PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1856.

VOL. II.

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1857.

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to the Bengal Government. It was so long since he had written it, that he did not precisely remember whether he had made any suggestion respecting it; but he rather thought that he had proposed that the attention of the Board of Revenue should be drawn to the objections which he had raised; and he was under the impression that the substance of his Minute had been sent to the Bengal Government.

MR. CURRIE'S motion was put, and agreed to.

NOTICE OF MOTION.

MR. ELIOTT gave notice that he would, on Saturday next, move the first reading of a Bill to amend Act XXIII of 1854.

MESSENGER.

MR. CURRIE moved that Mr. Grant be requested to carry the Bill "to amend Act No. XI of 1849 and Act No. XIX of 1852" to the Most Noble the Governor General for his assent.

Agreed to.

MR. ALLEN moved that Mr. Grant be requested to carry the Bill "to prevent the malicious or wanton destruction of Cattle" to the Most Noble the Governor General for his assent.

Agreed to.

NOTICE OF MOTION.

MR. PEACOCK gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "for granting exclusive privileges to Inventors."

The Council adjourned.

Saturday, February 9, 1856.

PRESENT:

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

H. E. the Commander-in-Chief,	D. Eliott, Esq.,
Hon. General Low,	C. Allen, Esq.,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. B. Peacock,	E. Currie, Esq. and
	Hon. Sir A. Buller,

THE CLERK presented to the Council the following Petitions:—

MARRIAGE OF HINDOO WIDOWS.

A Petition, signed by 44 Native Inhabitants of Calcutta, praying for the insertion of a Marriage Registration Clause in the Bill "to remove all legal obstacles to the Marriage of Hindoo Widows."

Also a Petition from certain Native Inhabitants of Bengal, praying for the passing of a general Marriage Act, a draft of which accompanied the Petition, in lieu of the above Bill.

MR. LEGEYT moved that the above Petitions be referred to the Select Committee on the Bill.

Agreed to.

MESSAGES FROM THE GOVERNOR GENERAL.

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

MESSAGE No. 66.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 26th January 1856, entitled "a Bill to enable Magistrates and certain other Officers to take cognizance of certain offences without requiring a written complaint."

By Order of the Most Noble the Governor General.

CECIL BEADON,
Secretary to the Govt. of India.

FORT WILLIAM,
The 4th February 1856.

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

MESSAGE No. 67.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 2nd February 1856, entitled "a Bill to amend Act No. XI of 1849 and Act No. XIX of 1852."

By Order of the Most Noble the Governor General.

CECIL BEADON,
Secretary to the Govt. of India.

FORT WILLIAM,
The 8th February 1856.

MESSAGE No. 68.

The Governor General informs the Legislative Council that he has given his assent

to the Bill which was passed by them on the 2nd February 1856, entitled "a Bill to prevent the malicious or wanton destruction of Cattle."

CECIL BEADON,
Secretary to the Govt of India.

FORT WILLIAM,
The 8th February 1856.

LIGHTING OF CALCUTTA.

MR. CURRIE presented the Report of the Select Committee on the Bill "to provide for the better lighting of the Town of Calcutta." In doing so, he said that the Select Committee did not recommend that this Bill should be proceeded with; not that they considered that the idea of gas lighting should be abandoned—on the contrary, they were of opinion that this improvement should be extended, on a moderate scale, to all the important thoroughfares of the town. But they thought that other and more urgent wants of the town should be simultaneously provided for; and they had suggested the means by which this might be effected. The lighting question thus became a branch of the general subject of municipal taxation, which was now under the consideration of another Select Committee, in connexion with the proposed revision of Act X of 1852. The Select Committee on the Bill, therefore, recommended that their Report should be referred to that Committee, in order that provisions of the kind which they had suggested should be introduced into the new Municipal Bill. As soon as the Report should be printed, he should have the honor of making a motion to that effect.

OUTRAGES IN MALABAR.

MR. ELIOTT said, he had now to submit to the Council a Bill "to give effect to Act XXIII of 1854 from the time of its promulgation in the district of Malabar."

The Council would remember that this Act was passed towards the end of 1854, in consequence of an urgent representation from the Government of Madras of the inadequacy of the general law for the suppression of the murderous outrages which had frequently been committed in Malabar by people professing the Mahommedan religion, of the class called Moplahs, against inhabitants of the district of other classes and different faith.

It would be in recollection that these outbreaks had become progressively more sanguinary. Greater numbers had joined in them. It had become necessary to employ larger bodies of troops, and to call in the assistance of European soldiers to overcome them. At the beginning of 1852, an outbreak occurred in all respects more deplorable and formidable than any which had preceded it. In this outbreak, numbers of men, women, and children—even infants—were indiscriminately massacred.

The Government then sent a special Commissioner into the province to search out the radical causes of these disturbances, and to consider the best mode of putting down the evil. The Commissioner, after a most minute investigation, declared his conviction that the true incentive to all these outbreaks had been the most decided fanaticism; pointing out that the victims, or designed victims, had been all Hindoos, and their slayers, or intended slayers, all Moplahs, who had engaged in these atrocious outrages with the avowed design of sacrificing their own lives as martyrs for their faith, in mortal conflict with Kafirs, under the superstitious belief that thereby they would gain admission to Paradise. The Commissioner ascribed the development of the fanatical spirit among the Moplahs to the evil influence of their Tungals or high priests—especially of one called the Tarramul Tungal, whose residence was at Tervovengudy. In the full belief that this Tungal had undoubtedly been accessory to the aggravated outrage committed at the beginning of 1852, the Government, on the recommendation of the Magistrate of Malabar, Mr. Conolly, had given him the alternative of withdrawing from the country, or of being arrested and detained as a State prisoner, under the provisions of Regulation II of 1819.

Mr. Conolly, with difficulty, constrained him to quit the country, but not till very great danger had been incurred by the tumultuous assembling of thousands of Moplahs on his behalf; and then only by positive intimation that, if blood was shed on his account in a conflict between the excited Moplahs and the troops, it would be visited on his head.

The Commissioner, however, was of opinion that the departure of the Tungal had not given a death-blow to the dangerous spirit which he had so greatly contributed to excite among the Moplahs; and what he (Mr. Eliott) should presently relate would too clearly prove that he was right.

Having thus briefly reminded the Council of the circumstances which had led to the

passing of Act XXIII of 1854, he would now run over its chief provisions.

First, it made the property of Moplahs convicted of outrages of the nature described in it, and of all persons who should procure or promote such outrages, liable to forfeiture; and as experience had proved that the actors in such outrages would not suffer themselves to be taken alive, so that they might be brought to trial, it further provided that the property of Moplahs who, having committed such offences, should be killed in resistance to persons having lawful authority to apprehend them, should likewise be liable to forfeiture.

Again, it provided that Government might deal with persons charged with, or suspected of an intention to commit an offence punishable under the Act, either by confining them, under Regulation II of 1819 of the Madras Code, or by bringing them to trial under Act V of 1841.

And lastly, it authorized the infliction of fines upon the Moplah inhabitants of the Umshum or village, to which the perpetrators of such an outrage should be found to belong, or in which they should have been resident at the time of committing it.

These provisions, the Governor in Council of Madras was empowered to put into operation whenever he should see fit, by a proclamation published in the *Fort St. George Gazette*.

The Act was passed on the 28th October 1854; and as soon as it was received in Malabar, extraordinary pains were taken to promulgate it, and make its provisions and penalties universally known and understood, particularly by the Moplahs. It appeared, by a Circular Order of the Magistrate, dated 30th December 1854, that the Act was sent to all the Umshum officers to be published in every Umshum by beat of tom-tom, for the information of all the people, and was ordered to be read at all the fairs, bazars, and other places of public resort, in order that all the inhabitants of Malabar, and especially the Moplahs, should be fully acquainted with and understand its enactments, and the penalties contained therein.

The local officers were enjoined to communicate the Act especially to the Moplahs; and the Division Officers were directed, when they went on circuit to the Umshums, to enquire carefully if there were any people who had not heard of the Act.

The Council would perceive presently why he laid so much stress on the manner in which the Act was promulgated in Malabar.

After its promulgation, there was quiet for a time, but it did not last long. Before many months had passed, on the 11th September 1855, Mr. Conolly, the Collector and Magistrate, was brutally murdered in his own house by a party of Moplahs. The murderers, five in number, were pursued, and, having been overtaken by a military force, European as usual, called out in aid of the Police, were killed in open resistance to them on the 17th September.

As soon as information was received of this audacious and heinous outrage, by which the Chief Officer of the district was cut off, the Governor of Madras issued a proclamation, under date the 18th September, declaring the whole province of Malabar to be subject to the operation of the Act; and, under the impression that, by virtue of the proclamation, all offences perpetrated after its promulgation were brought within its scope, they ordered the local officers to proceed under its provisions against all persons who might be discovered to have been implicated in the assassination of Mr. Conolly.

The most active measures were taken for this purpose; and information having been obtained which implicated a great many persons as accessories before or after the fact, proceedings were instituted with a view to the application of the Act against them.

In the course of this enquiry it was clearly ascertained that the object of the attack upon Mr. Conolly was to inflict vengeance on him for the part he had taken in the banishment of the Tungal to which he had already adverted. "The murderers," said Mr. Collett, the Joint Magistrate, "in more than one place declared this to be their motive." "It is now clear," he observed,

> "That, from an early date, they shaped their proceedings with a view to this end. It is from the knowledge that they were plotting to retaliate upon the person of the Chief Officer of Government for this offensive measure, that their caste people generally conspired together to aid them, and preserved their secret inviolate, though it was literally known to scores, including women and children."

He might here mention that, but shortly before this fatal event, Mr. Conolly had received a communication from Captain Harris, the late Resident at Aden, warning him to be on his guard, as, from information that had been sent to him from Arabia, he apprehended that the Tungal was plotting some mischief against him. It seemed proper here to remark that the direction which this last outrage had taken against the principal Officer of Government, was an entirely new feature

in these crimes. The Government, in the Minute of Consultation, under date 23rd August, made the observations which he begged leave to read :—

"If there is one point more peculiarly striking, and of more marked significance than another in every record of these Moplah outrages, it is the entire absence of ill-feeling towards the Government or its Officers. Although the Government is necessarily 'Kafir,' and its officers the same in the eyes of every bigotted Mahomedan; neither in the proceedings of the fanatics, nor of those who encouraged them, is there any trace of ill-will to the Government, nor has the fanatical spirit been in any instance directed against their officers. The Right Honorable the Governor in Council believes this to have arisen from that perfect justice which has been dealt out to religionists of all creeds, to that wise and just neutrality observed, which leaves every Hindoo and Mahomedan at full liberty, so long as he does not interfere directly with others, to follow the tenets and dogmas of his own faith."

The first step taken to enforce the Act, was an application from the Magistrate to the Session Court to declare the forfeiture of the property of the Moplahs, who were killed in conflict with the troops on the 17th September. On a reference to the Fouzdaree Adawlut, that Court, observing that the proclamation bore date the 18th September, expressed a doubt whether the property could legally be confiscated under the provisions of an Act not in operation at the time these men were killed in resisting the Authorities. Upon being apprised of this doubt, the Government consulted the Government Pleader (Mr. Norton, a Barrister of the Supreme Court,) on the subject; and, being advised by him that none of the provisions of the Act could be enforced in respect to offences committed before the date of the proclamation, they directed the Magistrate to relinquish all further measures under Act XXIII of 1854, against the estates of the murderers, or against those who were privy to, or abetted the murder of Mr. Conolly.

But having afterwards received remonstrances from the Magistrate and Joint Magistrate against any retrocession, and being convinced by the representations contained therein, that it would be of dangerous consequence to recede after the determination which had been so strongly declared of prosecuting to the utmost all persons who were accessory to the murder of Mr. Conolly, and believing that a due regard to the peace of the country, and the safety of the public officers employed in it, imperatively demanded that the original intention of putting the Act in force against all implicated in that heinous crime, should be carried out to its full extent, they had called upon him to move the Legislative Council to pass an Act to throw back the operation of Act XXIII of 1854, in such a manner as would admit of its reaching all concerned.

The letters of the Magistrate and Joint Magistrate of Malabar, and the Minutes of the Governor and the Members of Council upon them, had satisfied his mind that the only safe course, in the present critical state of Malabar, was to give effect to Act XXIII of 1854 from the time of its promulgation, instead of from the date of the proclamation; and he hoped that the perusal of those papers would equally satisfy the Members of this Council of the expediency of this course.

He would here particularly call attention to the new feature which distinguished this last outrage—namely, its direction against the Chief Officer of Government which he had already adverted to; and he would mention that other officers had received menaces from which they apprehended their lives to be in jeopardy. He would point to the statement of Mr. Collett, that the employment of an able and zealous native officer in the duty of conducting the prosecution of offenders against the Act, as suggested by by him, would inevitably expose him to great personal danger.

What he had already said of the extraordinary care with which the Act, as soon as it was received in Malabar, had been published and promulgated throughout every Umshum of the District, and the pains taken that its provisions and penalties should be made fully known to the Moplahs to whom it was specially applicable, and to the people of all other classes inhabiting the District, with the strong and confident assertion of the Joint Magistrate, that every inhabitant of the District was fully persuaded and convinced that the Act was in operation from the time of its promulgation, and that whoever should act in defiance of its provisions would certainly incur the penalties therein denounced, seemed to him to obviate the objections which, on principle, attached to an *ex post facto* law, giving, as he thought, full assurance that, if the law was enforced, the operation of it would take no man by surprise; and that whoever should be dealt with under its provisions, would be dealt with just as he was fully conscious he was liable to be dealt with when he committed the act by which he was brought within its scope.

He proposed that Act XXIII of 1854 should take effect from the 1st March 1855,

as a date before which there was a moral certainty that the Act was fully promulgated throughout the District.

Before concluding he might observe that, though he had thought it proper to confine the Bill strictly to the object proposed by the Government of Madras, it had struck him that one provision of Act XXIII of 1854 required consideration with a view to amendment. It was that which limited the operation of the Act to offences committed by Moplahs against persons of any other class. This included all persons, Officers of Government, as well as others, who were not Moplahs. But he apprehended it would not include murderous outrages by Moplahs against Moplahs. Now, the probability of such outrages was made very apparent by the present papers. It was the dread of the vengeance of the Moplah tribe which, it was stated, rendered it extremely likely that prosecutions in the Courts against the Moplahs implicated in the murder of Mr. Conolly, would fail, the witnesses being chiefly Moplahs, who would not dare to stand to their evidence in open Court in the presence and hearing of people of the class by whom they would be regarded as traitors for giving witness against Moplahs. There were also Moplah Officers —a Tehsildar, and others—who stood peculiarly exposed to danger from the fanatical fury of their class fellows, if they did their duty. If it should be thought advisable to extend the Act so as to include offences of the nature contemplated in the 2nd Section committed by Moplahs against Moplahs, an amendment could be introduced into the Bill when it was in Committee.

There was another provision to which he would call attention. It was that contained in Section VI of the Act for the punishment of any person who, having undertaken, in consideration of the suspension of proceedings against him under the Act, to depart from India, should return without permission. This provision had reference to the case of the Tungal of whom he had already spoken. But he apprehended it would not apply to himself if he should return, as he had often threatened to do; because his departure took place long before the passing of the Act. As the return of that person would be in the highest degree dangerous, he (Mr. Eliott) should have been inclined to think it necessary to amend the provision so as to make it applicable to his case, but for the strong opinion he entertained that the Government had power to deal with the case under Regulation II of 1819 of the Madras Code, which authorized them to place such a person in confinement when reasons of State policy should appear to them to render such a proceeding necessary, and reasons of State policy would certainly not be wanting to warrant such a course against the Tungal. In point of fact, on a former occasion, when the Tungal sent emissaries into Malabar who gave out that they were his precursors, and that he would himself shortly follow them, the Government resolved to act under that Regulation, and issued warrants for the apprehension of the Tungal wherever he should appear, the knowledge of which alone, it was believed, prevented his advent.

With these explanations, he had the honor to move that the Bill which he now presented be read a first time.

ABKAREE REVENUE (BENGAL).

Mr. CURRIE moved the second reading of the Bill "to consolidate and amend the Law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal."

Mr. ALLEN said, he wished to offer a few observations upon the Bill—not that he meant to oppose the second reading, for he thought that no one could regret that a measure had been brought in to consolidate the law relating to the Abkaree Revenue in Bengal; but there was an important principle contained in the Bill to which he did object, and which he thought it right to notice at this time. The principle in the Bill to which he objected was that upon which all persons accused of offending against the Excise Laws were to be tried, not by Magistrates, but by Collectors of the Land Revenue in charge of the Excise, or by Superintendents of Abkaree. This seemed to him to involve the principle that a man might be prosecutor and judge in his own case. He fully conceded that the present Law admitted of persons accused being tried by Excise Officers; but this Bill was designed, not only to consolidate the present Law, but also to amend it; and if the principle to which he referred was wrong, the Legislature ought to correct it when amending the Law.

More than that, this Bill went farther than the present Law in several respects. As one instance of this, he would quote the following paragraph from the Statement of Objects and Reasons which the Honorable Member for Bengal had annexed to his Bill:—

"The imprisonment which may be awarded under the present Law, whether as a specific

punishment or in default of payment of fine, is imprisonment in the Civil Jail. By the Salt Laws, smuggling is punished by imprisonment in the Criminal Jail; and offenders against the Straits Abkaree Act may be punished with imprisonment with labor. It seems to me that, under the revised Law, persons sentenced to imprisonment should be confined in the Criminal Jail."

Without entering into the question whether, when imprisonment was awarded in default of a money penalty, it was right to confine the offender in a Criminal Jail, he objected to the provision in the Bill as going farther than the present Law went.

The Honorable Member referred to the Straits Abkaree Act as making offenders against its provisions liable to imprisonment with hard labor. But that Act sent such offenders to Justices of the Peace for trial, and not to farmers of Abkaree duties or Collectors of Land Revenue. The Honorable Member also said that, by the Salt Laws, smuggling was punished by imprisonment in the Criminal Jail. But that punishment, in the North-Western Provinces at least, was awarded by Magistrates, and not by Salt Officers. He thought the provision in the Salt Law relating to the North-Western Provinces, which sent offenders to Magistrates instead of to Salt Officers for trial, a very wise one. He had had considerable experience of prosecutions for smuggling under the Salt Law, and had found that Salt Officers were often too eager for the conviction of the accused—too apt to be influenced by a bias in favor of their own subordinates, and against the persons accused.

But this Bill went farther than the present Law, not only in the respect that it made offences against its provisions liable to imprisonment in the Criminal instead of the Civil Jail, and to imprisonment with labor instead of without labor; it also went farther than the present Law in this respect—that, whereas by Act XXV of 1840, the utmost extent of punishment that could be awarded by Superintendents of Abkaree was a fine of Rupees 200, or imprisonment for three months, the punishment that might be awarded by those Officers under this Bill was a fine of Rupees 1,000, or imprisonment for six months.

Another point in which the Bill went farther than the present Law was, that it vested the power of awarding the highest money penalty of Rupees 1,000, allowed by it in the case of distilleries worked after the European method, in Collectors of Land Revenue, whereas by Regulation II of 1802 all such penalties and forfeitures must be adjudged by Magistrates.

It might be said, as to the North-Western Provinces, that the Collector and Magistrate there were the same person; and that therefore, if penalties for offences against the Excise Laws were ostensibly awarded by the Magistrate, they were, in point of fact, awarded by the Collector. But the objection would be more specious than real—for two reasons. The Abkaree Revenue was collected in the Bengal Presidency in two modes; one by letting out to farmers the collection of Abkaree duties; and the other by the collection of Abkaree duties by the Government Collectors of Revenue themselves. The former was the plan that was generally adopted in the North-Western Provinces, and the latter in the Lower Provinces of Bengal. Consequently, the person prosecuting under the Excise Law in the North-Western Provinces, was generally not a Government Revenue Collector, but a farmer, whose object alone it was to stop smuggling. This was one reason. Another reason was, that the Excise Revenue in the North-Western Provinces was generally made over to Uncovenanted Deputy Collectors; and an Officer entrusted with the Abkaree management of a District was not intrusted with a Criminal Jurisdiction in it. It might be said, too, that, in England, offences against the Excise Laws were adjudicated by Commissioners of Excise, and by Officers who had the management of Excise; and for that reason, he supposed Johnson had defined Excise to be "a hateful tax levied upon commodities, and adjudged, not by the common judges of property, but wretches hired by those to whom excise is paid." But since Johnson's time, different Laws had been passed, taking away power from the Excise Commissioners. Several years ago, Magistrates had been given a concurrent jurisdiction; and more lately, the Excise Commissioner had been entrusted with other duties, till, at last, their very name had been taken away, and they were more like the Board of Revenue in Calcutta than a Collector in the interior.

It was not the original practice in this country to make over these offenders to Collectors of Land Revenue. Up to the passing of Regulation X of 1813, all offences against the Abkaree Laws were adjudicated by Magistrates; but in 1813, the work of the Magistrates had increased very considerably; and in those days, most of the Magistrates were also Civil Judges who had all the original Civil cases of the district; and he presumed that it was found that they had not time to adjudicate cases under the Excise

Law, and that cases could be more speedily disposed of by Collectors of Land Revenue, than by the overworked Magistrates who then existed. In the Presidency of Madras, under Regulation I of 1820, all Abkaree offences were tried by Judges having criminal jurisdiction, and by Magistrates. In Calcutta itself, also, all such cases were, by Act XI of 1849, made over to Magistrates for trial. He, therefore, could see no reason why the same course should not be pursued in the Mofussil of Bengal, as that which was pursued in the Mofussil of Madras, and in Calcutta.

As he had said before, it was not his intention to oppose the second reading of the Bill; but he had thought it right to draw the Honorable Member's attention, at the present stage, to those provisions contained in it which appeared to him to be open to objection.

MR. CURRIE said, as the Honorable Member did not mean to oppose the second reading of the Bill, he should say but a very few words in reply.

In preparing this Bill, the principle which he had followed, and which he thought ought always to be followed in cases of this kind, was to retain those provisions of the existing Law which had been found to work well, and to make alterations only where experience had shown alterations to be necessary or desirable. Acting upon that principle, it certainly had not occurred to him to make the alteration advocated by the Honorable Member. For more than forty years, the trial of Excise cases had been vested in the Collectors. He had never heard any objection to this practice; and if any such objections had been taken, from the position which he had held he must have heard of them.

Then, he did not think that the principle involved could be generally considered objectionable. Only two or three years ago, when an Act was passed for improving the Abkaree Law of Bombay, the adjudication of Excise cases by Collectors of Revenue was maintained and extended. If there were any real objection to the exercise of that power by such officers on the score of principle, he supposed that it would not then have escaped the consideration of the Legislature. This practice of adjudication of Excise cases by Collectors was consistent with the Law relating to other subjects. In the Salt Department, cases of smuggling had, for the last thirty-five years at least, been adjudicated by officers of that Department; and in the Sea Customs, in like manner, confiscations were adjudged by the Board of Revenue on the Report of the Collector. It was true that, in Calcutta, Abkaree cases were tried by the Magistrate; but the circumstances of a Presidency town were altogether different from those of Mofussil Districts; and in Calcutta, previous to 1849, the whole charge of the Abkaree had been in the hands of one of the Magistrates.

The Honorable Member had referred to the Salt and Frontier Customs Act of the North-Western Provinces as another instance in favor of his view of the question. He (Mr. Currie) thought that one reason why the Legislature had made Customs cases in the North-Western Provinces triable by Magistrates, might possibly have been that there was not a superior officer of Customs in each District. He did not know whether that was really the reason; but it occurred to him at the moment as a probable one. The Act referred to, however, did not appear to him to be consistent with itself. According to his recollection, confiscations were adjudged by the Revenue Authorities; while the penalties of fine or imprisonment were, as the Honorable Member had said, adjudged by Magistrates. Now, if it was right that fines should be adjudged by Magistrates, it was equally right that confiscations should be adjudged by Magistrates too. He himself did not participate in the sentiment which the Honorable Member had expressed on this subject, and supported by a quotation from Dr. Johnson. If that sentiment was carried out to its full extent, it would apply equally to the decision of summary suits for rent by a Collector—at least, in those parts of the Country where peremptory sale was not the ordinary mode of enforcing payment—since it might be said to be the interest of the Collector to get in the Revenue as speedily as possible, and therefore to put it in the power of the Zemindar to enforce payment of the rent from which that Revenue was drawn. The Collector was as much an interested party in the one case as in the other. He (Mr. Currie) did not, however, think that many persons would be disposed to regard Dr. Johnson's definition as applicable to our Collectors.

Another point upon which the Honorable Member had remarked, was the substitution of the criminal for the civil jail. In making that alteration, he (Mr. Currie) had followed the course which had been adopted in the Salt Department. Formerly, smuggling of salt was punishable, in default of payment of fine, by imprisonment in the civil jail. But when

the Salt Law was revised in 1838, that was changed, and imprisonment in the criminal jail was substituted. He himself thought that this was right. When imprisonment for a certain definite period was adjudged in commutation of a fine, the imprisonment became a specific penalty: it was not in the nature of imprisonment for debt; and he, therefore, did not see why the person convicted should be confined in the debtor's jail.

The Honorable Member had also said that the Bill would give extended powers to Superintendents of Abkaree. In point of fact, however, Superintendents of Abkaree did not now exist. The Abkaree Revenue was every where administered by Collectors. The Bill did, indeed, provide for the appointment of special officers if, at any future time, the Government should think such a measure necessary; but it was to be presumed that, if such appointments were made, the Government would take care that the persons appointed would be duly qualified to exercise the powers conferred by the Act.

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

PATENTS FOR INVENTIONS.

On the Order of the Day for a Committee of the whole Council on the Bill "for granting exclusive privileges to Inventors" being read—

MR. PEACOCK said, before moving that the Council should resolve itself into a Committee, he thought it would be convenient if he stated briefly the principal alterations which had been recommended by the Select Committee, and the objects and reasons for which they had recommended them.

The Select Committee had attentively and anxiously considered the Bill, and the several communications which had been received regarding it; and they had endeavoured, as far as they possibly could, having regard to the interests of the Public in general, to give to an Inventor, as a reward for his ingenuity, skill, and labor, an exclusive privilege which would be productive of real benefit, instead of being, as was too frequently the case, a source of anxiety, litigation, and expense.

The first material alteration which the Select Committee recommended was, the omission of the words "and useful" with regard to the invention. As the Bill originally stood, it was required that the invention should be "new and useful." As far as he was aware, there was but one ground upon which it was necessary to retain the word "useful." In England, the want of utility might be set up either as a ground for cancelling a patent, or as a defence to an action for an infringement. But if an invention were not useful, there could be no great injury to the Public in allowing the inventor to have the exclusive privilege of using it; nor, as a general rule, could there be any valid reason for allowing a person who infringed the patent to defend himself upon the ground that the invention was not useful, the very fact of his using it showing that he did not consider it useless. There was, however, one case in which an exclusive privilege in a useless invention might be injurious to the Public. A man might obtain a patent for an invention which was not useful: some one else might invent an improvement which would make it useful, and obtain a patent for the improvement. The original Inventor could not use the improvement, or grant licenses to others to use it; and the Improver would be excluded from using the original invention, and making it useful by means of his own improvement. In such a case, the first patent might be injurious to the Public. Such cases did not usually occur; but if any should occur, it would be met by the 15th Section of the Bill, which provided that an exclusive privilege should cease if the Governor General in Council should declare that it was prejudicial to the Public; and there was another Section which enabled the Governor General in Council to order the Advocate General of any of the Presidencies, to apply to the Supreme Court for a Rule calling upon a patentee to show cause why the Court should not direct an issue for the trial of any question of fact on which the revocation of the exclusive privilege might, in the judgment of the Governor General in Council, depend; and it further provided that, if the Rule should be made absolute, the Court might direct such issue to be tried, and certify the result of the trial to the Governor General in Council. If, therefore, a man should obtain an exclusive privilege for a thing that was not useful, and would not use it himself, or grant licenses to others to use it upon reasonable terms, and should endeavour to exclude the Public from the benefit of an improvement which might render it useful, by preventing them from using the original invention, there would be a remedy under the 15th Section of the Bill. He (Mr. Peacock), therefore, thought there was sufficient reason for relieving an Inventor from the necessity of showing that his invention was useful in

every case, in which his exclusive privilege might be disputed.

The next important alteration which the Select Committee recommended was that the Importer into India of an invention, which had not been publicly known or used there before, should be deemed an Inventor for the purposes of this Act, and they had provided to that effect by Section XVI. When the Bill was origiually before them, the Select Committee were of opinion that it was not necessary to allow an Importer to be deemed an Inventor. They were of opinion that, owing to the great increase of scientific publications, and the existing facility of intercommunication between foreign countries, it was improbable that an important invention, made known in one country, should not also become known in others; and that, therefore, a person who imported an invention into India, ought not to be entitled to the privileges of an actual Inventor. But, upon further consideration, they had come to the conclusion that the first Importer of an invention ought to be allowed an exclusive privilege in this country. It appeared to them that a man who employed his time and capital in bringing a foreign invention into use in a country like this, was, in many cases, deserving of as much consideration as a man who actually invented. They had, accordingly, inserted a Section in the Bill enabling the Importer of a new invention to obtain an exclusive privilege. In doing this, they were introducing no new principle. The principle was in existence in England now, and had existed there from the date of the Patent Laws. But inasmuch as an Importer, after obtaining an exclusive privilege, might abstain from bringing it into use, and, by virtue of his exclusive privilege, might prevent others from doing so, the Select Committee had made the continuance of the exclusive privilege of an Importer subject to the condition that he should bring the invention into practice within two years from the date of his petition, and either continue to use it himself, or grant licenses to others upon reasonable terms to enable them to use it. In France, and in many other countries, even actual Inventors were required to bring their inventions into public use within a given period; but the Select Committee on this Bill had not thought it necessary to go so far. The English Law did not require either an Inventor or an Importer to bring an invention into practice; but the Select Committee, although they were not prepared to impose this condition on Inventors, had thought it necessary to impose it upon Importers.

The next material alteration recommended by the Select Committee was in Section XVIII. In England, a patent might be avoided or infringed on the ground that, before it was obtained, the invention had been publicly known or used. The Select Committee were of opinion, that no public knowledge ought to be allowed to defeat a patent unless it were derived from a printed publication. If any one could show that the invention had been publicly *used* before the petition was presented, the Inventor would not be entitled to an exclusive privilege; for that might enable him to deprive others of the benefit of capital and labor, which they might have expended in bringing into use an invention which had been made publicly known. He had known cases in England, in which considerable litigation had taken place on the question of novelty. In the case of a patent for the Screw Propeller, evidence was given to show that the principle of that invention, though it had never been brought into practice, was known so far back as the last century. The ground of objection did not succeed; but yet, every patent taken out for that invention had been upset for one reason or another. He did not think that the question of novelty could altogether be excluded; but the provision recommended by the Select Committee, requiring that the previous public knowledge must be by means of a printed publication, would exclude parol evidence, which, in such cases, might be often too easily obtained.

The next alteration recommended by the Select Committee was in the same Section. They proposed that the public use or knowledge of an invention prior to the application for leave to file a specification, should not be deemed a public use or knowledge within the meaning of the Section, if the knowledge should have been obtained surreptitiously, or in fraud of the actual Inventor, or should have been communicated to the Public in fraud of the actual Inventor, or in breach of confidence, provided the Inventor presented his petition within a reasonable time. The object of this provision was to protect Inventors during the time they were perfecting their inventions, and endeavouring to bring them into such a state as to entitle them to an exclusive privilege. During such period, it was frequently necessary for Inventors to employ workmen and others to assist them, and to prepare their specifications. If, in any such case, the person em-

ployed, having learned the secret of the invention in the course of his employment, chose to commit a breach of confidence, and to disclose the secret and make it public, the Inventor would lose the whole benefit of his invention. But the Select Committee thought that, where a man stole the knowledge of an invention, or made it public fraudulently, or in breach of confidence reposed in him by the Inventor, the right of the Inventor to an exclusive privilege ought not to be prejudiced by such an act of dishonesty.

The Select Committee had also recommended an alteration in Section XXXII. In England, if a person obtained the knowledge of an invention surreptitiously, or made it public in breach of confidence, the actual Inventor lost the benefit of his invention. He might upset a patent taken out by the other, but he could do that only on the ground that the Patentee was not the actual Inventor; and he could acquire no privilege for himself, because his invention had already been made public. The Select Committee thought that, where a person obtained an exclusive privilege for an invention, the knowledge of which he had gained by surreptitious means, the actual Inventor ought to be allowed, not merely to come in and upset the exclusive privilege granted, upon the ground that the petitioner was not the Inventor, but also to compel him to assign over the exclusive privilege which he had obtained, and to account for the profits that he might have derived from it, provided the Inventor commenced his proceedings within two years from the date of the petition to file a specification.

Section XXII of the Bill was altogether a new Section. In England, an action brought by a Patentee for the infringement of his patent, might be defended on the ground that there was some defect or insufficiency in the specification, or that the Patentee had not properly described his invention, or that the invention was not new, or that it was not useful, or that the Patentee was not the actual Inventor. The Select Committee thought, that a person who disputed a Patent upon any of these grounds, ought, if he was not in a situation different, in regard to it, from the rest of the Public, to be required to apply that the Patent should be rescinded: because, by that mode of proceeding, the whole Public would be benefited, and the Inventor would be protected from litigation with every person who might choose to infringe his Patent. They, therefore, recommended the introduction of Section XXII, which provided that—

"No such action shall be defended upon the ground of any defect or insufficiency of the specification of the invention, nor shall any such action be defended upon the ground of a misdescription of the invention in the petition, nor upon the ground that the plaintiff was not the Inventor, unless the defendant shall show that he is the actual Inventor or derives title from him. Any such action may be defended upon the ground that the invention was not new, if the person making the defence, or some person through whom he claims, shall, before the date of the petition for leave to file the specification, have publicly or actually used in India the invention, or that part of it of which the infringement shall be proved; but not otherwise."

If a person obtained a patent for an invention which was not really his, no person except the real Inventor would be allowed to defend an action for infringing the patent. The defence that the invention was not new, could not be set up to an action for the infringement of a patent granted under the Act, unless the defendant could show that he had actually used the invention in India before the petition for the exclusive privilege was presented; but any one who could prove that he had been in the actual use of the invention before the petition was presented, would be allowed to continue such use, and set up the want of novelty as a defence to any action that might be brought against him for the infringement.

The Select Committee had also inserted a Section to prevent the cancellation of an exclusive privilege upon the ground that there was a misdescription of the invention in the petition, unless such misdescription was fraudulent. Misdescription of an invention in a petition for a patent, was often a ground of litigation; and Inventors who acted *bonâ fide*, and to whom great credit was due for the ingenuity, labor, and expense which they incurred, were often deprived of the whole benefit of their inventions by reason of some unintentional misdescription of their inventions, which, with every care, could scarcely be avoided. In one case, a patent was taken out for a new and improved method of preparing and drying malt. The specification described the invention to consist in so heating malt that it should become of a deep brown color, and be readily soluble in hot or cold water. It was held that the invention described in the specification was different from that mentioned in the petition, and the patent was defeated upon that ground. It was held that the patent being for a method of preparing malt, must mean making malt from barley; whereas the specification appeared to be for drying malt already made. With every

respect for the opinion of the Court by which that case was decided, he should have thought that the petition properly described the invention ; but he referred to this case to show how easily a patent might be defeated upon technical grounds in cases in which the Public was not injured—where no fraud was intended—and upon which different opinions might be entertained. If any person could satisfy the Court that the Inventor had described his invention improperly for a fraudulent purpose, that undoubtedly would be a just and sufficient ground for rescinding his exclusive privilege ; but to allow an exclusive privilege to be rescinded because the Inventor called his invention one thing, when the Court thought he ought to have called it another, and when no fraud was intended, and no person could possibly be injured by the misdescription, appeared to the Select Committee to be a great defect in the Law, and one which ought not to be introduced here. They had accordingly recommended a Section for the protection of Inventors in this respect.

The Select Committee proposed to remove another source of anxiety and hardship to Inventors which existed in England. Under the English Law, if any one part of the invention claimed was not new, or if the Patentee was not actually the first Inventor of that part, or if he had unintentionally misdescribed it in his specification, he lost his exclusive privilege as to the whole invention, notwithstanding he might have acted with perfect good faith and the most honest intentions. It was almost impossible for any person—even for gentlemen who practised as Patent Agents in England, though they were men of ability and science who devoted themselves exclusively to the business—so to draw a petition for a patent, or a specification of an invention, that a hole could not be picked in it. What the Select Committee proposed to do was this—that, if an Inventor honestly claimed as his invention any thing which was not new, or of which he was not the original Inventor, his exclusive privilege should be set aside only as to that particular portion ; but that he should be permitted to retain it as to the remainder, if it was, by itself, of any use to him ; and also that the Court should have power to allow any amendment to be made in the specification by which the Public would not be injured, if by that means the whole privilege claimed by the Inventor could be made good. If a Patentee fraudulently claimed as his own any part of an invention which he knew to have been in public use before, or of which he was not the Inventor, or if he fraudulently misdescribed it, then the exclusive privilege might be upset altogether. There appeared to the Select Committee to be no objection to such a provision, because it would be the petitioner's own fault if he fraudulently claimed more than he was entitled to, or if he filed a specification intentionally framed in such a manner as to mislead the Public.

By these means, the Select Committee hoped to secure to Inventors exclusive privileges which would really be of some benefit to them, instead of being a source of anxiety and of litigation which, not unfrequently, ended in their ruin.

Baboo Rajendro Loll Mittra had suggested that the right of caveat should be extended to this country, as a privilege which would enable Inventors to prevent others from anticipating them before they could bring their inventions to perfection. The Select Committee had carefully considered the question of allowing caveats before the Bill was prepared, and had come to the conclusion that the privilege ought not to be allowed. They still retained that opinion. It appeared to them that the privilege would be a source of constant litigation. A, for example, might enter a caveat to prevent any person from obtaining an exclusive privilege in an invention for a particular purpose. If B should apply for an exclusive privilege for an invention falling within the description of A's caveat, notice of the application would be given to A, and he might come forward with his objections. But before whom would the question between the parties be tried ? In England, it would be tried by the Attorney or Solicitor General. But their decision would not be final. If it should be in favor of B, he might obtain his patent ; but it would still be open to every other member of the Public to dispute the patent, upon the same grounds that had been set up by A, in opposition to the grant. Unless the decision upon the application for the exclusive privilege could be made final, it appeared to the Committee to be entailing upon an Inventor unnecessary litigation to compel him, in the first instance, to defend himself against every person that might, with either good or bad motives, enter a caveat. One person might enter a caveat honestly ; another with the object of being bought off by the Inventor. A might enter a caveat, and oppose B's petition upon the ground that B was not the Inventor, or upon the ground that the invention was not new, or upon the ground

that it had been in public use. Upon the hearing, A might fail in establishing his objection. He might fail to produce the necessary evidence, either by reason of negligence in getting up the evidence, or in collusion with B. It would not, therefore, be fair towards the Public to allow the decision upon the preliminary investigation to be final; for if it were made so, the actual Inventor, who might be out of the country, or members of the Public who could show that the supposed invention had been long in public use by themselves in India, might be excluded, without an opportunity of being heard, or of advancing evidence upon the subject. There could be no more difficulty in applying to the Court to rescind the exclusive privilege after it had been obtained, than in opposing the grant in the first instance. The Select Committee thought that Section XXIII of the Bill would afford a sufficient protection to the actual Inventor on the one hand, and to the Public on the other. Under that Section, any person might move the Supreme Court to declare that an exclusive privilege had not been acquired, upon proof that the invention in respect of which it was obtained, was not new at the date of the petition to file the specification, or that the petitioner was not the Inventor, and that the applicant was the Inventor. If, upon such application, after hearing the petitioner and any evidence which he might adduce, the Court should decide against him, the exclusive privilege would be rescinded. The right to enter caveats would open a door to much unnecessary and vexatious litigation, without being productive of any real benefit—especially under this Bill, which provided that an Inventor should not be deprived of the benefit of his invention if the knowledge of the invention was surreptitiously obtained and disclosed hy another. A caveat would not afford this protection to an actual Inventor. It would not prevent the knowledge of the invention, if communicated to the Public by the person against whom the caveat was directed, from defeating an application by himself for an exclusive privilege. But this Bill would allow him an exclusive privilege, notwithstanding such disclosure; provided only he should not have previously acquiesced in it, and should apply for leave to file his specification within six months.

Mr. Ackland had suggested that the Executor, Administrator, or Assignee of an Inventor should be placed in the same position as the Inventor, for the purpose of enabling him to obtain an exclusive privilege under the Act. The Select Committee thought there could be no objection to this. In England, the Executors, Administrators, or Assigns of an Inventor could not take out a patent; though, after a patent had been obtained, the Executors, Administrators, or Assigns of the Inventor were entitled to avail themselves of the exclusive privilege granted by it. The Select Committee were of opinion that there was no valid reason for this distinction. They thought that there was no difference in principle between the two cases; and that, if an Inventor chose to assign to another the benefit of his invention before he obtained a patent, the assignee should be entitled to an exclusive privilege in the same way that he would have been, had the Inventor assigned to him his interest after he had obtained a patent. They had therefore followed Mr. Ackland's suggestion.

The word "manufacture" was used throughout the Bill. The original Bill had defined the meaning of that word by an interpretation Clause. The Select Committee had made a slight alteration in the definition of the word. The original definition was as follows:—

"The word manufacture shall be deemed to include the art or manner of producing or making an article; and also any article produced by manufacture."

This definition appeared to him to be sufficient; but as it was thought that some question might possibly be raised upon it, the Select Committee, to avoid all doubt, had enlarged it as follows:—

"The word 'manufacture' shall be deemed to include any art, process, or manner of producing, preparing, or making an article; and also any article prepared or produced by manufacture."

With these observations, he begged to move that the Council resolve itself into a Committee on the Bill.

Agreed to.

The first Section of the Bill provided that the Inventor of any "new and useful" manufacture may petition the Governor General in Council to file a specification thereof.

SIR ARTHUR BULLER said, he had come prepared to move precisely the same amendment in respect of the words "and useful" in this Section, to which the Honorable and learned Mover of the Bill had referred in the commencement of his preliminary speech. Perceiving that these words had been studiously omitted from the Preamble, he had supposed that they had crept into the 1st Section by mistake. But he confessed

he thought that their retention might, very possibly, give rise to unnecessary difficulties, because men differed very much in their notions of what was "useful," and the word was susceptible of a variety of interpretations according to the different opinions—he might say, according to the different fancies—of those who might have to interpret it. He himself was a decided partizan of the principle of utility; but he must say that he had hardly ever yet seen three persons, whether friends or enemies of that principle, exactly agree as to what the word "utility" meant. In his opinion, whatever contributed to the comforts, or even to the elegant luxuries of life, was "useful." But there were others who put a much sterner and more restricted construction upon the term,—a construction which, if applied to the inventions sought to be protected by this Act, would, in his opinion, deprive the Act of much of its value. He should, therefore, move that the words "and useful" be omitted from the Section; and he thought that the Legislature might safely trust to the Governor General in Council not to give his sanction to any scheme which, in any bad sense of the term, would deserve to be called useless.

MR. PEACOCK said, that the words referred to by the Honorable and learned Member had remained in the 1st Section by an oversight, and he had himself come prepared to move the amendment which had just been proposed.

SIR ARTHUR BULLER'S motion was then put and carried; and the Section, thus amended, was passed.

Section II was passed as it stood.

Section III provided that—

"The Governor General in Council might refer a petition to file a specification to any person or persons for enquiry and report, and that such person or persons should be entitled to a reasonable fee for such enquiry and report."

MR. PEACOCK said, he hoped that it would not be found necessary to make such references in many cases; but where they should be made, he thought that the fee ought to be paid by the person who petitioned.

There was a subsequent Section which provided that no specification should be filed until the petitioner should have paid, among other fees, the fees of the persons to whom his petition might have been referred; but it might happen that the referees might decide against him. In that case, as the Bill now stood, there would be no means of compelling him to pay the fee. He (Mr. Peacock) should, therefore, propose that the words "to be paid by the petitioner" be added to the words "such enquiry and report in this Section."

The motion was carried, and the Section, as amended, was passed.

Sections IV to XV were passed as they stood.

Section XVI provided that "the Importer into India of a new invention shall be deemed an Inventor within the meaning of this Act."

MR. ALLEN enquired whether the words "new invention" were intended to mean an invention that was new in the country from which it was imported, or new in the country to which it was imported. Section XXI of the original Bill provided that, in the case of a British or Foreign patented invention, any exclusive privilege under the Act should not continue in force longer than the British or Foreign patent. That Section had been omitted from the amended Bill; and, as the measure now stood, an Inventor who had already enjoyed a thirteen-years' exclusive privilege in England, might come over and obtain an exclusive privilege in India for fourteen years more. But he (Mr. Allen) thought that it would be objectionable to allow the Importer of a patented invention to enjoy an exclusive privilege in India beyond the term to which the patent extended in the country where the invention was first made known.

MR. PEACOCK said, the principle upon which the Select Committee had consented to allow Importers an exclusive privilege was, that a man who employed his time and capital in bringing a foreign invention into use in India might be deserving of as much consideration as an actual inventor. In England, the knowledge of an invention in a foreign country did not affect a patent. The Honorable Member said that an Inventor might possibly have already had an exclusive privilege for thirteen years in England, and might then come over here and obtain an exclusive privilege for fourteen years more. He (Mr. Peacock) did not see any objection to this. The author of a book obtained a copy-right for life, and the exclusive privilege granted thereby descended to his executors or assigns after his death. It appeared to him that, if the principle was admitted that an importer of a new invention into India ought to be allowed an exclusive privilege, on the ground that credit was due to him for employing labor and capital in bringing into use a useful manufacture into a country like this, the restriction contemplated by the Honorable Mem-

ber ought not to be imposed. In answer to the first part of the Honorable Member's question, he would refer him to Section XVIII, by which "a new invention" was defined.

SIR ARTHUR BULLER would ask the Honorable and learned Mover whether he had advisedly retained, in the sixth line of this Section, the words "his Executors, Administrators, or Assigns." In one of the interpretation Clauses, the word "inventor" was declared to include the "importer of an invention," and in another, the word "inventor" was declared to include "the Executors, Administrators, and Assigns of an Inventor." It appeared to him, therefore, that the insertion of the words here, and their omission elsewhere, might possibly give rise to some doubts.

MR. PEACOCK said, the term "inventor" would, in any Section, by an express interpretation Clause, include an Importer, or the Executors, Administrators, or Assigns of an Inventor; but he had some doubts whether the word "Importer" did include Executors, Administrators, or Assigns; and to avoid all doubt upon the subject, he had introduced the words to which the Honorable and learned Member had referred. A person might bring an invention into this country, and might obtain an exclusive privilege; but before bringing it into practice he might sell it, or he might die. If either the death or the sale took place withen two years from the date of the petition to file a specification, his executors or assigns would, by this Section, be placed in the same position as himself. It was to avoid any doubt on this point that he had thought it better to put in the words. Their insertion, at all events, would do no harm.

MR. ALLEN said, he should rather propose that Section XXI of the original Bill should be inserted again.

MR. CURRIE would ask whether it might not be right to secure a superiority to the actual Inventor over the mere Importer. Any person reading the specification of an invention filed in England, might come over to this country, and claim an exclusive privilege for his knowledge, to the injury of the actual Inventor.

MR. PEACOCK said, there was a Clause in the Bill that would prevent that. A person desiring to obtain a patent in England, was forced by law to file either a preliminary or a final specification. If he filed a preliminary specification, he got protection for the period of six months; and if he obtained his patent at the end of the six months, he got further time for six months to file his final specification. It had occurred to him (Mr. Peacock), that any other person might obtain a knowledge of the invention from either of these specifications, and come over to this country, and claim, as an Importer, an exclusive privilege in respect of it. The Select Committee had provided by this Bill that, if an Inventor who, prior to applying for leave to file a specification under this Act, should have obtained Letters Patent in England, and should petition to file such specification within twelve calendar months from the passing of the Act, or within six months from the date of such Letters Patent, he should be entitled to an exclusive privilege. He believed there were gentlemen in India who had taken out patents in England—Mr. Ackland, for instance, who, he believed, had a patent for bleaching Jute, and was desirous of obtaining an exclusive privilege in India. The answer to his application for an exclusive privilege in India might be that, by means of books or other printed publications, or through some person who had read the specification in England, his invention had become known here, and that therefore he was not entitled to an exclusive privilege. But this Bill would enable him to obtain an exclusive privilege notwithstanding, except as to those who might already have introduced the invention into the country at an outlay of capital and labor, at a time when there was no law to restrain them from doing so.

The Section was then put, and passed as it stood.

Sections XVII to XX were passed as they stood.

Before Section XXI was proposed, MR. ALLEN moved that the 21st Section of the original Bill, which had been left out of the amended Bill, should be inserted. The words of that Section were as follows:—

"If a specification be filed under this Act in respect of any invention for the exclusive use whereof Letters Patent, or some other like privilege, shall have been previously granted in any part of Her Majesty's dominions, or in any Foreign country, the Inventor shall not be entitled to any exclusive privilege under the provisions of this Act, beyond the term during which such Letters Patent, or the like privilege so granted, or any valid renewal thereof, shall continue in force, or, if more than one such Patent or like privilege shall have been granted, beyond the expiration or determination of the grant which shall first expire or be determined."

He did not think that an Importer was entitled to very great privileges—to any thing

like the privileges which were granted to an Inventor. As he had said before, an invention might have been in use in England thirteen years, but might not have been in use in this country. Under the Bill as amended, it would still be new in this country, and any person not the Inventor who imported it, would be entitled to an exclusive privilege in India for the further term of fourteen years. Now, was it right that a person who had devoted neither skill nor capital to the invention, but was seeking merely to speculate upon a knowledge of it communicated to the Public in England by the actual Inventor, should be entitled to such a privilege? He thought that it was not; and he should therefore move that Section XXI of the original Bill be inserted after the 20th Section of this.

MR. PEACOCK said, it had appeared to the Select Committee, on careful consideration, that the 21st Section of the original Bill ought to be left out. It had been inserted in the original Bill with a view to following out the English Act, which, he admitted, was in support of the Honorable Member's argument. By that Act, the Importer of a foreign invention was allowed to take out a patent in England; but the patent in England ceased when the patent or other like privilege abroad ceased. The Section had been objected to in the House of Commons when the Bill was under consideration there, but it was ultimately carried. To him, it appeared to be objectionable on principle. The object was to prevent a man from having an exclusive privilege in this country when all persons were free to use the invention elsewhere. But the Honorable Member's amendment would not get rid of the difficulty. If a man took out in his own country—America, for instance—a patent or other like privilege, and some other person imported the invention into England, and took out a patent for it there, he might obtain an exclusive privilege for fourteen years, if the American patent should continue in force during that period; but if there was no patent for the invention in America, the Importer would have an exclusive privilege for fourteen years absolutely. Thus, it would happen that, if the American had excluded his own countrymen from using the invention by taking out a patent for it in America, an English patent would cease at the same time as the American patent. But if the American should not take out a patent, and should leave his own countrymen free to use his invention as they pleased, the people in England might be excluded from using it for the full period of fourteen years. He (Mr. Peacock) thought that the converse of this ought to be the case. He never could understand the principle upon which the Section contended for by the Honorable Member had been inserted in the original Bill. The Select Committee had struck it out, upon consideration; and he thought that it ought not to be restored.

MR. ALLEN'S amendment was then put and negatived; and the Section was passed as it stood.

Section XXII was passed as it stood.

Section XXIII was passed, after some verbal alterations.

Sections XXIV and XXV were passed as they stood.

Section XXVI provided as follows:—

"Any of the said Courts of Judicature, if it think fit, may direct an issue for the trial, before the same Court, or by any other Court of Her Majesty or of the East India Company, of any question of fact arising upon an application under Sections XXIII, XXIV, or XXV of this Act: and such issue shall be tried accordingly. And if the issue be directed to another Court, the result of the trial shall be certified by the Court before which the same was tried, to the Court directing the same."

MR. LEGEYT said, he wished to suggest the addition of a few words in this Section. He proposed that, after the words "or by any other Court of Her Majesty, or" the words "any principal Court of original jurisdiction in civil cases" should be inserted. His object was to prevent any issue of the kind contemplated by the Section being directed to be tried by any Court of inferior jurisdiction, which might be found to be inconvenient. Taking the whole intention of the Section into consideration, he apprehended the object to be, that the trial of issues directed under the Section should not be open to appeal; and, therefore, it might be desirable that such trials be restricted to Courts of superior knowledge and experience.

MR. PEACOCK said, he had no objection to the Honorable Member's amendment. He thought it would be rather an improvement. The intention certainly was, that questions which might arise under this Section, should be tried by the principal Courts of original jurisdiction in civil cases. It was an oversight that the words suggested by the Honorable Member were not in the Section; and he felt much obliged to him for proposing them.

MR. LEGEYT'S amendment was then put and carried.

MR. LEGEYT said, he had another amendment to move in this Section. He

proposed that, after the words "and such issue shall be tried accordingly," the words "in a summary manner, and the decision thereon shall be final" be added. He thought it was very desirable that these matters, when sent to Mofussil Courts, should not be allowed to be placed on the file like regular suits, and there wait their turn to be tried; but that they should be disposed of at once. He also thought that there was a strong reason why the decision come to upon issues under this Section should be final. If the additional words which he proposed to insert in the Section, were not inserted, there would be nothing to prevent the party against whom the decision went from appealing against the finding to the appellate Court, which, although it would generally be the Sudder Adawlut, still litigation might be greatly protracted to the serious injury of the parties concerned.

MR. PEACOCK said, he had no objection to the words "in a summary manner;" but as to the words "decision thereon should be final," the original civil jurisdiction in the Company's Courts in a question of fact, was in no case a final jurisdiction. He thought it would probably be better that the evidence taken by the Court of original jurisdiction should be sent up to the Supreme Court, who might act upon it if they thought fit. The object was to save the trouble and expense of bringing down witnesses residing at a great distance from the Presidency. For example, one might dispute the right of another to an exclusive privilege on the ground that he had publicly used the invention in the Punjaub. Should that question of fact be tried in the Punjaub, or should the witnesses be brought down to Calcutta to be examined in the Supreme Court? There certainly was a difficulty in determining the question; but he should say that the evidence ought to be recorded by the Court of the place in which the witnesses resided, and be sent up to the Supreme or other Court by whom the issue might be directed. In England, the Court of Chancery frequently directed issues to be tried by Courts of Common Law. In such cases, the decisions of the Courts of Common Law were not final. If the finding was objected to on the ground that it was against evidence, or that improper evidence had been admitted, or that evidence material to the issue had been excluded, instead of applying to the Court of Common Law for a new trial, as in ordinary cases, the party who objected to the finding must apply to the Court from which the issue had been directed—that is the Court of Chancery. But in no case would the decision be final. His own opinion was, that those who saw the demeanor of the witnesses, were much better able to judge of the credit due to their evidence than the Court which merely read the written evidence that was sent up. Therefore, he had much rather that the Judge who heard the witnesses should give his own decision; but that he should send it up with the evidence to the Supreme Court, who might act upon that decision, or, if they thought that it was wrong, might direct a new trial.

SIR ARTHUR BULLER said, he had no objection to the insertion of the words "in a summary manner." The phrase appeared to have a significant meaning in the Mofussil Courts; and in the Supreme Courts, to which the provision was also made applicable, it certainly could do no harm, although, perhaps, when applied to the trial of an issue, it would be difficult to assign it any perceptible effect.

As regarded the other question, he considered that something more than the mere "*result*" of the trial should be certified to the Court directing the issue—that is to say, if "the result" meant merely the general finding:—for instance, "the invention is new;" "or it is not new."

Whether the Court taking the evidence should or should not give its own conclusions upon such evidence, might be worthy of consideration. But he was of opinion that, under any circumstances, the evidence should be transmitted to the Court directing the issue, and that such Court should be at liberty to act upon it in any way it thought proper. It had been thrown out that it was altogether an innovation to bring the Mofussil Courts into any sort of connection with the Supreme Court; but to him, the innovation appeared to be attended with this advantage, at all events—that it would give both Courts a foretaste of that blessed millennium of amalgamation of which the advent was said to be so near at hand.

After some conversation, the further consideration of the Section was postponed, on the motion of Mr. Peacock.

Section XXVIII provided as follows:—

"If it shall appear to any of the said Courts of Judicature, at the hearing of any application under the provisions of Section XXIII or XXIV of this Act, that, by reason of any of the objections therein mentioned, the said exclusive privilege in the invention or in any part thereof has not been acquired, the Court shall give judgment accordingly, and shall make such

order as to the costs of, and consequent upon, the application, as it may think just; and thereupon the petitioner, his executors, administrators, and assigns, shall, so long as the judgment continues in force, cease to be entitled to such exclusive privilege."

SIR ARTHUR BULLER said, he wished to know whether the Honorable and learned Mover of the Bill had considered, with reference to this Section, the possibility of the following state of things arising. Before putting his case, however, he must premise that he had read this Bill for the first time only to-day, and that it was extremely possible that he was not taking an accurate view of the Section, and that the difficulty which he apprehended might be obviated by some subsequent provision in the Bill which had escaped his notice. The case he wished to put, was this. An exclusive privilege in an invention might very possibly extend to all the Presidencies, and a question might very possibly be raised in each as to whether, for instance, the invention was new. The Courts at Calcutta and at Madras might hold that it was new. That of Bombay might hold that it was not. Then, according to this Section as it was now framed, immediately the right was upset in Bombay, away would go the exclusive privilege in the other Presidencies also, notwithstanding that the Courts at the other Presidencies had declared the Patentee to be entitled to it. He was not prepared with any amendment at present, and, very possibly, his doubts might meet with an easy answer. If not, he would suggest that the consideration of this Section, like that of the preceding one, might be postponed to another Meeting.

MR. PEACOCK said, he had no objection to allow the further consideration of this Section to stand over; but it appeared to him that it involved no difficulty which could be avoided. The same difficulty might occur in England that the Honorable and learned Member opposite apprehended here. As he had said before, the mode of testing the validity of a patent in England was either by an action brought by the Patentee for an infringement of his patent; or by a writ of *scire facias*, issued at the instance of any person, in the name of the Crown, calling on the Patentee to show cause why his patent should not be rescinded. The Crown itself did not prosecute the *scire facias*, though its name was used. The success or failure of the writ, depended upon the evidence which the person at whose instance it was issued, brought forward. A man might sue out a *scire facias*, alleging that he had publicly used the invention, but might produce no evidence, or evidence insufficient to prove his allegation. The Court, upon such want of proof, would of course give a decision in favor of the Patentee: but it would not be right to make that decision a bar to any other Member of the Public who was no party to the proceedings, if he could really prove that he had, for many years before the date of the patent, been publicly using the invention. If that were to be the case, the inventor himself might get a *scire facias* taken out by a brother or a friend who, at the trial, would purposely offer insufficient evidence, and the decision which must follow would secure the exclusive privilege against all the world. The Bill, as it stood, would protect the Public from this injury. If one prosecutor of a *scire facias* omitted to bring forward all the evidence that could be brought forward, and the Patentee, in consequence, obtained a verdict, some other person might sue out a fresh writ, and prove that the invention was not new; and the Court would then decide that the patent was void.

He (Mr. Peacock) therefore thought that the Section as it stood was correct; but he had no objection to allow the further consideration of it to be postponed, as suggested by the Honorable and learned Member opposite.

The further consideration of the Section was postponed accordingly.

Sections XXIX to XXXII were passed as they stood.

Section XXXIII was passed after some verbal alterations.

Section XXXIV was passed after an alteration, by which the service of a Rule or of proceedings for cancelling or revoking an exclusive privilege might be affected, by fixing the same in some conspicuous part of the Court, or in such other manner as the Court might direct.

The remaining Sections, with the forms of Petitions and forms of Declarations appended to the Bill, were passed as they stood.

The consideration of the Preamble and Title was postponed, in consequence of two of the Sections having stood over.

The Council resumed its sitting.

OUTRAGES IN MALABAR.

MR. ELIOTT gave notice that he would, on Saturday the 16th February, move that the Bill "to give effect to the provisions of Act XXIII of 1854 from the time of its promulgation in the District of Malabar," be read a second time.

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

CONSERVANCY (PRESIDENCY TOWNS, &c.)

MR. LEGEYT moved that a communication received by him from the Government of Bombay, relative to the regulation of Burial and Burning grounds, be laid upon the table, and referred to the Select Committee on the Bill "for the conservancy and improvement of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

ABKAREE REVENUE (BENGAL).

MR. CURRIE moved that the Bill "to consolidate and amend the Law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal" be referred to a Select Committee, consisting of Mr. Allen, Mr. LeGeyt, and the Mover.

Agreed to.

The Council adjourned.

Saturday, February 16, 1856.

PRESENT:

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

H. E. The Commander-in-Chief,
Hon. J. P. Grant,
Hon. B. Peacock,
D. Eliott, Esq.,
C. Allen, Esq.,
P. W. LeGeyt, Esq.,
E. Currie, Esq.
and
Hon. Sir Arthur Buller.

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented a Petition signed by the Rajah of Kishnagbur and certain Zemindars, Talookdars, and others, in and about Santipore, for legalising the Marriage of Hindoo Widows.

MR. GRANT moved that this Petition be printed.

Agreed to.

BENGAL MARINERS' AND GENERAL WIDOWS' FUND.

THE CLERK also presented a Petition from the Directors, Members, and Beneficiaries of the Bengal Mariners' and General Widows' Fund, praying for the passing of an Act (a draft of which accompanied the Petition) providing for the dissolution of the Society and the division of the Fund.

MR. PEACOCK said, it appeared to him that the better course would be to appoint a Select Committee to report upon this Petition: he should move that the Petition be printed and referred for report to a Select Committee, consisting of Sir Arthur Buller, Mr. Currie, and the Mover.

Agreed to.

OUTRAGES IN MALABAR.

MR. ELIOTT moved the second reading of the Bill "to give effect to the provisions of Act XXIII of 1854 from the time of its promulgation in the District of Malabar."

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

EXECUTION OF CRIMINAL PROCESS.

MR. CURRIE moved the second reading of the Bill "to provide for the Execution of Criminal Process in places out of the jurisdiction of the authority issuing the same."

MR. ELIOTT said, he very much approved of this Bill, and should support the Motion for the second reading; but he wished to know the reason why a difference was made between Mofussil Magistrates, and Magistrates having jurisdiction within the local limits of the Supreme Court. The former were to act on their own discretion; but the latter, if any objections to the execution of a Warrant or other process occurred to them, were to refer the matter to a Judge of the Supreme Court. He did not see why a reference to higher authority should be more necessary within than without the limits of the Supreme Court.

MR. CURRIE replied, that the Section provided that Magistrates having jurisdiction within the local limits of the Supreme Court, when they had any doubts as to the propriety of backing a process sent to them for endorsement, might refer the process to a Judge of the Supreme Court, to be dealt with according to the provisions of Act XXIII of 1840. As he had said on the motion for the first reading, he had originally intended to propose that Act XXIII of 1840 should be repealed altogether, in so far as it relates to criminal process; but it had been suggested to him by the Advocate General, that cases might occur in which the Magistrate might have doubts of the propriety of endorsing warrants; and that, in such cases, it might