitration should be borne by the Government, who were the promoters of the undertaking, if the amount of compensation awarded exceeded that which had been offered.

MR. ALLEN said, the idea was that, if the Arbitrators awarded less than the Collector had offered, then the owner, who had forced on the enquiry, should pay the costs; but that, if they awarded more, the costs should fall on the Government.

MR. PEACOCK said, he thought it would be better to have some express provision on the subject. As the Bill now stood, it would be entirely discretionary with the Arbitrators to throw the costs upon the owner even where they awarded more than the Collector had offered. In England, the rule was that, even if a Jury gave less than the sum offered, the promoters of the undertaking should pay one-half the costs, and the owner the other half. He did not know that that was a very correct principle; but he certainly thought that where the Arbitrators awarded more than the Government had offered, the Government, who would be taking the land by compulsion, ought to pay the costs.

MR. ALLEN said, he had no objection to insert an amendment to the effect that, if the award was for a larger amount than that which the Collector had offered, the Government should pay the costs of the Arbitration.

MR. GRANT asked, if the remune-

ration of the Arbitrators was to form part of the costs. If it was, the effect might be rather awkward, because then the Arbitrators would have to fix their own remuneration.

MR. ALLEN said, there was nothing in the Bill which provided for any remuneration whatever to the Arbitrators. Members of Punchayets always met without remuneration, and were willing to meet without it. In fact, respectable men would not like to take remuneration. He intended that the office of Arbitrator under this Bill should be an honorary office.

MR. GRANT said, he doubted very much whether, in the Presidency towns, persons would be found to accept the office on those terms.

MR. PEACOCK said, as there was no necessity for passing this Bill immediately, he would suggest that this Section stand over until the next Meeting of the Council, in order that a Clause might be prepared after more mature consideration than could be given to it at present.

Agreed to.

Section XVII was passed as it stood.

Section XVIII was passed after a verbal amendment.

Section XIX was passed as it stood.

MR. ALLEN, after Section XIX, moved the following new Section:

"When the amount of compensation to be paid for land taken under the provisions of this Act is determined by the award of the Collector or other Officer under Section V, he shall pay the amount awarded at the time when possession is taken of the land on account of Government. When the compensation is determined by the award of Arbitrators under Section XVI, the Collector or other Officer shall pay the amount awarded, with interest at the rate of 6 per cent. per annum from the time when possession was taken of the land on account of Government."

Agreed to.

Section XX provided that—

"If there exist any ground which, in the judgment of the Collector or other Officer, renders it improper to make immediate payment of the compensation, or of any portion thereof, to any of the persons having or claiming an interest in the land or in the compensation awarded in respect thereof, the amount, or such portion of the amount as he may deem sufficient, shall be invested in Government securities, and held in deposit until an order of Court shall be obtained for the payment thereof."

MR. ALLEN moved that the following words be added to the Section:—

"If any such ground shall exist, payment of the compensation may be made according to the award. Provided always that nothing in this Act contained shall affect the liability of any person who may receive the compensation awarded for any land, or any portion of such compensation, to pay the same to the person lawfully entitled thereto."

Agreed to.

Sections XXI to XXIV were passed as they stood.

Section XXV was passed after an amendment.

Section XXVI was passed as it stood.

Section XXVII provided that any person obstructing the setting out of line-works, displacing land-marks, &c., should, on "conviction before a Magistrate," be liable to imprisonment, or fine, or both.

MR. PEACOCK moved that the words "before a Magistrate" be left out. An offence against the Section might be sufficiently punished with a very small fine, and the Magistrate might be at a distance. It would hardly be necessary to carry the offender all the way before the Magistrate for the purpose of having such a case adjudicated. He thought it would be better to leave these cases to be dealt with in the ordinary mode, which would be by a competent officer on the spot. He should, therefore, move that the words "before a Magistrate" be left out. In that case, the ordinary rules of Law would apply.

The amendment was agreed to, and the Section then passed.

Section XXVIII was passed as it stood.

Section XXIX being proposed—

MR. PEACOCK said, for the reasons he had already stated, he should move that it be omitted, leaving the object for which it was intended, to be provided for by private Acts.

MR. GRANT asked, whether it was intended that the Collector, if, under Section XX, he paid to the wrong person the compensation awarded by the Arbitrators, should be liable for the wrong payment.

MR. PEACOCK said, where a Collector wished to take land under the provisions of the Act, he would affix a notice upon the land, he would publish a notice by proclamation in the neighborhood, and he would serve a

notice upon the persons known or believed to have an interest in the land. If the persons interested appeared upon the notice, they would appoint an Arbitrator to determine the value of the land and of their respective interests. The award of the Arbitrators would be *primâ facie* proof of the rights of those in whose favor it was made, and the Collector would be indemnified for making payment according to the award. But if there were any ground for doubting who were the proper persons to receive payment, the money would be paid into the Court where the rights of the parties would be determined.

MR. GRANT said, he objected to forced arbitration of conflicting claims even in the case of claimants who appeared on the notice. He was afraid, however, that he had passed by the Sections which provided for such arbitration.

MR. CURRIE said, the question of providing by arbitration for the adjustment of conflicting interests was a very perplexing one, and had occasioned great difficulty in the preparation of the Bill. But as he understood the Bill as it now stood, there would be no enforced arbitration of such interests. Section VI said :—

"If the Collector or other Officer shall be unable to agree with the persons who have attended in pursuance of the notice, and whose claims appear to him to be valid as to the amount of compensation to be allowed, or if any dispute shall arise as to the apportionment of such amount, the amount of compensation or other matter in dispute shall be referred to the determination of arbitrators, to be appointed in the manner hereinafter provided."

The mode of appointing the Arbitrators was provided by Section IX. If the interest was joint, the only matter to be settled under Clause 1 of that Section would be the value of the land. Clause 2 provided that—

"If there be several persons having distinct and separate interests in the matter in dispute, and they cannot agree in the appointment of an arbitrator on their behalf, it shall be competent to the Collector (subject to the orders of the Commissioner or other superior revenue authority) to refer each of such distinct and separate interests to a separate arbitration, or for the purpose only of determining the amount of compensation to be allowed for the land, to select any one of the persons interested whose interest appears to him to qualify such person to represent the others; and the person so selected shall appoint an arbitrator on behalf of all the persons interested in the matter in dispute."

If the claimants did agree in the appointment of an Arbitrator on their behalf, of course that Arbitrator would determine, not only the value of the land, but the shares in which it should be divided. That would be an arbitration by consent. But if parties having distinct and separate interests in the land—a Zemindar and Putneedar, for instance—could not agree in the appointment of an Arbitrator, then the Collector might have one Arbitration to determine how much was the value of the Zemindar's interest, and another Arbitration to determine how much was the value of the Putneedar's interest; or he might choose either the Zemindar or the Putneedar for the purpose of appointing an Arbitrator to determine the whole amount of compensation to be awarded for the land. So that it appeared to him (Mr. Currie) that there was to be no enforced arbitration of conflicting interests between the parties interested. The value of the Zemindar's claim might be determined by arbitration, and the value of the Putneedar's claim might be determined by arbitration. It was quite possible that, in that way, the Government might have to pay more for the land than if only one arbitration were appointed to determine the value of the land, and the apportionment of their respective shares were left to be settled afterwards by the Zemindar and Putneedar amongst themselves; but in any case, there would be no enforced arbitration of their relative interests.

THE CHIEF JUSTICE said, he thought that the Honorable Member's explanation met only one class of cases —cases in which, several persons having admittedly separate and distinct interests in a piece of land—such as a Zemindar or Putneedar, or a tenant under a long lease and the reversioner, —could not agree in the appointment of an arbitrator to determine the value of their respective interests. But how would it be if there were rival claimants to the same piece of ground? How would it be if A. said, "This land is mine," and B. said—"No; it is mine?"

MR. CURRIE replied, in such a case the Collector would determine, under

Section V, which of the claimants was entitled.

MR. ALLEN added that, if the Collector would not do this, he would deposit in Court the amount of compensation allowed for the land.

MR. GRANT said, he did not understand that the Bill required the Collector to deposit the amount in Court. He rather thought that it gave him power to exercise his own judgment in the matter. If he should exercise his own judgment, and should exercise it ill, and pay the amount over to the wrong person, would he be liable or not liable?

MR. ALLEN said, he would not be liable.

MR. GRANT replied that, in that case, he certainly objected to this part of the Act. The Collector would take the land, and might pay the value of it to the wrong person. The land would be gone, and the money might also be gone, by reason of the insolvency of the person to whom it had been paid; and then the rightful claimant would be without a remedy.

MR. PEACOCK said, it appeared to him that in the provision on this subject, there was a *casus omissus*. As he understood the Bill, it provided for the case of persons claiming a joint interest in land, and for the case of persons claiming separate interests in land; but it did not provide for the case suggested by the Honorable and learned Chief Justice of two or more persons each claiming, not a joint or separate interest, but an exclusive interest in the whole land. In the first two cases, it appeared to him, that, under the Bill, the Collector might compel the parties to refer to arbitration, not merely the value of the land, but also their respective rights and interests in the land. In the last case, there was no power to compel them to refer any thing more than the question of the value of the land. But after all, would it be right to force upon the claimants such a tribunal for the determination of their claims? It appeared to him that all that ought to be compulsorily settled was the value of the land to be taken. If the land were not required to be taken for a public purpose, rival claimants to the land could not be forced to refer their claims to arbitration. Why, then, when the land was required for a public purpose, and a sum of money was to be substituted for it, should the parties be bound compulsorily to refer to arbitration their respective claims to the money? The award would not be final: it might be set aside by a Court of Law. But if the parties were compelled to go to arbitration, they would be put to the expense of two tribunals, if they were not contented to abide by the decision of the arbitrators.

MR. GRANT said, he had no objection to the Collector being secured from the liability of paying twice if his payment in the first instance were made to the person in possession of the land, because, in that case the rival claimant, if he conceived his to be a better title, might file a suit, and take out an injunction from a Court of Law to restrain him from making such payment. But as the Bill now stood, the Collector might pay to a person out of possession. If he did that, and a rival claimant were afterwards declared entitled, there might be no means of recovering the amount paid, by reason of the insolvency of the person to whom it had been paid.

MR. PEACOCK said, he thought the Bill as it stood would give rise to many difficult questions. Suppose A. and B. came forward to claim the same land. The dispute between them might depend upon a question of boundary. Each might say the land to be taken lay within the limits of his boundary. The Collector would say, "I have nothing to do with that question. All I shall do is to have the value of the land determined."

The Collector, then, would appoint an Arbitrator for the Government. But who would appoint an Arbitrator for the rival claimants? A. might contend that he had a right to appoint. B., on the other hand, might claim to appoint the Arbitrator. It appeared to him (Mr. Peacock) that there was no provision in the Bill for such a case.

After some conversation—

MR. ALLEN said, he had not the slightest objection to providing that the Collector should deal only with the person in possession, and he would prepare a Section for that purpose, in substitution of Section XXIX, before the next Meeting of the Council.

Section XXIX was then put, and negatived.

Section XXX was passed as it stood.

Section XXXI was passed after an amendment.

The Council having resumed, the President reported progress with the Bill.

CRIMINAL PROCEDURE (BENGAL.)

THE CHIEF JUSTICE moved that the Report of the Standing Orders Committee on the Petition of certain British subjects, praying to be heard before the Council 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," be adopted.

In doing so, he said the simple question referred to the Standing Orders Committee was whether that part of the prayer of the Petitioners in which they sought liberty to be heard by Counsel, or rather by themselves, in support of their Petition, fell within the 29th Standing Order. That Standing Order, as the Council was aware, was as follows:—

"If a Bill be pending peculiarly affecting private interests, and any person whose interests are so affected apply by petition to be heard by himself or his counsel upon the subject of the Bill, an order may be made upon the Motion of a Member, allowing the petitioner to be so heard either before the Select Committee on the Bill, or before a Committee of the whole Council, provided the petition be received by the Clerk of the Council before the Report of the Select Committee on the Bill shall have been presented."

And the final words of the Order were these:—

"In no other case or manner shall any stranger be heard by himself or by his Counsel."

Therefore, this Standing Order not only gave affirmatively the right to persons to be heard, in a particular class of cases, by themselves or by Counsel at the bar of the Council, but it declared that, except in that particular class of cases, no person should be so heard. Consequently, the simple question for the Standing Orders Committee to consider was whether the Bill against which the Petitioners prayed to be heard, could be said to be a Bill "peculiarly affecting private interests." The very frame and argument of the Petition were rather that the privilege which the Petitioners wished should be continued was a privilege which had been given on public grounds, and which affected a very large portion of the community. It did appear to the Members of the Standing Orders Committee that, whether the Bill were considerd as one for the better administration of justice—and the question must be looked at in both lights—it could not be said to affect private interests in the sense of the Standing Order. He might adduce an example from another class of the community. He would suppose that a Bill was brought into the Council to enact that there should be no trust of land unless that trust were declared by writing. It could hardly be contended that every Hindoo whose civil rights, by virtue either of the Regulations or of the Statutes which govern the practice of the Crown Courts, were determinable by Hindoo Law, would be entitled to be heard before the Council against such a measure, because it would modify Hindoo Law, and strike at the root of Benamee transactions. Private interests could mean only interests distinct from those of the public, or of any large class of the community. Therefore, without going farther into the question, and raising what would be little better than a logomachy, he would simply move that the Report of the Standing Orders Committee be adopted.

Agreed to.

NOTICES OF MOTIONS.

MR. LEGEYT gave notice that he would, on Saturday the 4th of April next, move the second reading of the Bill "to establish and incorporate an University at Bombay."

Also that he would on the same day move that the Standing Orders be suspended to enable him to pass the Bill through its subsequent stages.

POLICE AND CONSERVANCY (SUBURBS OF CALCUTTA AND HOWRAH.)

MR. CURRIE moved that the Bill "to make better provision for the order and good Government of the Suburbs of Calcutta and of the Station of Howrah" be referred to a Select Committee consisting of Mr. Allen, Mr. LeGeyt, and the Mover.

The Council adjourned.