Saturday, 20th January, 1855

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. I

(1854 - 1855)

SESSIONS COURT AT OOTACAMUND.

MR. ELIOTT moved the first reading of a Bill "to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund on the Neilgherry Hills." The Honorable Member said, the Madras Government had proposed to establish a Court of novel constitution, to be called the Auxiliary Civil and Sessions Court. This proposition had been referred for report to a Select Committee, who reported that it appeared to them that a Court constituted according to Regulations VII and VIII of 1827 of the Madras Presidency would be sufficient for the present exigency. Such a Court the Governor of Madras could constitute of his own authority, and all that was required to be done by a Legislative Act, was to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund. The Bill of which he now moved the first reading, had been prepared by the Select Committee for that purpose.

ABSENCE OF GOVERNOR GENERAL.

MR. DORIN said, he was sorry to be obliged to ask the indulgence of the Council for postponing the reading of the Bill to provide for the exercise of certain powers by the Governor General during his absence from the Council of India, (of which he had given notice), until next week. The Bill had been drawn, and would have been brought forward to-day, if it had not been necessary, with reference to some of the arrangements proposed, to consult the Executive Council upon it. This would have been done yesterday, had not the Governor General been prevented from holding a Council by indisposition.

The reading of the Bill, therefore, stood postponed until Saturday next.

BOUNDARY MARKS (MADRAS.)

MR. ELIOTT moved the first reading of a Bill for the establishment and maintenance of boundary marks in the Presidency of Fort St. George. He said a survey was now in progress in Madras, one of the objects of which was to fix the boundaries of fields, &c., and it was an object of great importance to establish land-marks to denote those boundaries. The Bill submitted followed Act III of 1846 and I of 1847, which provided for the same object in the Presidency of Bombay and the North-Western Provinces respectively.

CATTLE TRESPASS.

MR. PEACOCK moved that the Petition from Members of the Indigo Planters' Association read this day, be printed. He had thought that this would have been done as a matter of course. On looking at the Standing Orders, he found that this was not the case. As Mr. Theobald, the Secretary of the Association, seemed to desire that he should be informed of what had been done with the Petition, there would be no objection to the Clerk of the Council communicating to him, under Section XXX of the Standing Orders, that the petition had been ordered to be printed; and he (Mr. Peacock) would therefore also move that such a communication should be made.

Both motions carried.

NOTICES OF MOTION.

SIR JAMES COLVILE gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee of the whole Council on the Bill "for the further improvement of the Law of Evidence."

MR. MALET gave notice that, on Saturday next, he would move that the Council resolve itself into a Committee to consider the Bill "for the better prevention of Desertion from the Indian Navy."

MR. ELIOTT gave notice that, on Saturday next, he would move that the Council do adopt the preliminary Report of the Select Committee to consider the Bill "to amend the Law relating to District Moonsiffs in the Presidency of Fort St. George," and that the Bill be amended according to their suggestion and published for general information.

MR. LAUTOUR'S PETITIONS.

MR. MILLS moved that the two Petitions from Mr. E. Lautour, Additional Judge of Patna, read this day, be printed. These petitions related to points of importance connected with Civil procedure.

Agreed to.

The Council Adjourned.

Saturday, January 20, 1855.

PRESENT:

The Most Noble the Governor General, *President.*

Hon. Sir Lawrence Peel,	Hon. Sir James Colvile,
Hon. J. A. Dorin,	A. J. M. Mills, Esq.,
Hon. Major Genl. Low,	D. Eliott, Esq.,
Hon. J. P. Grant,	A. Malet, Esq., and
Hon. B. Peacock,	C. Allen, Esq.,

THE CLERK presented a Petition from certain inhabitants of Howrah against the

Bill "to amend the Law relating to the appointment and maintenance of Police Chowkeydars in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal."

MR. MILLS moved that this Petition be printed, and referred to the Select Committee on the Bill.

Motion carried.

MR. MILLS laid on the table the Report of the Select Committee on the Bill "for incorporating for a further period, and for giving further powers to the Assam Company."

ABSENCE OF GOVERNOR GENERAL.

THE HON'BLE MR. DORIN said, he was prepared to move to-day the first reading of a Bill "for providing for the exercise of certain powers by the Governor General during his absence from the Council of India." But before doing so, he had to present a Message from the Governor General in Council in connection with the Bill.

The Message was handed in by the Hon'ble Member, and read to the Council by the President. It was as follows :—

MESSAGE No. 25.

"The Governor General in Council announces to the Legislative Council a Resolution passed this day, relative to the absence of the Governor General from the Council, and to the necessity for vesting the Governor General with certain powers during such absence.

By order of the Governor General in Council,

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

FORT WILLIAM,
The 19th January, 1855.

The Resolution alluded to above, was read by the Clerk, and is subjoined :—

"*Fort William, Home Department, Jan.* 19, 1855.

Read Minute by the Governor General, dated 29th November 1854, regarding the absence of the Governor General from the Council.

Read Minute by the Hon'ble Mr. Dorin, dated 1st December.

Read Minute by the Hon'ble Major General Low, C. B., dated 2nd December.

Read Minute by the Hon'ble Mr. J. P. Grant, dated 6th December.

Read Minute by the Hon'ble Mr. Peacock, dated 8th December.

Resolved,—That it is expedient that the Governor General should visit the Neilgherry Hills in the Presidency of Fort St George, and other parts of India, unaccompanied by any Member of the Council of India.

That the Hon'ble Mr. Dorin be requested to take charge of, and bring into the Legislative Council, with a view to its being passed into Law, a Bill to authorize the Governor General alone, during his absence, to exercise all the powers which might be exercised by the Governor General in Council, in every case which the Governor General may think it expedient to exercise those powers.

That, in the event of such a Law being passed, the business of the Government of India be conducted in the following manner:—

1.—All communications to the Government of India, shall be ordinarily made to the President in Council.

2.—All the ordinary business of the Government of India in every department, shall be conducted by the President in Council.

3.—All questions of general importance in the several departments and branches of the Administration, shall be referred to the Governor General by the President in Council, with or without any expression of opinion; and such questions, when so referred, may be either disposed of by the Governor General, or returned by him with an expression of opinion for disposal or re-consideration by the President in Council.

4.—The Governor General may likewise take up any questions when not so referred to him, and may either dispose of them or send them to the President in Council.

5.—All appointments made by, or requiring the confirmation of the Governor General in Council (except temporary acting appointments) shall be made and confirmed by the Governor General.

6.—The President in Council shall furnish the Governor General with a copy of all letters from the President in Council to the Secret Committee, and a weekly abstract of proceedings; and the Governor General, in like manner, shall send to the President in Council a copy of all letters from the Governor General to the Secret Committee, and a weekly abstract of proceedings."

Ordered.—That a copy of this Resolution be communicated, with a Message from the Governor General in Council, to the Legislative Council.

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

MR. DORIN moved that the Message and Resolution just read, be printed.

Agreed to.

MR. DORIN then moved the first reading of a Bill "for providing for the exercise of certain powers by the Governor General during his absence from the Council of India." He said it was a Bill framed under Section 70 of 3 and 4 of William IV, c. 85, which enacted "that, whenever the Governor General in Council shall declare it is expedient

that the Governor General should visit any part of India unaccompanied by any Member or Members of the Council of India, it shall be lawful for the Governor General in Council, previous to the departure of the Governor General, to nominate some Member of the Council to be its President, in whom, during the Governor General's absence from the Presidency of Fort William, the powers of the Governor General in Assemblies of the Council, shall be reposed: and it shall be lawful in every such case for the Governor General in Council, by a Law or Regulation for that purpose to be made, to authorize the Gevernor General alone to exercise all or any of the powers which might be exercised by the Governor Geueral in Council, except the power of making Laws or Regulations." The Resolution just read, had been recorded by the Governor General in Council as a step preliminary to the passing of an Act to empower the Governor General to act when absent from the Council of India; and he (Mr. Dorin) would explain the circumstances under which it had been come to. When Lord Dalhousie first came out to this country as Governor General, it was not his intention to remain in it beyond the usual term of five years allotted for continuance in that office; but in 1852, at the request of Her Majesty's Ministers and of the Hon'ble Court of Directors, he consented to prolong his stay, with this qualification, however, that, though he would remain to introduce the changes that might be found necessary for the working of the new India Bill, it would not be convenient to him to stay in India, except under very pressing circumstances, beyond February 1855. At the time His Lordship intimated this, it was impossible to foresee the political convulsions which were now agitating Europe; but in the beginning of 1854, when it was clear that war with Russia was inevitable, His Lordship, deeming that it was not the duty of any public man at such a crisis to relinquish his post on light grounds, tendered his services to the Home Authorities for such further period as the public exigency might require. His Lordship's stay in India had consequently been prolonged very much beyond the period originally intended by him; and those who knew the enormous labors which devolved upon the head of this Government, and the zeal and energy which His Lordship had devoted to them, would not be surprised to hear that his health now partially failed him. Excepting a short tour of inspection through Pegu, and a visit to the Arracan Coast, it was now nearly—indeed, fully three years that His Lordship had not been absent from Calcutta; and the labor imposed upon him in the relaxing climate of Bengal, had so affected his health, that he felt he was unable to continue his work with satisfaction to himself and advantage to the Public Service without some slight change of air. It was purely for this, and for no political reason whatever, that he proposed to leave Calcutta; and in this he merely asked what every public servant in this climate was entitled to who suffered from the effects of severe and continued exertion. His Lordship had at first proposed to go to Darjeeling, which appeared to be nearest to the seat of Government; but it was not so in reality, for there existed no communication between it and Calcutta by Electric Telegraph, nor, if unexpected occasion should arise for the Governor General's presence in the Presidency, would the roads admit of speedy travelling, especially during the rains. Accordingly, his Lordship had selected the Neilgherry Hills, both because access to them was easy at all seasons, and it would be possible to return from them to Calcutta in a very short time in any case of emergency; and because Calcutta was connected with Bangalore by Electric Telegraph, by means of which it would be quite possible to despatch communications from Calcutta, and receive replies, in two days at the very furthest.

Under the old India Bill, which expired last year, and by which the functions of the Executive and the Legislative Council were vested in one and the same body, it might have been quite possible, though not quite convenient, that the Members of the Council should accompany the Governor General during his absence from the Presidency; but under the new India Bill, it was practically impossible that they should leave Calcutta without suspending the functions of the Legislative Council, because that Bill required that seven should be the quorum for Meetings of the latter body, and the departure of the Members of the Executive Council from the Presidency would leave only six Members for the Legislative Council on the spot. It was true that, by s. 48 of 3 and 4 William IV. c. 85, if one Member of the Executive Council accompanied the Governor General, he and the Governor General would form a quorum sufficient for the exercise of all functions not Legislative; but the presence of that one Member would

practically be of very little consequence, for, in the event of a difference of opinion upon any question, the Governor General would have a casting vote; so that any check that might be imposed by the presence of that one Member would, in point of fact, be null. Moreover, the fact of the Council of India, thus legally constituted, meeting at a distance from Calcutta, would prevent the nomination of a President in Council; and the whole of the somewhat cumbrous business of the Government of India, would have to be transacted at the Neilgherry Hills—a circumstance of itself sufficiently inconvenient. So that, on the whole, having balanced the advantages and the disadvantages of the courses that might be pursued, his Lordship in Council had decided that it would be more convenient that the Governor General should proceed to the Neilgherry Hills unaccompanied by any Member of the Executive Council.

He (Mr. Dorin) was permitted to mention that His Lordship intended remaining there only during the approaching hot weather, and that he would be again in Calcutta by the close of the year. His absence therefore would be but short; and in the meantime, as stated in the Resolution read, all the ordinary business of the Government of India would be conducted by the President in Council, and all questions of general importance in the several departments and branches of the Administration, would be referred to the Governor General.

The only other provision inserted in the Bill was as to the period of its duration. Being framed for only a temporary object, its duration was limited to one year.

With these observations, the Hon'ble Member moved the first reading of the Bill.

The Bill was read a first time accordingly.

SESSIONS COURT AT OOTACAMUND.

MR. ELIOTT moved the second reading of the Bill "to empower the Session Judge of Coimbatore to hold Sessions at Ootacamund on the Neilgherry Hills."

Motion carried, and Bill read a second time accordingly.

Moved by the same that the Bill be referred to a Select Committee, consisting, of Mr. Grant, Mr. Mills, and the Mover.

Agreed to.

LAW OF EVIDENCE.

SIR JAMES COLVILE moved that the Council resolve itself into a Committee of the whole Council to consider the Bill "for the further improvement of the Law of Evidence." He added that, as the Bill had been very much re-cast by the Select Committee, he thought this unquestionably a case in which he ought to avail himself of the permission given by the Standing Orders, to move that the Council be instructed to consider the Bill in the amended form in which it was recommended by the Select Committee to be passed.

Motion carried.

The Council then went into Committee upon the Bill as amended by the Select Committee, and considered it Section by Section. The first 21 Sections were passed without other than two or three trifling verbal alterations.

The 22nd Section was as follows:—

"A witness being a party to the suit shall not be bound to produce any document in his possession or power which is not relevant or material to the case of the party requiring its production, or any confidential writing or correspondence which may have passed between him and any legal professional adviser with reference to the suit in which the evidence is proposed to be given. If any party, however, offer himself as a witness, he shall be bound to produce any such writing or correspondence in his custody, possession, or power, if relevant or material to the case of the party requiring its production."

SIR JAMES COLVILE moved that the words "with reference to the suit in which the evidence is proposed to be given" between the words "adviser" and "If" in this Section, be omitted.

MR. ALLEN said, dealing as this Bill did with matters of Law in which he was very little competent, it was with considerable diffidence that he rose to speak upon it. The Section now before the Council provided that "a witness being a party to the suit shall not be bound to produce * * * any confidential writing or correspondence which may have passed between him and any legal professional adviser, &c." Now, he did not see why this privilege should be given,—or why a legal adviser should not be bound to tell all that he knew regarding his case, when every body else was so bound. By Section XXXII of this Bill, it was made compulsory on a witness to answer questions which might criminate, or tend to criminate himself. That Section went much further than the Law in its present state did. No such provision was to be found in Act XIX of 1853, from which other Sections in the Bill had been taken. If a man was not to be relieved from criminating himself, he did not

see why a professional adviser should be relieved from disclosing everything that he knew relating to a suit. The object of the proposed improvement in the Law was to get at truth as far as possible, in the best way possible. That being so, he did not see the advantage of giving any privilege to a professional adviser. In Act XIX of 1853, it was provided that a man was not bound to produce his own title-deeds, unless he was a party to the suit. That Section, he observed, was left out in this Bill; from which he concluded that it was the intention of the framers of it to force a man to produce his own title-deeds, as it was their intention to compel a man to answer questions which might criminate himself. The principle upon which they proceeded, he thought a correct one; but because he thought the principle correct, he was opposed to giving any privilege to a professional adviser. He would, therefore, move that the Clause in this Section by which confidential writings or correspondence between a client and his professional adviser were protected, and the following one, which referred to it, be expunged.

SIR JAMES COLVILE said he would resist the Amendment. The Hon'ble Member had opened it—though he hardly could have meant so to open it—as if the 22nd Section of this Bill were giving a privilege which did not now exist. But whether the privilege was mischievous, or whether it was expedient, it was one which had been long in existence. He (Sir James Colvile) was perfectly aware that the question had been very much discussed, whether we should get at truth by all the means that were in our power, or whether those exceptions which the Law allowed should be permitted to continue. After careful and mature deliberation, the general impression in England and elsewhere was, that it was expedient not to interfere with the particular privilege against which the Hon'ble Mover of the Amendment had spoken. He (Sir James Colvile) did not think it necessary to mix up this question with that of the propriety of taking away from a witness the privilege of refusing to answer any question relevant to the suit which might criminate or tend to criminate himself; because that seemed to him to stand on an entirely different footing. The privilege to which the Hon'ble Member was opposed, was a privilege conceded, because it had always been considered that where a man had occasion to consult a legal adviser —as men would have occasion to do while laws were complex—it was inexpedient that he should be fettered and restrained from disburthening his mind to his legal adviser as to the real nature of his case, by a fear that the matters which he disclosed might afterwards be adduced against him. If the privilege were taken away, every professional adviser would obviously be exposed to inquiries which would be extremely painful to him as relating to facts the knowledge of which he had acquired in strict and unreserved confidence. He (Sir James Colvile) did not mean to say that the privilege should be retained in deference to the feelings of the professional adviser, though many cases might occur in which he personally should be glad to see parties relieved from the obligation of disclosing communications on the ground that these were confidential. He should be glad for instance, if a clergyman who, as such, had received a communication from a penitent for the ease of his conscience, were relieved from divulging what he had received in so sacred a manner, although he might not be a Minister of the Roman Catholic faith, bound by the strong obligation of secrecy which the discipline of that Church imposes on a confessor. That was a privilege which the Law of England would not now give to a Protestant clergyman. But, on a general balance of convenience and inconvenience, he thought that communications to professional advisers should still be generally privileged; and that nothing would be gained by the total withdrawal of that privilege. In many instances, it might happen that the communications between client and attorney had been only verbal. In such a case, the attorney, giving evidence respecting them, might do so in a manner which would convey a false or distorted impression of what had really passed, either from failure of memory, or an imperfect or erroneous apprehension on his own part of what his client had said. The Law now gave the power of examining the party himself, and taking from his own lips all that he knew of the case. There was, therefore, the less necessity for taking away a privilege which had so long been allowed, and found to be convenient.

Upon the whole, having maturely considered the arguments that had been adduced for and against the privilege, he did not think that its abolition would be beneficial to Society; and he certainly was not inclined to go further in this direction than this Section as it stood did go in advance of those who were at the head, or had the conduct of legal reforms in England.

SIR LAWRENCE PEEL said, he regretted very much that the state of his health would not permit him to do justice to the importance of the question raised by the Hon'ble Mover of the Amendment; but he would endeavor, as far as he was able, to state the reasons why he had given his assent to the introduction of the Section in the Bill to which the Hon'ble Member objected, and why he was opposed to the destruction of the existing privilege. That Section was, in itself, an extension of the Law, and proceeded on the principle that, as a party to a suit was now permitted to give evidence in his own favor, it would be unreasonable to allow him to tender himself as a witness and still to claim the privilege of withholding any relevant confidential communication which might have passed between himself and his legal adviser. Where he did not so tender himself, the Section permitted him to retain the privilege; and the question was, whether it would be politic or expedient to make the change which the Hon'blé Mover of the Amendment proposed, without first making far greater improvements in the substantive Law of the land than had yet been effected. It was to be remembered that the privilege was not the privilege of the professional adviser. It was not, by any means, conceded as a boon, or in deference to him. It was the privilege of the client; and if laws were all perfect—if they secured in every case perfect protection to the honest purchaser—he would not be opposed, as much as he now was, to the alteration advocated by the Hon'ble Member to his right. This particular rule in the Law of Evidence had been adopted upon principles of policy, in order that there might be the most perfect freedom of communication between client and attorney when they came together; and every one who considered the extreme delicacy of that relation, and how necessary it was to the interests of both client and adviser that the latter should be made fully acquainted with all the circumstances of the case regarding which he was called in to interpose his valuable advice,—must see that there would be evil in interposing any check which might tend to restrain the freedom of the client's communications. That was the principle upon which the Law had determined that communications between a client and his professional adviser should be protected. Would the public consent to have this privilege withdrawn? Would they consent to a change in the Law by which a man, if he found it necessary to consult a professional adviser, would be unable to make his communications to him without exposing himself to the chance of having them laid bare in a Court without any restriction, whenever the necessities of his own case, or the proceedings of others, might take him there? Would the public consent to this? It was taking a very narrow view of the question to suppose that the privilege could be used only as a cloak for dishonesty or crime. In the majority of cases, it would be used for the protection of the rights of parties most innocent and most honest. Suppose, for example, the case of a man who purchased an estate under the full belief that he was acquiring a complete legal title, and who gave perhaps all that he was worth in the world for the purchase. After the acquisition of the property, he learnt, for the first time, that there was a flaw in the title. He called upon his legal adviser, communicated what he had heard, and asked him to look into the matter, and see if his title was secure, or if it could be strengthened or confirmed. He, at all events, having purchased *bonâ fide*, was quite as innocent a party, and, according to natural equity, was fully as much entitled to protection, as a person who had been long dispossessed, and to whose supineness, perhaps, the danger of the other was owing. The protection of such a one now practically depended often in a great degree on the difficulty of proving the title of the claimant. The party in possession relied on his possession. But this change would expose him to the risk of being turned out of possession on proof of an admission in a confidential communication with his own attorney, directed to the security of that which, as an honest man and often as a just man, he was entitled to see secured. What justice would there be in such a course? Surely, it would be just and right to give to honest purchasers more security than they now enjoyed against dormant claims. What feeling would be entertained, especially amongst a commercial community, on seeing an honest purchaser ruined by a forced revelation of that which had passed between him and his own professional adviser under the seal of secrecy? And yet, this might be the consequence of the change in the Law advocated by the Hon'ble Mover of the Amendment.

But this would not be the only inconvenience. There would be another. If the privilege were withdrawn, how could a

person, desirous of legal advice, feel that he was free to communicate to a professional adviser everything that he might wish to communicate? Were there not dangers of misconception and half revelations? The withdrawal of the privilege would operate as a constant check upon communications from a client to his attorney. It was not to be supposed that the object of a man in consulting a legal adviser could only be to serve some dishonest purpose. Legal advice was daily sought with the most honest of motives. It constantly happened, for instance, that a commercial man, under impending and unforeseen difficulties occasioned by no fault of his own, found it necessary to take legal advice in order to learn how it would be safe for him to act. Would he, in seeking that advice, think it prudent or expedient to be perfectly open in his communications, if he knew that himself and his legal adviser were liable to be dragged into a Court, and compelled to state in evidence everything that had passed between themselves? The object really contemplated by the Law in allowing professional communications to be privileged, was, not to keep out of sight anything that was criminal or improper, but to maintain that full and entire confidence between attorney and client which ought obviously to exist between them, but which the withdrawal of the privilege, suggested by the Hon'ble Mover of the Amendment, would tend very greatly to shake.

The Hon'ble Member who had moved the Amendment, considered that there was an inconsistency in the Bill in the respect that, while the 22nd Section retained the privilege in regard to professional communications,—which it did, subject to the proviso that the client, being a party to a suit, did not tender himself as a witness in it—the 32nd Section made it compulsory on a witness to answer questions relevant to the issue which might criminate, or tend to criminate himself. He (Sir L. Peel) must say, that he did not see the inconsistency at all. The questions which a party would be bound to answer under the 32nd Section, would have no necessary connection with his own rights. It might happen that most important rights of property of another person might depend upon them. When the Law relating to breaches of trusts was altered in this country a few years ago, the new Act—which, he believed, was framed by the late Mr. Bethune—made many offences criminal which were before only matters of civil jurisdiction. Now, suppose a civil suit were instituted for the recovery of certain funds which had been misapplied. It might be that the misapplication could be proved only by the evidence of some one or more of the several individuals involved in the act itself; but the breach of trust would, under the new Act, be a criminal offence; and as, in the existing state of the Law, these individuals, though they might be examined as witnesses in the civil suit, would not be bound to criminate themselves, they might refuse to answer any question tending to shew what had become of the funds. There the personal privilege of a witness not to criminate himself would operate to the destruction of the civil rights of another party. That privilege was never originally intended to work any such result, and would be stretched too wide if allowed to work it. It had been conceded to a witness in the merciful spirit of the English Criminal Law, in order that a confession of guilt should not be extorted from the delinquent's own mouth, and then used as evidence against him. That was the principle on which the privilege rested; and the 32nd Section of this Bill preserved it entirely to him by providing, as it did, that no answer which a witness might be compelled to give should subject him to any arrest or prosecution, or be used as evidence against him in any criminal proceeding. There was no analogy between such a privilege, and a privilege which rested upon the broad principle of general convenience and expediency in protecting the daily communications between attorney and client. He had the greatest possible respect for the opinions of the Hon'ble Mover of the Amendment and those who thought with him upon this question. He was aware that there was no less a man than Bentham who had expressed himself in favor of the removal of this privilege. Bentham was in favor of the retention of one privileged communication only, which did not exist in our Law, namely, that between a priest and penitent. He had supported his views on this subject with his usual powers of reasoning; but it should be remembered that that great man was a great legal reformer, and it might be that he recommended the removal of the privilege in question only as part of a general reform, in harmony with the principles which he and those of his school advocated. As he (Sir L. Peel) had said in opening, he might himself be willing to assent to the change if the substantive Law were in a state of such

advanced improvement as to admit of it with safety. But it was not; and he was convinced that it would be premature and rash to introduce the proposed change as yet. It was to be observed that it had not been asked for here and elsewhere by those who were most likely to know if it was required. This went to show that they saw the necessity and importance of free and unreserved communications between themselves and their professional advisers; and he should certainly say that unless the attention of the public out of doors were first drawn to so important an alteration in the Law, it would be very inexpedient to introduce it. It would be an alteration making a most wide change in the Law—a change beyond anything that had been called for in England. The reform proposed in Section XXXII, to which the Hon'ble Member had referred as being inconsistent with Section XXII, *had* been called for and strongly urged in England in works having for their object the reform of our Laws.

The question on which he had spoken, was one too vast to be done justice to without previous preparation. He had endeavored, feebly he feared, to express his sentiments regarding it. He would repeat, he felt fully convinced that, in the present state of the substantive Law, the change proposed by the Hon'ble Member would work great injustice and mischief, and that, at all events, before determining upon it, the attention of all commercial men—indeed of the public at large—should be first drawn to it. On the grounds he had stated, he would resist the Amendment, and urge on the Legislative Council the expediency of retaining the Section as it stood.

SIR JAMES COLVILE begged to add a few words to what he had already said. It was undoubtedly desirable that so important a question should be discussed; but it hardly seemed to him to be properly raised by this Amendment. The Amendment of his Hon'ble friend had taken him by surprise; but as he understood it, it was to omit all the words of the 22nd Section after the word "production." If this was carried, the effect would be to leave the Law, in respect of professional communications, unaltered, and the privilege to which his Honorable friend objected, unqualified even by the exception which this Section sought to engraft upon it.

MR. PEACOCK said, he had felt considerable doubt whether, after parties to a suit were allowed to give evidence in their own behalf, and might be compelled to give evidence against themselves, and even to answer questions which might criminate them, the privilege which had now for many years protected confidential communications between attorney and client, should or should not be withdrawn. Having given the best attention that he could to the question, he had come to the conclusion that it would be better if the privilege were not withdrawn. The question which had been raised on the 22nd Section of the Bill, might more fully be raised on the 24th, where the privilege was more clearly laid down. The first Clause of the latter Section said—"A barrister, attorney, or vakeel, shall not, without the consent of his client, disclose any communication made by the client to him in the course of his professional employment, nor any advice given by him professionally to his client, nor the contents of any document of his client the knowledge of which he shall have acquired in the course of his professional employment." If the privilege defined in this Clause of the 24th Section were to remain, the Hon'ble Mover of the Amendment must admit that the privilege defined in Section XXII ought also to be continued. [*Mr. Allen.*—Certainly.] He would, therefore, consider it rather as it was broadly defined by the 24th Section, than on a mere question whether only a written confidential communication between attorney and client should or should not be produced. It appeared to him that, when the Law allowed a party to a suit to give his evidence, and enabled the opposite party to compel him to do so, it did all that could be fairly required; and that to bring the legal adviser into the witness-box to disclose communications which might have been made to him, would be not only inexpedient, but unsafe. A client, in consulting an attorney, ought to be allowed to communicate with him free from any restraint. In so doing, he might, with perfect honesty, communicate to him only such facts as at the time he might consider essential to his case. Suppose that, at the trial of the suit—the client being absent, but the attorney present—the attorney could be called and compelled to disclose the communication which had passed between him and his client: the consequence might be very injurious to the latter; for the communication having been made without special reference to the point raised in Court, would, in all probability, be imperfect in itself, but capable of explanation if the client were present in Court. He (Mr. Peacock)

would put another case. Suppose a person to have purchased an estate, and to have been in possession of it for many years, and an action to be then brought to eject him from it. He might consult his professional adviser, stating that he had paid for the estate, that he had been in possession many years, that he did not know why the action had been brought, but wished to learn if he could safely defend it. The conveyancer or attorney would examine the title, and might pick some hole in it of which the opposite party had no knowledge whatever, and he might bring it to the notice of his client. Would it be fair to compel the client to disclose the existence of that flaw at the hearing of the action, and so inform the opposite party of it, who probably would never have discovered it himself? A case such as the one he was now supposing, had really occurred. A gentleman had purchased an estate, and been in possession for forty years. At the end of that time, a question arose as to the validity of his title. He sought professional advice, and the conveyancer whom he consulted found a flaw in the title of the person from whom the gentleman had bought the property—a flaw depending upon a mere technicality. He informed his client of the mistake; no one else knew of it; no one else would in all probability have discovered it; and no injury or injustice was done, because the gentleman had honestly paid for the estate. Now, if he or his professional adviser had been liable to be compelled to produce in a Court the opinion regarding the real nature of the title, what would have been the consequence? He might have very soon been turned out of a property for which he had given a fair and valuable consideration, and of which he had been in possession for so many years. For these reasons, he (Mr. Peacock) was of opinion that the privilege in question should be retained, but subject to the check which both the 22nd and the 24th Sections of the Bill provided,—*viz.*, that, being the privilege of the client, a party to a suit should be deemed to have waived it when he offered himself as a witness to the Court, and himself or his legal adviser should then be bound to disclose professional communications which might have passed between them. In such a case, if the client gave false evidence, his legal adviser might be examined to contradict him. Generally, he (Mr. Peacock) was averse to allowing any privileges in Law; but, having weighed all the considerations which affected the question, he was of opinion that this particular privilege it would be safer and more expedient to retain.

MR. MILLS said, he likewise would vote against the Amendment moved by his Honorable friend opposite. It would be very undesirable to introduce such a change in the Mofussil. Indeed, he did not think any one there would dare to consult a *mookhtear* with a view to his defence or the enforcement of his rights, if he knew that the *mookhtear* was at liberty to walk into Court and divulge everything that he might communicate to him for the purpose of obtaining his advice. This question had been fully and carefully considered by Mr. Harington and himself in relation to Act XIX of 1853, and they had both come to the conclusion that it would be extremely unsafe to do away with the privilege, which had long existed in our Courts.

MR. ALLEN'S Amendment negatived.

The original question was then put and agreed to.

The remaining Sections of the Bill were passed, with a verbal alteration in Section XXX.

DESERTION, INDIAN NAVY.

MR. MALET moved that the Council resolve itself into a Committee of the whole Council to consider the Bill "for the better prevention of Desertion from the Indian Navy."

Motion carried.

The Committee proceeded to consider the Bill (which had been prepared and brought in by Mr. Malet) in its original form.

The 1st Section was passed as it stood.

The 2nd Section was as follows:—

"Every Commander or Master of any merchant vessel, and every other person, who by words or any other means whatsoever, directly or indirectly instigates or procures any officer, seaman, or other person belonging to the Indian Navy, to desert,—or knowing that any officer, seaman, or other person belonging to the Indian Navy is about to desert, aids or assists him in deserting; or knowing any officer, seaman, or other person belonging to the Indian Navy to be a deserter, *harbours or conceals such deserter, or assists such deserter in concealing himself*, shall for every such offence, be liable to a fine not exceeding Rs. 1,000."

MR. MALET moved that, the words "harbours or conceals, &c.," given above in italics, be left out, and that the following words be substituted for them:—"harbours,

conceals, *or assists in concealing such deserter, &c.*"

Motion carried.

MR. MILLS then moved that after the word "concealing" in the above amendment, and before the words "such deserter," the words "or employs, or continues to employ" be introduced,—observing that, though the Master or Commander of a merchant vessel might not harbour or conceal, or assist in harbouring or concealing a deserter, he might employ or continue to employ him.

THE PRESIDENT said, he apprehended that in point of order, the Hon'ble Member's motion could not be put. The words introduced into the Section on the motion of the Hon'ble Member to the right (Mr. Malet) were an amendment: the words now proposed by the Hon'ble Member near the gangway (Mr Mills) were proposed as an amendment of that amendment; and, according to the 48th Standing Order, the first amendment having been already carried, it was not competent to the Hon'ble Member to move an amendment of it now. He should have made his motion before the first amendment was put to the vote. The words of the 48th Standing Order were:—"A motion to amend a proposed amendment may be made after the question of amendment has been proposed by the President, and before it has been put to the vote,—but at no other time."

MR. MILLS said, he did not oppose the amendment already passed: he voted for it: but he proposed that it should appear in the Section with the additional words "or employs, or continues to employ."

THE PRESIDENT said, he was quite aware of this; but if one Hon'ble Member moved an amendment, which was carried by the Council, and another Hon'ble Member then proposed to interline something in it, that was proposing to amend an amendment; and, according to the strict and literal interpretation of the Standing Order, it was not competent to him to make his motion. As he (the President) had said on former occasions, he did not by any means wish to take upon himself arbitrarily to decide the sense of the Standing Orders; and, therefore, if there was any doubt as to the construction which he put upon the 48th Standing Order, he would be glad to hear how the Council read it. But he thought the meaning of the Order was so clearly expressed by the words used, that the Council would agree in his opinion that the Hon'ble Member was out of order in bringing forward his motion now.

MR. MILLS then altered his motion by moving that the words "or employs, or continues to employ such deserter", be inserted *after* the passage already amended; so that the whole might stand thus—"harbours, conceals, or assists in concealing such deserter, *or employs, or continues to employ such deserter.*"

MR. MALET said, he had no very great objection to the introduction of the words proposed by the Hon'ble Member, if the Council considered that the phrase "harbours a deserter" did not include employment of a deserter. He thought that it did, and had not, therefore, inserted it in the Section.

SIR LAWRENCE PEEL said, he certainly was opposed to the introduction of the word "employ," if it was to be understood as an extension of the word "harbour:" and if it were not so intended, it was an unnecessary addition. If the Master or Commander of a vessel employed a deserter from the Indian Navy with what the Lawyers would term a *malus animus*, unquestionably he should be punished; but to make it an offence in him, or any other party, to employ at all a person who had at any antecedent time deserted from his ship, would be to make an offence of what might in reality be a most innocent act. The Section provided no limitation in point of time; and if it were passed with the amendment which was now proposed, the result would be, that a man who had once deserted from the Indian Navy would be incapable of obtaining work for his livelihood for the remaining part of his natural life; or that, if he did obtain it, at some period, however remote from the date of his offence, the party employing him without knowledge would be liable to pay a penalty of 1,000 Rs.

MR. PEACOCK said, he would support the motion for the amendment. He understood that there was a doubt whether the meaning of the term "employ" was included in that of the term "harbour." If this was so, all future questions arising from such doubt ought to be obviated, by the introduction of the amendment proposed. In the Section as it now stood, the words "knowing any officer, seaman, or other person belonging to the Indian Navy to be a deserter," over-rode the words "harbours, conceals, or assists in concealing such deserter;" and as the Hon'ble Member proposed to place his amendment, they would also over-ride the words "or employs, or continues to employ." The question, then, was simply this—was it, or was it not, as

bad to employ, or continue to employ a deserter knowing him to be such, as to harbour, or conceal, or assist in concealing a deserter knowing him to be such? Upon this, he apprehended, there could be no two opinions.

With regard to the objection urged against the amendment by the Hon'ble Chief Justice,—*viz.*, that, by the Section as proposed to be amended, where a man once deserted from the Indian Navy, it would be punishable to employ him at any subsequent period of his life—it seemed to him that it would equally apply to the Section as it now stood; and that, according to the construction of the Hon'ble Member, where a man once deserted from the Indian Navy, it would be punishable to harbour or conceal him at any subsequent period of his life. But the word "deserter," in the sense in which he understood it to be used in the Bill, meant, not a man who had run away from his ship at any remote period of his life, but a man whose term of service in the Indian Navy was unexpired at the time of harbouring him. Therefore, it would be punishable to harbour or employ him only while he was liable to serve in the Indian Navy, and where the party harbouring or employing him was cognizant of that fact. For instance, if a man engaged to serve in the Indian Navy for one year, and absconded from it after three months, it would be an offence, knowing him to have absconded, to harbour or employ him during the remaining nine months of his engagement: but it would be quite justifiable to harbour or employ him after that period.

MR. ALLEN opposed the amendment. The Master or Commander of a vessel might engage a deserter innocently; but after he left the port, and when on the high seas, the seaman might tell him that he had run away from the Indian Navy. What was he to do with the man there? Was he to put him in chains for the rest of the voyage? He would have no alternative but to continue to employ him; and yet, that would be punishable as an offence by the amendment now proposed.

SIR LAWRENCE PEEL said, the Hon'ble Member opposite (Mr. Peacock) had said that the objection which he (Sir Lawrence Peel) had made to the amendment, was equally applicable to the Section as it stood; and that the term "deserter," as used in the Bill, applied to a man who had run away from his ship only during the term of service for which he had contracted, and that after such term he ceased to be a deserter. But the general tenor of the Bill shewed that this was not the meaning which the Bill gave to the term, and the word was used in several Sections as applicable to a party who had deserted, though, at the time of concealment and so forth, the given time for which he might have contracted, had expired. There was no expression of limitation of time: the period was unlimited; and the contract would be unperformed though the time had lapsed, if it was interrupted by desertion. Therefore, in his view of the provisions of the Bill, he adhered to the objection he had made to the Amendment.

MR. MILLS' motion was put to the vote, and negatived by a majority.

Section II, as amended on Mr. Malet's motion, was carried.

The Committee then proceeded to consider Section III of the Bill after it had been amended as proposed by the Select Committee. It then stood as follows:—

"Proof that any deserter from the Indian Navy has been concealed on board any merchant vessel, shall in all cases be deemed sufficient *primâ facie* evidence against the Master or Commander of such vessel on a charge of having knowingly harboured or concealed, or assisted in concealing such deserter; but such Master or Commander shall be at liberty, by way of defence, to explain the fact of such concealment, or to prove that the same took place without his knowledge."

MR. GRANT said, he was opposed to this Section altogether. For all good purposes, it seemed to him to be quite unnecessary. No doubt, the fact of a deserter from the Indian Navy being found concealed in a merchant vessel—the Master or Commander of such vessel being on board at the time—would tend to shew complicity in the concealment on the Master's part; and this it would do without any law to the effect of this Section. But such a fact would not, of itself, be proof of the Master's complicity, any more than the finding of stolen goods in a man's house would be proof that he had stolen them. The effect, however, of this Section would be to make it so. The Section provided that it should be held to be *primâ facie* evidence in *all* cases; so that, whenever it could be shewn that a deserter had been found concealed on board a certain merchant vessel, that alone, if no further evidence in the matter could be produced, would stand as proof against the Master, who must be convicted upon the charge.

The framer of the Bill had endeavored to get over the difficulty by adding to the Section the following qualification—"Such Master or Commander shall be at liberty, by way of defence, to explain the fact of such concealment, or to prove that the same took place without his knowledge." But how was the accused in the dock to explain the fact if he knew nothing about it? If he knew anything about it, he was guilty. But he (Mr. Grant) was supposing the case of an innocent man:—how could such a one "explain the fact" "by way of defence?" All he could say would be, "I know nothing at all about it." *That* would not be an explanation. Then, again, how could he prove, as the Section required, that the concealment had taken place without his knowledge? This was to call upon him to prove a negative. Yet, whenever he should find it impossible to do that, the mere fact that the deserter had been found on board, would be sufficient evidence against him, because, however innocent he might be, it would not be in his power to rebut it. Everybody knew how often it happened that seamen of merchant ships took friends on board, and concealed them in the hold or the forecastle without the knowledge of the Master. In such cases, what means would the Master or Commander have of proving that he did not know of the concealment at the time, to displace that which this Section made *primâ facie* evidence against him? There was an amusing anecdote related here of a most venerable personage, one of our former Bishops, whose servant was in the habit of putting other people's silver spoons into his Lordship's pocket. The spoons were, in this way, stolen by the servant; and who would ever think of saying that, in such a case, the fact of concealment should be *primâ facie* evidence, or any evidence at all, of any sort of complicity in the theft? And if such a provision would not do in other cases, why should it do in the case of Masters of merchant ships? What had this class done that what was not sufficient evidence against other men, should be sufficient evidence against them? On these grounds, he (Mr. Grant) would vote against this Section standing part of the Bill.

MR. MALET said, that the 3rd Section was intended to repress an evil which had risen to a great height in Bombay; and the more stringent it was made, the more speedily would the evil decrease, and all necessity be removed for putting the provisions of the Act into force.

MR. PEACOCK said, he would vote against the Section, as calculated to operate very injuriously towards Masters or Commanders of merchant vessels. It provided that proof that any deserter had been concealed on board a merchant vessel, should in all cases be deemed sufficient *primâ facie* evidence against the Master or Commander on a charge of having knowingly harboured or concealed him. The mere fact that a deserter was found concealed on board, would not shew that the Master or Commander knew him to be a deserter. He might have hired the man fairly: or some of his crew might have concealed him without his knowledge. He ought not to be made liable to punishment for that.

SIR LAWRENCE PEEL said, he had waited to hear what would be said in favour of this Section, and he quite concurred in the objections that had been urged against it. He would take an analogous case for an illustration. Suppose that a question arose as to the possession of a person charged with receiving stolen goods knowing them to be stolen. The property might be found on his premises, the finding of which might afford a reasonable ground, under the circumstances, for presuming that it could not have been placed there without his knowledge. That would raise a *primâ facie* presumption against him, which he must rebut by some proof. The surrounding circumstances might raise or rebut such presumption. For they might equally lead to the belief that the property had been smuggled into the place where it was discovered without his observing it. The law provided for cases of this kind. But this Section said that in all cases—that is, under every conceivable combination of circumstances—the simple fact that a deserter from the Indian Navy had been concealed on board a merchant vessel, should be taken as *sufficient primâ facie* evidence that the Master or Commander knew of his concealment;—in other words, that, under any conceivable circumstances, it would be sufficient only to shew that the seaman had deserted from the Indian Navy, and been concealed on board a merchant ship, and then, without proof of one fact more, without proof of anything that raised even the feeblest presumption of his guilt, the Master or Commander would be liable to be convicted of having knowingly harboured and concealed the man. For by a legislative enactment, proof really insufficient in the instance supposed, would still be declared sufficient,

unless it was rebutted. But as the defendant in a criminal case could not give evidence for himself, it would be unjust to throw on him the *onus* of rebutting that by evidence which he might not, in such a case, have the means to rebut, as had been sufficiently shewn by the Hon'ble Member who had opposed the Clause. There could be no better reason in this than in any other classes of cases for straining and violating the first principles of justice; and he would vote against the Section forming part of the Bill.

SIR JAMES COLVILE said, he thought the Hon'ble Member who had introduced the Bill, would exercise a sound discretion in yielding to the opinion of the Council, and allowing the Section to be expunged. In the Bill which was first brought in, the discovery of a concealed deserter on board a merchant vessel was made conclusive evidence against the Master or Commander. He (Sir James Colvile) had opposed the Bill principally on the ground of the objectionable character of that Clause, and it was ultimately withdrawn. At that time, it was suggested, he thought by the Hon'ble and learned Chief Justice, that it would be sufficient to treat the discovery on board as only *primâ facie* evidence, and leave it open to the Master to explain the fact of the concealment. He (Sir James Colvile) himself individually had always been of opinion that all that was necessary in such a case could be gained under the Law as it now existed, and that the fact of finding the man on board the vessel should be an element in the evidence, but nothing more. But the representations from Bombay of the necessity of some special provision, were very strong; and as the Hon'ble Member for that Presidency had pressed for some Clause like the one in question, he (Sir James Colvile) had assented to the insertion of this Section, believing that the Master, if really innocent, would probably have little difficulty in proving that the deserter had been concealed without his knowledge. At the same time, however, he fully conceded the impolicy of meeting particular cases by changes in the general Law; and he would therefore vote, on the motion of the Hon'ble Member who had spoken last, that the 3rd Section of the Bill be expunged. He understood that his Hon'ble friend on the right (Mr. Malet) did not desire to press the adoption of this Section.

Section III was negatived.

Section IV being proposed—

MR. PEACOCK said, he had the same objection to this Section that he had to the last. It provided that, if it should appear that a deserter had been concealed on board a merchant vessel, and that the Master or Commander of the vessel, though ignorant of the fact of the concealment, might have known of it but for some neglect of his duty as Master or Commander, or for a want of proper discipline on board his vessel, he should be liable to a fine not exceeding Rs. 500. He (Mr. Peacock) thought it quite reasonable that the ignorance of the fact of the concealment of a man known to be a deserter, should be punished if it was owing to neglect of duty or want of discipline. But then, there arose this difficulty. The seaman concealed might be a deserter without any one on board knowing he was a deserter. He might be the friend of one of the crew, who, knowing that it was contrary to the rules of the ship to have his friend on board, might have concealed him from the officers of the ship without knowing that he had absconded from the Navy. From neglect of duty, or from a want of proper discipline, the Master might not know of the concealment. The man who concealed, would not be guilty of any offence, not knowing of the desertion; but yet, by this Section, the Master, who might not know either of the desertion or of the concealment, would be guilty of an offence, because he did not know of the concealment.

MR. MILLS said, he likewise objected to the Section, and should vote that it be omitted. The 2nd Section provided that whoever harboured, concealed, or assisted in concealing a deserter knowing him to be such, should be liable to a fine. It seemed to have been felt that the guilty knowledge which was made an ingredient of the offence defined here, would be difficult of proof; and the 4th Section had been introduced evidently for the purpose of catching those whom the other Clause could not reach. It was extremely objectionable to stretch an enactment in this way. The intention obviously was, where a Master could not be convicted of harbouring, concealing, or assisting to conceal a deserter knowing him to be such, to turn round and punish him for neglect of duty. There was no such provision as this 4th Section in the English Law, and he saw no reason why it should be introduced into the Law of this country.

SIR JAMES COLVILE said, he admitted that the 4th Section was a stringent provi-

sion, but on the whole, he was disposed to allow it to remain. The evil which the Bill was intended to put down, was stated upon authority to be one of continual occurrence in Bombay, and certainly might, in time of war, be productive of very grave consequences to the public service. It was extremely difficult to bring home to a person in charge of a vessel the graver offence defined in the 2nd Section. The Master or Commander was frequently absent from his vessel. Yet, he was the person directly interested in inducing sailors to desert, in order the more effectually to man his own ship. That was the grievance of which the naval authorities in Bombay principally complained. Wages were high in the Merchant Service at present, and, of course, the higher the rate of wages the greater the inducement for desertion from the Indian Navy, and the more frequent the occurrence of the offence. It was very easy for a Master or Commander to contrive to induce men to desert without appearing to take any part in the transaction himself, by employing his mate, his boatswain, or his gunner; and while he thus had the benefit of the desertion, he might contrive not to lay himself open to have the offence defined in the 2nd Section proved against him. All that the 4th Section provided, was, that if it was proved—and the burthen of proof, it should be observed, was on the accuser—that the Master had so negligently kept his ship, or allowed such a want of discipline in it, that a deserter who came on board could be and had been concealed without his knowledge, he should be punished for that minor offence with a minor penalty. The Hon'ble Member opposite (Mr. Peacock) objected to the Section that it did not cast on the party accusing, the burthen of showing that the seaman concealed was known to be a deserter. Of course, the Master could not know the fact, because the Section assumed that he was ignorant of the concealment. But still, was it not desirable to say broadly, that if a man was concealed on board, the person who by his negligence had permitted such concealment, should take the chance of the person concealed turning out to be a deserter from the Indian Navy? There could be no concealment of any person with a good motive. If a seafaring man sought to be concealed on board a vessel, it was pretty certain that, if not a deserter from the Indian Navy, he must be a deserter from a ship of some other Service, or a fugitive from justice; and if he was concealed on board owing to the negligence of the Master, the Master should take the chance of his turning out to be a deserter from the Indian Navy, and the falling within the purview of this Section. He (Sir James Colvile) admitted that it was a stringent Section; but he thought it was not more stringent than was required to check the evil complained of, and that if it were fettered with the necessity of proving guilty knowledge—a thing always difficult of proof—not in the party concealed, but in the person who actually concealed the deserter, it might become ineffectual.

MR. ELIOTT said, it seemed to him that the objections made to the Section would be met if it were altered so that it would impose on the Master or Commander of a merchant vessel, when he found a man concealed on board, the duty of ascertaining who he was, and why he was concealing himself. This would lay no hardship on the Commander, and would meet the objections that were now raised against the Section.

MR. GRANT said, the time for moving amendments on this Section, had now gone by, and the proposition of the Hon'ble Member who had just spoken, could not, therefore, be entertained in the shape of an amendment; but he (Mr. Grant) believed that it would be competent to the Hon'ble Member, if he pleased, to vote against the amended Section altogether, and, if that motion were carried, to propose a new Section instead of it. To him (Mr. Grant), however, there appeared no valid objection to this Section as it now stood. He had objected to the 3rd Section, because he considered that it tampered with the general rules of evidence to provide for a particular case; and as rules of evidence depend upon general principles, they should be left to be applied by the Court to each case before it according to its own common sense and discretion. The 4th Section did not tamper with the general rules of evidence. As he understood it, it would have to be positively proved against the Master, or the Officer in charge for the time being, of a merchant vessel, that he had neglected his duty, or allowed a laxity of discipline to prevail in his ship; also, that the concealment of a deserter on board was a consequence of such neglect or laxity of discipline. If a person who was entrusted with so important a charge as the command of a vessel, was negligent or remiss in the performance of his duty, and if the consequence of this neglect was

Sir James Colvile

a great public evil, it appeared to him (Mr. Grant) to be very reasonable that he should be made responsible for his negligence.

MR. ALLEN said, he would vote against the Section. It had been discussed in Committee, and he had opposed it there, on the ground that it proposed to punish Masters or Commanders of merchant vessels, not for encouraging desertion from the Indian Navy, but for neglect of duty, or maintenance of lax discipline on board their vessels. "Neglect of duty" and "want of proper discipline" were such very vague terms, that almost anything might be made to come under them. He, therefore, objected to the Section.

SIR LAWRENCE PEEL said, he agreed with the Hon'ble Member to his right (Mr. Grant,) in thinking that the 4th Section was not open to the objection which applied to the 3rd. The ground upon which it was opposed by the Hon'ble Member opposite (Mr. Allen) was not likely to arise; for it would be obvious to every man of common sense—and it was to be hoped that the Act would not fall in the hands of men without common sense for interpretation—that the neglect of duty and want of proper discipline intended by the Section, was such a neglect of duty and want of discipline as could admit of a deserter from the Indian Navy coming on board a vessel and remaining concealed there without the Master or Commander being aware of the fact. Concealment of deserters on board of merchant vessels was one mode by which desertion was chiefly promoted and encouraged, and it was therefore desirable that it should be effectually checked. If the Master or Commander were made answerable for it—which, though he might not have known of the fact, he ought to be—an effectual check would be provided. In this, there would be no hardship imposed upon him; for it would only make him more strict in the performance of his duty; and the party accusing would be bound to prove—*first*, that the seaman found on board, was a deserter from the Indian Navy; *secondly*, that he had been concealed in the ship; and *lastly*, that the Master or Commander ought to have known of such concealment. If he ought to have known and did not know of it, he was guilty of a neglect of duty which was not general, but led to the particular evil which this Section was intended to repress. He (Sir L. Peel) could not see what reason the Master or Commander would have to complain of being harshly dealt with if he were punished for this, which was a great evil in itself, inasmuch as it tended to aid in the commission of a serious public mischief.

The Section was carried by a majority of votes.

The remaining Sections of the Bill were passed with a few trifling verbal alterations.

DISTRICT MOONSIFFS (MADRAS.)

MR. ELIOTT moved that the preliminary Report of the Select Committee on the Bill "to amend the Law relating to District Moonsiffs in the Presidency of Fort St. George," be adopted; and that the Bill, with the amendments proposed, be published for general information.

Agreed to.

NOTICES OF MOTION.

SIR JAMES COLVILE gave notice that he would, on Saturday the 27th instant, move that the Bill "for the further improvement of the Law of Evidence," be read a third time and passed.

MR. MALET gave notice that he would, on Saturday the 27th instant, move that the Bill "for the better prevention of Desertion from the Indian Navy," be read a third time and passed.

MR. MILLS gave notice of the following motion, to be brought before the Council on Saturday the 27th instant; namely, that the Council do resolve itself into a Committee on the Bill "for incorporating for a further period, and for giving further powers to the Assam Company."

MR. DORIN gave notice of the following motion, to be brought before the Council on Saturday the 27th instant; namely, that the necessary Standing Orders be suspended, to enable him to move the passing of the Bill "for providing for the exercise of certain powers by the Governor General during his absence from the Council of India," through its several remaining stages.

MR. GRANT gave notice of the following motion, to be brought before the Council on Saturday the 27th instaut; namely, that the Standing Orders Committee be instructed to prepare a Standing Order to provide for the publication of the printed papers of the Council.

The Council adjourned.

Saturday, January 27, 1855.

PRESENT:

The Most Noble the Governor General, *President.*

Hon. Sir Lawrence Peel,	Hon. Sir James Colvile,
Hon. J. A. Dorin,	A. J. M. Mills, Esq.,
Hon. Major Genl. Low,	D. Eliott, Esq.,
Hon. J. P. Grant,	A. Malet, Esq., and
Hon. B. Peacock,	C. Allen, Esq.,

THE CLERK presented the following Petitions:—

A Petition from certain Inhabitants of Singapore against the Bill "to improve the Law relating to the Coppor currency in the Straits."

A Petition from the Inhabitants of Calcutta, purporting to be signed by upwards of 3,200 persons, praying for a Law to provide for the proper drainage of the town, and for the supply of water to the inhabitants.

MR. MILLS moved that this Petition be referred to the Select Committee on the Conservancy and Police Acts.

Agreed to.

NOTICE OF MOTION.

MR. ELIOTT gave notice that, at the next Meeting of the Council, he would move that the Bill "for the establishment and maintenance of boundary marks in the Presidency of Fort St. George," be read a second time.

WRITS OF EXECUTION.

SIR LAWRENCE PEEL presented the Report of the Select Committee on the Bill "to exteud the operation of, and regulate the mode of executing writs of execution in Her Majesty's Supreme Courts of Judicature."

PROCESS OF EXECUTION.

SIR JAMES COLVILE presented the Report of the Select Committee on the Bill "to assimilate the process of execution on all sides of Her Majesty's Supreme Courts, and in the Courts for the relief of Insolvent debtors; and to extend and amend the provisions of Act XXV of 1841."

MINORS (MADRAS.)

MR. ELIOTT moved the first reading of a Bill "for making better provision for the education of male minors, and the marriage of male and female minors, subject to the superintendence of the Court of Wards in the Presidency of Fort St. George." He said, this Bill, which he had the honor to submit at the instance of the Madras Government, was intended to provide for the better education of minor zemindars whose property had been, or might be brought under the management of the Court of Wards in that Presidency, in the same manner as provisions for a similar object had been made for Bengal by Act XXVI of 1854. The Madras Government had formed a plan for improving the education of male minors under the guardianship of the Court of Wards, and required extended powers to carry it out. The first eight Sections of the Bill corresponded exactly with Act XXVI of 1854 for this Presidency. The 9th Section extended the provisions of that Act, and ran thus:—

"And whereas it frequently happens that a minor whose property is under the care of the Court of Wards, has a younger brother or brothers entitled by Law to maintenance and education at the charge of the estate, all the powers and provisions hereinbefore contained for promoting the education of such minor, are hereby declared and made applicable to the case of such younger brother or brothers."

In reference to this Section, Mr. Eliott explained that in Madras, as formerly in Bengal, the right of succession in the case of zemindars followed the Law of primogeniture. On the death of a zemindar, his eldest son succeeded to the whole of his estate, the younger brothers being entitled only to maintenance and education. That custom had been abolished in Bengal by Regulation XI of 1793, but not in Madras; and during the last half century and upwards, since the zemindaree settlement was formed, succession to most of the estates included in that settlement, had taken place repeatedly according to that Law. It had been the practice of the Court of Wards to take under its care all the infant Members of the family of a zemindar who had become its ward under Regulation V of 1804, and to provide for their education—a practice which the Sudder Court, on a reference from Government, had sanctioned, as following the spirit of the Law under which the Court of Wards acts. The Madras Government felt it to be incumbent upon them to give as good an education to the younger brothers, as to the present head of a family, for this, among other reasons—that they might, in the course of nature, be called in their turn to the succession, and ought to be trained for the duties which might thus devolve upon them. It

was therefore desirable to extend the Act in the manner proposed.

Another provision of the Bill was to vest the Court of Wards, and Collectors of Revenue, who were its agents, with a control over the marriages of minor zemindars, and of their infant brothers and sisters. The object of this was to prevent their being misled by the intrigues of designing parties, into forming alliances which might be disapproved of by those relations whose advice ought to be followed in the matter. A case of recent occurrence in Madras had suggested the expediency of this provision. The female relatives of a zemindar under the guardianship of the Court of Wards, had attempted to give his sister in marriage to a person who was disapproved of by his guardian and the members of the family to whom the minor himself adhered. The Collector of the zillah considered the marriage objectionable for many reasons, but particularly because it would cause a breach in the family. In consequence of this, the Court of Wards prohibited the marriage, and the Sudder upheld it in that interference. By the 10th Section of this Bill, it was proposed to make it an offence to aid or abet the marriage of any infant under the guardianship of the Court of Wards, without the leave of the Collector of the district.

Bill read a first time accordingly.

ABSENCE OF GOVERNOR GENERAL.

MR. DORIN moved that the Bill "for providing for the exercise of certain powers by the Governor General during his absence from the Council of India," be now read a second time.

Motion carried, and Bill read a second time accordingly.

Moved by the same that the necessary Standing Orders be suspended, in order that the Bill might be forthwith passed through its subsequent stages.

The motion was seconded by MR. PEACOCK, and carried.

The Council then proceeded to consider the Bill in Committee.

The 1st Section was as follows :—

"During the absence of the Governor General from the Council of India, it shall be lawful for the Governor General alone to exercise all the powers which may be exercised by the Governor General in Council in every case in which the said Governor General may think it expedient to exercise those powers."

MR. ALLEN said, he would move, as an amendment, that the words "except the power of making Laws and Regulations" be added to the Section. It appeared to be usual to add those words in other Acts of this kind ; and, as he read 16 and 17 Vic., c. 95, s. 22, it was necessary to add them in this one. He was quite aware that, in the interpretation Clause of the Standing Orders, it was laid down that the words "Governor General in Council" shall be deemed to mean the Governor General sitting in Council for *other* purposes than that of making Laws and Regulations ; but the Standing Orders gave them this meaning with exclusive reference to the Orders themselves, and not generally. As he read the 22nd Section of the new Charter Act, it appeared to him that the words "Council of India" did include the Council then sitting. The Council of India was but one body, formed of two classes of Members,—*viz.*, Ordinary Members, who could sit at all times ; and Legislative Members, who could sit only when the Council of India assembled for the purpose of making Laws and Regulations. The words of the Section were these :— "For the better exercise of the powers of making Laws and Regulations, now vested in the Governor General of India in Council, the several persons hereinafter mentioned shall, in addition to and together with such Governor General and the Members of the said Council under 3 and 4 of William IV. c. 85, be Members of the said Council of India for and in relation to the exercise of all such powers of making Laws and Regulations as aforesaid, and shall be distinguished as Legislative Councillors thereof"—that is to say as Legislative Councillors of the Council of India. And the Section concluded with these words—"Provided always that the Legislative Councillors added to the Council of India by or under this Act, shall not be entitled to sit or vote in the said Council, except at Meetings thereof for making Laws and Regulations." The propriety or impropriety of adding to the Section of the Bill now before the House, the words "except the power of making Laws and Regulations," arose on a question as to the real meaning of the words "Governor General in Council" as used in this Bill. The exception had always been inserted in former Acts made for a similar purpose, and it seemed to him (Mr. Allen) that it would be better to add the words proposed, in order to obviate all future doubt on the point. He would, therefore, move that the words "except the power of making Laws and Regulations" be added to the Section in question.

MR. DORIN said, he had no objection to the words proposed being added to the Section; but he believed that they were quite unnecessary. He was perfectly aware that the words had been adopted on former occasions; but even in those cases, he did not think that it was by any means necessary to adopt them. The 70th Section of 3 and 4 William IV., c. 85, under which this Bill had been framed, alluding to any intended absence of the Governor General, enacted "that it shall be lawful in every such case for the Governor General in Council, by a Law or Regulation for that purpose to be made, to authorize the Governor General alone to exercise all or any of the powers which might be exercised by the Governor General in Council, *except the power of making Laws or Regulations.*" Now, if the Imperial Statute thus excepted the power of making Laws and Regulations, he apprehended it would be perfectly unnecessary to specify in the Bill that the power was not given, seeing that it could not be given. More than this, the 23rd Section of 16 and 17 Vic., c. 95, provided that "the power of making Laws or Regulations, vested in the Governor General in Council, shall be exercised only at Meetings of the said Council" (that is, of the Legislative Council,) "at which such Governor General, or Vice-President, or some Ordinary Member of Council, and six or more Members of the said Council, shall be assembled, &c." This Section, therefore, limited the power of making Laws and Regulations to assemblies of the Legislative Council at which there were present not less than six Members, besides the Governor General, or the Vice-President, or a senior Ordinary Member of Council, who should preside; and that alone barred all attempt to depute the power to any minor number, or to the Governor General alone.

As he had said before, he had no objection to the introduction of the words proposed by the Hon'ble Member, if the Council considered that they were necessary; but his own opinion was, that they were quite unnecessary.

SIR LAWRENCE PEEL said, though it was proper to introduce words in order to clear up doubts, the words proposed were suggestive of matter of doubt, and therefore he objected to their introduction. If they were introduced, it would appear, or might be assumed, that the Legislative Council thought that, but for their introduction, the Governor General, under this Act enabling him to exercise all the powers of the Governor General in Council, could have the power to make Laws; but, in reality, there was no doubt that, under the late Act of Parliament, he had not that power. He (Sir Lawrence Peel) was therefore of opinion that it would be much better if the Section were retained in its present form.

MR. PEACOCK said, to him it appeared there could be no doubt that the Section, if passed as it now stood, would not admit of Legislative powers being exercised by the Governor General without the Legislative Council; but, on the other hand, if, as the Hon'ble Mover of the Amendment apprehended, it was open to doubt on this question, the better course would probably be to follow the precedent furnished by previous Acts of a similar nature, and introduce the additional words proposed, especially as the Hon'ble Mover of the Bill had no objection to their being introduced.

MR. GRANT said, if the words proposed by the Hon'ble Mover of the Amendment were introduced into the Section, the Council would commit themselves to this opinion—that the assembly now sitting was an assembly of the "Governor General in Council." His own opinion was, that it was not, though he knew there were great doubts upon the subject. The Governor General was by the Law the President of this Council; but, without abandoning any of his functions as Governor General, and without quitting the Presidency, he might abstain from attending at any Meeting of this Council, which nevertheless, with the Vice President, or, in his absence, with an Ordinary Member of the Council of India in the Chair, might meet and pass Laws. This was not the case with the Governor General in the Executive Council, because there could be no assembly of that body without the Governor General. He, therefore, thought that the assembly now sitting could not be the "Governor General in Council." Consequently he was loath to adopt the words proposed as an addition to the Section by the Hon'ble Mover of the Amendment, as that would be to affirm a contrary opinion on this point.

SIR JAMES COLVILE said, he concurred in the objection advanced by the Hon'ble Member who had just spoken against the addition of the words proposed, and also agreed with the Hon'ble and learned the Chief Justice in thinking that their introduction would raise a doubt which really did

not exist. There was the less necessity for introducing them in consequence of the way in which the Section had been framed. It said it should be lawful for the Governor General alone to exercise the powers which were vested in the Governor General in Council in those cases only in which he might deem it expedient to exercise them. This conferred upon him a discretionary power; and it might safely be assumed that the discretion so given would not be exercised except in conformity with the Law. From the provisions of the Charter Act, it was clear that the proposition that this Council could empower the Governor General alone to make Laws and Regulations, was one which could not for a moment be maintained. He should therefore vote against the Amendment.

MR. ALLEN'S Amendment was negatived, and the Section passed as it stood.

The second and last Section, which limits the duration of the Act to one year from the day of its publication in the official *Gazette*,—with the Preamble and Title, were also passed as they stood.

The Bill having been reported—

MR. DORIN moved that it be read a third time, and passed.

Agreed to.

Moved by the same that Mr. Allen be requested to take the Bill to the Most Noble the Governor General for his assent.

Agreed to.

LAW OF EVIDENCE.

SIR JAMES COLVILE moved that the Bill "for the further improvement of the Law of Evidence" be now read a third time and passed.

Agreed to.

Moved by the same that Mr. Allen be requested to take the Bill to the Most Noble the Governor General for his assent.

Agreed to.

DESERTION, INDIAN NAVY.

MR. MALET moved that the Bill "for the better prevention of Desertion from the Indian Navy" be now read a third time and passed.

Agreed to.

Moved by the same that Mr. Allen be requested to take the Bill to the Most Noble the Governor General for his assent.

Agreed to.

ASSAM COMPANY.

MR. MILLS moved that the Council resolve itself into a Committee of the whole Council on the Bill "for incorporating for a further period, and for giving further powers to the Assam Company."

MR. ALLEN said, he had some objections to this Bill being considered by a Committee of the whole Council. The Assam Company applied that the Charter of Incorporation granted to it by Act IX of 1845 should be extended, with enlarged powers, to a further period of twenty years. At the time that Act was passed, there was no other by which a corporate existence could be given to that body. But now that Act XLIII of 1850 was in existence—an Act which provided for the registration of all joint-stock Companies—he did not think that any private Company should apply for such a Bill as the one proposed, unless it asked for privileges which could not be obtained under the Registration Act. In the Bill he did not see any privileges provided which could not be obtained under that Act; and this being so, it appeared to him that it would be much better not to legislate specially for a particular Company or a particular body of persons, but to send the applicants to register their association under the Act which had been already passed, and which would secure to them all the privileges that they demanded. More than this, Act XLIII of 1850 had been framed with great care, and contained very stringent provisions against malversation by the Directors of a Company registered under it. It also provided that Directors who were indebted to the Company, should cease to be in office; that the Company should not purchase, or take in pledge, its own shares; that it should make no loans to Directors; that its accounts should be audited periodically, and the audit be verified and published; that the Auditors should not be Directors; that any shareholder might, on application to the Supreme Court, force the Directors or the Secretary to a performance of their duties under the Act; and that, in the event of the Company committing an act of insolvency, it should become subject to the jurisdiction of the Insolvent Court, and the sum required to pay its debts should be raised by contribution of the shareholders according to an assessment to be made by the Official Assignee. None of these provisions, which the Legislature had deemed it necessary to

lay down in that Act, for the protection of the Shareholders and of the Public, appeared in this Bill; and for this reason, as also for the reason that Act XLIII of 1850 would give all the privileges which the Assam Company sought for, he should vote against the Council going into Committee upon the Bill.

SIR JAMES COLVILE said, he thought that, in comparing the provisions of this Bill with the provisions of Act XLIII of 1850, the Hon'ble Member had drawn an analogy which the different nature of the subjects of the two enactments did not admit of. Act XLIII of 1850 was confined to joint-stock Companies of an ordinary character —that is to say, to joint-stock Companies in which the responsibility of the shareholders was limited only by the extent of their means. The Bill before the Council was a Bill to continue for a further term the corporate existence of a body to which the Legislature had deemed it right to grant a charter of incorporation in the year 1845. He need hardly tell the Hon'ble Member who objected to going into Committee upon this Bill, that between a trading corporation and an ordinary joint-stock Company, there was this substantial distinction—in a trading corporation, the shareholders were liable for the debts and obligations of the corporation only to the extent of the value of their respective shares, or to such extent as the Legislature or other authority granting the Charter of Incorporation, might see fit to impose; while in a joint-stock Company, the shareholders were liable for the debts and obligations of the Company to the whole extent of their respective means. In this respect, there was no difference between a joint-stock Company, and an ordinary mercantile partnership; and the only reason why the Legislature should pass Acts containing provisions like those of Act XLIII of 1850, upon which the Hon'ble Member had remarked, was that the extreme size of a joint-stock Company, and the number of its shareholders, render such provisions necessary in order to ensure the safe and satisfactory transaction of business. He (Sir James Colvile) was not sure whether his Hon'ble friend meant to object altogether to the grant of a Charter of incorporation to any trading corporation. That would certainly raise a very wide question; and if his Hon'ble friend really had an objection to the existence of trading corporations, as such, all he (Sir James Colvile) could say was, that his Hon'ble friend had fallen upon evil times, and had been unfortunate in this particular in the course of his own individual life. For what, after all, up to a recent period of its existence, was the great Company of which the Hon'ble Member was so distinguished and valuable a servant, but a trading corporation? When the Hon'ble Member held the office of Financial Secretary, he was *ex-officio* a Director of a trading corporation—the Bank of Bengal. If, again, on Saturday next, the Hon'ble Member should accompany the Governor General to Burdwan, he would be carried 70 miles by, he would breakfast at the expense of, a trading corporation. If he were to retire from his labors here, and take the overland route home, he would be carried to his native country by a trading corporation. Nay, so greatly had these bodies been multiplied of late years in England, that it was possible that when, after having returned to his native country, the Hon'ble Member should be gathered to his fathers—an event which he (Sir James Colvile) hoped would be long deferred—he might be buried by a trading corporation. And if this was so—if the Hon'ble Member could not avoid meeting a trading corporation at every turn of his life,—if even in death he could not escape from one, why (he, Sir James Colvile, hoped his Hon'ble friend would excuse the expression)—why should he take his stand upon the tea-pot, and say that nobody should drink tea that was raised by a trading corporation?

He (Sir James Colvile) spoke under correction, and in the presence of one who, when at the Board of Trade, must have acquired a knowledge to which he did not pretend, of the general principles on which Charters of Incorporation were granted at home to trading companies: but he conceived that one of the grounds on which such Charters were generally granted was, that the objects of the Company seeking to be incorporated, were in some degree of a public nature. He knew little of the Assam Company, or of its Management; but he thought that its objects might fairly be considered to be of a public character, since assuredly it was sound policy to promote the cultivation of the tea plant within the territories of the East India Company, with a view to the production of tea either as an article of export, or of consumption in this country, and to the possibility of an interruption, either temporary or permanent, in the trade with China. He therefore thought

that in 1845, the then Legislature had substantial grounds for granting to the Assam Company a Charter of Incorporation. Opinion in England was generally advancing in favour of creating trading companies with limited responsibilities. We were living in an age one characteristic of which was the undertaking, by associations of persons—some of them with large, and some with small means—of enterprises often involving great public objects, or objects too vast for any individual or ordinary partnership. He was not prepared to say that in every case the responsibility of the shareholders of such associations should be limited to the value of their respective shares, because he knew that many of these bodies engaged in rash and reckless speculations; and in such cases he thought it perhaps better that the consequences of the misconduct of the Directors should fall rather upon the shareholders, who had some means of checking it, than upon the Public. But whatever might be his opinion on this point, he could see no reason whatever for taking away from a Company like this, whose objects were of public utility, and which from its nature was not likely to enter into large and hazardous speculations, the privileges which had been granted to it in 1845, and which it was not shown to have abused. He should, therefore, support the continuance of those privileges for the term proposed, and vote for the motion that the Council do now go into Committee on the Bill. He would only add that, if the Hon'ble Member entertained these objections to the principle of the Bill, he would have taken a more regular course if he had opposed its second reading.

MR. PEACOCK said, he should vote for the motion that the Council do now resolve itself into Committee to consider this Bill. He quite agreed in the concluding observation of the Hon'ble Member who spoke last, that if the Hon'ble Member who was opposed to that motion, entertained objections to the principle of the Bill, he would have taken a much more regular course in stating them when the question of the second reading was proposed. The Bill had now passed two readings; no objection had been made against its principle at the second reading; and, therefore, it had, up to the present time, been admitted by the Legislative Council that there were no objections so far as the general principle of the Bill was concerned. The Hon'ble Member now made objections which were not confined to the details of the Bill, for the first time. He, however, had the power to do so; but it appeared to him (Mr. Peacock) that there was no valid reason for rejecting the Bill. In 1845, this Company was formed for the cultivation of tea in Assam; a large amount of capital was subscribed; and the Company applied to the Legislature to be incorporated by a charter, and were so incorporated for a term which had expired in 1854. Before that term had lapsed, they asked that the Charter should be extended for a period of twenty years; and it was enlarged to April 1855, for the purpose of enabling the Legislative Council to consider the application. Whether twenty years or a shorter period should be allowed, was a question to be determined in Committee. Of the continuance of the Company, every one who had been consulted approved. Besides that, its objects were of a public nature, as the Hon'ble Member opposite (Sir James Colvile) had shown; its operations had improved the neighbourhood, and had given employment to many laborers. It now asked to have its existence continued for a further term. The Hon'ble Member who opposed the Bill said that, instead of asking for that, the Shareholders should have applied to have the Company registered under Act XLIII of 1850. But that would not answer their purpose. Their Charter of Incorporation was now extended to April 1855: after that, they would cease to exist as a Company: and unless their term of incorporation were renewed, they must wind up the whole of their affairs, and commence *de novo*. They did not wish to do that. They wished to carry on the operations of the old Company, to take up the obligations of the old Company, and to go on in all respects in the same way and on the same principle as the old Company. As he had observed already, there was no objection whatever to the Company; they themselves wanted to be incorporated as before; and it appeared to him that it would be very unreasonable to refuse to extend the term of their existence, and compel them to wind up their affairs and commence *de novo*. As the Hon'ble Member who had spoken last had justly pointed out, there was a great and substantial difference between a Company incorporated by Charter, and a Company registered under Act XLIII of 1850. In the latter, every shareholder was liable for the debts of the Company to an extent beyond the amount which he subscribed: in the former, a shareholder was liable for the debts of the Company only to the extent of the amount which

he subscribed. For instance, in an incorporated Company, if a shareholder purchased shares to the amount of £500, he would be liable for the debts of the Company to the extent of £500, and no further; but in a registered joint-stock Company, he would be liable to pay a contribution which might absorb all his individual means, and wholly ruin him. Therefore, a man who accepted the former description of liability, might be very unwilling to accept the latter. But if the public, fully knowing that the fund to which they would have to look for payment of a Company's debts, consisted of the capital of the Company, and that the liability of the shareholders was limited to the value of their shares, and did not extend to the full value of their property,—if the public, fully knowing this, chose to give credit to that Company, there was no reason why the Company should not be allowed to exist, or the public to support it. If the public thought that the fund of the Assam Company, with their lands and crop, were not sufficient security upon which to give them credit, they would not be bound by this Act to give them credit; but if, on the other hand, they were willing to give them credit, he could see no reason why they should not be allowed to do so.

SIR LAWRENCE PEEL said, he concurred entirely with the observations that had been made by the Hon'ble Members who had spoken in support of the motion for going into Committee upon this Bill. He would not re-capitulate any of their arguments. The Hon'ble Member who had opposed the motion for going into Committee, seemed to think that the applicants might have applied to be registered under Act XLIII of 1850. But in reality, that could not have been done without the assent of every Member of the Corporation. The Members of this Company, in becoming shareholders in it, had entered into a compact on certain terms, one of which was that of limited liability. To register the Company under Act XLIII of 1850, would be to make them responsible to the whole extent of their respective means. That would be a complete alteration of the nature of the original contract; and the Law said, and justly said, that such an alteration could not be made without the assent of every Shareholder. Consequently, no one shareholder, or number of shareholders less than the whole body, could have made such an application with success.

MR. MILLS' motion was carried; and the Bill having been considered in Committee, all the Sections were passed, with only a few verbal alterations.

PUBLICATION OF PRINTED PAPERS.

MR. GRANT moved that the Standing Orders Committee be instructed to prepare a Standing Order to provide for the publication of the printed papers of the Council. He said, this motion was the natural and necessary complement of another motion which he had had the honor of moving, and which was carried some weeks ago—namely, the motion for the admission of strangers to the debates of this Council. After the very full discussion of the question of the publicity of the proceedings of the Legislative Council which had taken place on that occasion, he considered it unnecessary to trouble the Council with any arguments in support of his present motion. In the discussion to which he had referred, it had been observed by some Member that there might be some inconvenience in admitting strangers to the debates of the Council; but he did not remember that in the course of that debate any single Member had anticipated any possible inconvenience from the printed papers of the Council being published. There was one remark, however, upon this point which he wished to make. It was not a probable contingency, but there was certainly a possibility, that a paper which the rules required to be printed for circulation amongst the Members themselves, might contain libellous matter against individuals. Of course, it would not be expedient to publish any such paper; but the Standing Orders Committee might easily make such a rule as would prevent the publication of any such paper. It would only be necessary to follow the analogy of the rule under which strangers are admitted to the debates. Admission to the debates had been allowed, not as a right, but as a favor; and if the same principle were adopted in regard to the printed papers, any publication that would be objectionable or inexpedient, would be guarded against. The practical result would be that, in nine-hundred-and-ninety-nine cases out of a thousand, all the printed papers of the Council would be available to the public, and that in no case would any paper be withheld, which it would be of any real service to the public to obtain.

With these observations, he begged to move as above.

Motion carried.

NOTICES OF MOTION.

Sir JAMES COLVILE gave notice that, at the next Meeting of the Council, he would move that the Council resolve itself into a Committee of the whole Council on the Bill "to assimilate the process of execution on all sides of Her Majesty's Supreme Courts, and in the Courts for the Relief of Insolvent Debtors; and to extend and amend the provisions of Act XXV of 1841."

Sir LAWRENCE PEEL gave notice that, at the next Meeting of the Council, he would move that the Council resolve itself into a Committee of the whole Council on the Bill "to extend the operation of, and regulate the mode of executing writs of execution in Her Majesty's Supreme Courts of Judicature."

The Council then adjourned, until Friday next, at 1 o'clock.

Friday, February 2, 1855.

PRESENT:

The Most Noble the Governor General, *President.*
Hon. Sir Lawrence Peel, A. J. M. Mills, Esq.,
Hon. J. A. Dorin, D. Eliott, Esq.,
Hon. J. P. Grant, A. Malet, Esq.,
Hon. B. Peacock, and
Hon. Sir James Colvile, C. Allen Esq..

The following Messages from the Most Noble the Governor General were brought by Mr. Grant, and read:

MESSAGE No. 26.

The Governor General informs the Legislative Council that he has given his assent to the Act passed by them on the 27th January 1855, entitled "An Act for providing for the exercise of certain powers by the Governor General during his absence from the Council of India."

By Order of the Most Noble the Governor General.

CECIL BEADON,
Secretary to the Govt. of India.

Fort William,
The 2nd February, 1855.

MESSAGE No. 27.

The Governor General informs the Legislative Council that he has given his assent to the Act passed by them on the 27th January 1855, entitled "An Act for the further improvement of the Law of evidence."

By Order of the Most Noble the Governor General.

CECIL BEADON,
Secretary to the Govt. of India.

Fort William,
The 2nd February, 1855.

MESSAGE No 28.

The Governor General informs the Legislative Council that he has given his assent to the Act passed by them on the 27th January 1855, entitled "An Act for the better prevention of Desertion from the Indian Navy."

By Order of the Most Noble the Governor General.

CECIL BEADON,
Secretary to the Govt. of India.

Fort William,
The 2nd February, 1855.

REPORTS OF SELECT COMMITTEES.

Sir LAWRENCE PEEL presented the Report of the Select Committee on the Bill "relating to Mesne Profits, and to improvements made by holders under defective titles"—the Report of the Select Committee on the Bill "to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong"—and the Report of the Select Committee on the Bill "to improve the English Law in force in India, by extending to this Country, with some enlargement thereof, the provisions of the Statute 3 and 4 Wm. 4, c. 42, s. 2."

Mr. PEACOCK presented the Report of the Select Committee on the Bill "to amend the Law relating to the office and duties of Administrator General"—and the Report of the Select Committee on the Bill "to amend the Law of arrest on mesne process in Civil actions in the Supreme Courts of Judicature, and to provide for the subsistence of destitute prisoners confined under Civil process of any of the said Courts."

MUNICIPAL LAW.

Mr. ALLEN said he was not prepared to-day to move the first reading, of which he had given notice, of a Bill "to modify Act XXVI of 1850."