

Saturday, 8th March, 1856

PROCEEDINGS



OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to December 1856.

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per to enlarge upon the loss which British India was about to sustain; or upon those general claims which, during a vigorous and brilliant administration of eight years, the Noble Lord had established to the gratitude of those whom he had governed, and of his countrymen at home; and to the respect of his own age and of posterity. But the Legislative Council would be wanting in a just appreciation of what it peculiarly owed to His Lordship, if it did not, in some way, formally and publicly acknowledge the nature and amount of its obligations to him. He did not anticipate any difference of opinion in the Council on that point. Certainly, there would be none on the part of those who, either as Members of the Supreme Government, or as Members of this Council from the time of its formation, knew how anxiously the Noble Lord had, to use his own expression, "watched over the cradle" of the new Legislature; how, overburdened as all knew him to be, with the cares and duties of his high office, he had yet found time to devote to the consideration and completion of whatever the Statute, by which it was created, had left imperfect in its organization;—what valuable assistance he had given towards the framing of those rules of procedure which are essential to the well-being and efficiency of every deliberative assembly, however limited its numbers; and how constantly, often it was to be feared at great personal inconvenience, he had presided over its earlier deliberations—giving it always the sanction of his presence, and not unfrequently the benefit of his opinions. And he (Sir James Colville) was sure, that those who were disposed to agree in the Resolution which he was about to move, would do so the more heartily when they recollected the affectionate and weighty words of farewell which the Noble Lord had addressed to them that day. It was not for him, it was not for any Member, to say whether the Noble Lord had, or had not expressed too favorable an estimate of the merits of this Council as a Legislative body; but this he would say, that, in whatever degree the Council, now or hereafter, might answer or fall short of the ends for which it was designed, much of its success might fairly be attributed—none of its deficiencies could justly be charged—to him who was its first President.

Without further preface, he begged to move the following Resolution:—

"That the thanks of this Council are eminently due to the Most Noble James Andrew, Marquis of Dalhousie, for the constant interest

which he has taken in its proceedings; for the large part which he had in its organization; and for the care with which during the first period of its existence he personally presided over its deliberations."

The Resolution was carried unanimously.

SIR JAMES COLVILLE then moved that the Resolution be communicated by the Vice President to the Most Noble the Marquis of Dalhousie.

The motion was carried.

NOTICES OF MOTION.

MR. LEGEYNT gave notice that he would, on Saturday the 8th of March, move that the Bill "to enable the Bombay Government to provide for a due supply of water for public use in the Islands of Bombay and Colaba" 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.

MR. LEGEYNT also gave notice that he would, on the same day, move the third reading of the Bill "for the better control of the Gaols within the Presidencies of Fort St. George and Bombay."

PENAL CODE FOR PILOTS (BENGAL).

MR. CURRIE moved that a communication received by him from the Secretary to the Government of Bengal, forwarding for consideration, in connection with the proposed revision of the Penal Code for Bengal Pilots, an extract of a Despatch from the Honorable the Court of Directors remarking on the reluctance on the part of the Marine Courts of Enquiry to award adequate punishment to Pilots when convicted on trial of the charge preferred against them, be laid upon the table, and referred to the Select Committee on the Projects of Law connected with the Marine Department.

Agreed to.

The Council then adjourned until Saturday the 8th instant, on the motion of Sir James Colville.

Saturday, March 8, 1856.

PRESENT:

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

Hon. Sir J. W. Colville, Hon. B. Peacock,
H. E. the Commander- D. Elliott, Esq.,
in-Chief, P. W. LeGeyt, Esq.,
Hon. Major Genl. J. Low, C. Allen, Esq., and
Hon. J. P. Grant, E. Currie, Esq.

THE VICE PRESIDENT acquainted the Council that he had received a letter from the Most Noble the Marquis of Dalhousie, in answer to a letter communicat-

ing the Resolution of the Council of the 29th ultimo. With the permission of the Council, he would read the letter :—

“GOVERNMENT HOUSE, March 5, 1856.

“*The Honorable the Vice President of the Legislative Council of India.*

“SIR,—I have had the honor of receiving your letter of the 29th ultimo, in which you transmit to me a Resolution of thanks from the Legislative Council of India.

“I beg you to be so good as to assure the Council of the gratification which I derive from the intimation thus conveyed to me, that I have been able, in some degree, to render them useful aid in their performance of the onerous duties and the high functions with which they are charged.

“I am very sensible of the compliment which their Resolution confers, and shall retain a grateful remembrance of it in future years.

“I have the honor to be,

“Sir,

“Your obdt. and humble servt.,

“DALHOUSIE.”

SIR JAMES COLVILLE moved that the above letter be entered in the Journals.

Agreed to.

MARRIAGE OF HINDOO WIDOWS.

THE CLERK presented to the Council a Petition of certain Hindu Inhabitants of Secunderabad in favor of the Bill “to remove all legal obstacles to the Marriage of Hindoo Widows.”

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

Agreed to.

TRIALS FOR RAPE (BENGAL AND MADRAS).

MR. CURRIE moved the first reading of a Bill “to enable Session Judges to pass sentence in trials for rape.” He said, the object of this Bill was merely to remove an unnecessary and inconvenient restriction. The Law, as current in Bengal and Madras, contained certain special provisions for a particular class of criminal trials. By Section VI Clause 2 of Regulation XVII of 1817 of the Bengal Code (and there were corresponding provisions in that of Madras), the Courts of Sessions were authorized to pass sentence in such trials to the extent of seven years’ imprisonment, if the circumstances of the case were such as not to render a severer punishment necessary: if the circumstances of the case appeared to require severer punishment, reference must be made to the

Sudder Court. Clause 3 of the Section provided that—

“If the prisoner be convicted, or presumed guilty, of the heinous crime of rape, the Judge of Circuit” (now the Sessions Judge) “shall not pass any sentence, but shall refer the trial to the Court of Nizamut Adawlut, for the sentence of that Court, under the general Regulations in force.”

Now, it was very seldom that, in these referred cases, a severer punishment than imprisonment for seven years was adjudged by the Sudder Court. He had before him a Return from the Calcutta Court for the last three years, from which it appeared that, out of thirty-six cases referred during that period, in only three was severer punishment awarded than imprisonment for seven years. In every one of the other cases, the Sessions Judge might very well have passed a final order, and the Sudder Court, over-burthened as it was with business, might have been spared the necessity of revising the trials.

The case was very much the same at Madras. There, the punishment for this crime was, he understood, limited in practice to imprisonment for seven years.

The Calcutta Court and the Lieutenant-Governor of Bengal had recommended that the restriction imposed by the Clause which he had just read, should be withdrawn; and, entirely concurring in this recommendation, he had prepared a Bill for the purpose. The Bill gave the same power to Session Judges in regard to trials for rape, that they possessed in regard to trials for other offences under the Law to which he had referred; and, as the reasons which made the change advisable in Bengal, applied equally to Madras, he had, with the concurrence of the Honorable Member opposite (Mr. Elliott), extended the operation of the Bill to the latter Presidency.

The Bill was read a first time.

SUPPLY OF WATER (BOMBAY AND COLABA).

MR. LEGEYT moved the second reading of the Bill “to enable the Bombay Government to provide for a due supply of water for public use in the Islands of Bombay and Colaba.” In doing so, he said he desired to mention that, in accordance with the notice he had given at the last Meeting, he intended, if the Bill passed a second reading, to move that the Standing Orders should be suspended, that the Bill might be carried through its subsequent stages at once. When that Motion came to be put, he should be prepared to give his reasons for it.

With reference to the Motion for the second reading, he would observe that it had been stated to him that objections were likely to be advanced against the Bill in its present shape, which might render alterations in it necessary. He should not object to any alterations which the Council might consider necessary, provided they did not affect the principle of the Bill, which was to enable the Governor in Council of Bombay to prevent the waste or improper use, during the present year, of the drinking water in the tanks, wells, and reservoirs in Bombay and Colaba. From all he could learn, the measure appeared to be one of even greater necessity than he had supposed when moving the first reading of the Bill. He had since seen published in the *Bombay Government Gazette* of the 23rd February last, the following notification from the Chief Magistrate and Chairman of the Water-supply Committee :—

“The Water-supply Committee regret to state that, owing to the small quantity of water in the wells on the Esplanade, and the long period that must elapse before rain can be reasonably looked for, they are under the necessity of notifying that no water will be allowed to be removed from the wells on the Esplanade from the 1st proximo, except in copper or earthen pots.”

He (Mr. LeGeyt) had long resided in Bombay, and he had never known such a measure as this resorted to at this early period of the season. The usual mode of removing water from the public wells was in skins, carried by bheestees or bullocks; and the resort to the precaution notified in the *Gazette*, shewed that the water in the public reservoirs must be frightfully low. Since the last Meeting of the Council, he had communicated with the present Traffic Manager of the East Indian Railway, who had been the Traffic Manager of the Railway at Bombay in 1854, and had superintended the bringing in by rail that year of the daily supply of water for alleviating the distress consequent upon the drought. He had asked that gentleman if he thought it possible that a greater supply than 100,000 gallons could be taken in daily by rail to Bombay this year, and, with the permission of the Council, he would read his reply.

“Your note of the 26th came to hand yesterday. The limit to the quantity of water which could be taken by rail to Bombay, will not depend on the capabilities of the line to carry it, if once it was put on, but on the quantity which can be brought on to the line. The latter will be the difficulty.

“Three or four hundred thousand gallons of water, if once brought on to the line, might easily be taken to Bombay daily by the rail; but I apprehend that, as the season advances, it will be difficult to get 100,000 gallons on to the line daily. I examined all the country in the vicinity of the line from Bombay to Callian in 1854; and in the commencement of June that year, I do not think that there was 25 days' supply for the whole of Bombay in all the wells and tanks within half a mile of all that length. The only considerable store was in a tank at Callian; and if the drought now is what is reported, I apprehend that that must soon be exhausted. The line from Callian to Wassind will probably enable them to get some water from the Basta or Kaloo Rivers, where there are generally large pools in the dry weather. I cannot speak with confidence of that district; but I am strongly of opinion that 100,000 gallons per day for the next three months will be far outside what you can expect by rail.”

Mr. Roche had suggested whether it might not be advisable to bring down water to Bombay in large country boats from the northern rivers. He (Mr. LeGeyt) doubted whether that could be done. It was then to be remembered that, as Mr. Roche had shewn, the water to be had from the country in the vicinity of the line from Bombay to Callian, was by no means inexhaustible; and that the streams of which he spoke, were, in the hot season, at the end of May, perfectly dry. Consequently, there would be no source from which to take an adequate supply of water; and after the first week in May, the southerly winds prevail, which would prevent a speedy voyage from the northern ports.

There appeared to be some question as to what was done with the water that was brought in by rail. He believed that the water was brought into Bombay in iron tanks, that it was emptied at once into a reservoir, from which it was eagerly and immediately taken away by the people. The whole supply was exhausted in two or three hours. He believed that the people of Bombay would be dependent, during the present hot season, for a sufficient supply of water, entirely on the measures that could be taken for husbanding the water resources that existed in the Island, in addition to the supply which might be brought in by rail. The population of Bombay at present was not much less than 700,000; and he observed from the *Bombay Government Gazette*, that cholera had already broken out in the Island. If scarcity of water were to be added to that pestilence among so large a population, it could not but be expected that the ensuing season would prove a very deadly and disastrous one.

He was also glad to observe in the same *Gazette* a notification, intimating that upwards of twenty persons had placed their private wells at the disposal of the Water-supply Committee for the public use. Among these, were some of the most influential members of Society in Bombay. It was to be hoped that their example would be followed; but still, Honorable Members had seen, from the annexures to the Bill, that every inhabitant was not actuated by the same good motives; and that one in particular, who claimed a private right of irrigation in a piece of water known as the Nawab's Tank, had always resisted any effort to appropriate the tank to the public use in seasons of scarcity, and that, as matters now stood, the Government could not take possession of it without subjecting itself to an action of trespass. The good example of some well-disposed citizens, therefore, did not make it the less necessary that the Government should be armed with the powers for which they now applied, in order that they might be able to enforce compliance against those who might refuse to make over tanks and wells in their possession for the public use during the present year. He was quite aware that the provisions of the Bill were of a stringent and arbitrary nature; but he contended that, in a case like this, a measure of this kind was absolutely necessary. If the objections that were felt against the Bill were of a technical nature, he should be willing to make such amendments in it as would remove them; but he trusted that the principle of the Bill would be preserved.

MR. ALLEN said, he was not prepared to deny that some legislation was necessary to prevent there being a considerable deficiency of water in Bombay during the present hot season; but before he consented to the passing of this Bill, he thought he ought to be satisfied—first that the Government of Bombay and the Municipal Commissioners had taken all the practicable measures in their power for the preservation of water in the Island; and secondly, that this Bill did not go farther than was necessary or expedient for its own purpose. A deficiency of water had periodically taken place in Bombay for the last twenty years, and measures had, on each occasion, been adopted by the Municipal Commissioners and by the Government, for alleviating the public distress; but this was the first time that the Government had come up for a legislative enactment; and they had not altogether shewn that the measures adopted in former years

had been adopted in this, or that they would be insufficient if adopted. The measures which they *had* adopted, so far as he could learn, were stated partially in the 3rd para. of the Report of the Water-supply Committee which had been annexed to the Bill. The Committee there said—

“In order that the whole of the water contained in the soil of the Esplanade might be rendered available for the towns-people, all the Buffaloes, Dyers, and Washermen, who frequented the Esplanade, were ordered to discontinue coming, or being brought there, at considerable loss to Government.”

He also found, from the public papers, that the Government had, with considerable energy and propriety; caused a great number of tanks and wells to be dug in the Island. But still, he did not think they had gone so far as they might have done, or even as far as they had done on former occasions. In the Report of the Court of Petty Sessions, dated October 1845, he found the following paragraph:—

“On the last occasion of an anticipated scarcity of water in the season of 1838-39, the Court observe that, on the 20th of November 1838, a proclamation was promulgated by Government, prohibiting the use of private wheels, and the use of water from the public wells for irrigation and washing, and enjoining every private individual to be particularly careful in his own family to limit the use of water fit for domestic purposes, so that none might be unnecessarily or wantonly thrown away.”

This was done in 1838. Irrigation from all public wells was prohibited that year. This year, as far as the Council knew now, it was only the wells on the Esplanade that were closed for purposes of irrigation. Why had not irrigation from all other public wells in the Island been prohibited?

In the same year, 1845, the Court of Petty Sessions proposed the following proclamation with the view of preventing waste of water, though whether it was passed by the Government or not, he was unable to say:—

“No private wheels shall be allowed, until after the rains of next year, on the public tanks where the water is wholesome, and which are so situated as to be available to the Native population.

“The water shall not be taken from such tanks, or from public wells, in great quantities, by any other means, for the purpose of cultivation, nor is any to be expended upon the public roads.”

As to the public roads, he had more than once seen it stated in the Bombay journals, that they were so extravagantly watered that, from the slush and mud produced, they became dangerous to animals!

MR. LEGEYT observed that all the public roads in Bombay were watered from the sea.

MR. ALLEN said, some of them were at a distance from the sea : it must be very expensive to water them from that source.

MR. LEGEYT replied that no irrigation whatever was allowed in Bombay from public wells and tanks.

MR. ALLEN said, he was not aware of that fact before ; and it certainly took away his objection that the Government had neglected to take the precautions this year which they had adopted on former occasions.

Then, if the Government had taken all the ordinary measures in its power for husbanding the supply of water, he next came to consider whether this Bill did not go farther than was necessary or expedient. It allowed all private wells and tanks to be taken possession of by the Police for the public use during the present year. Now, the best conservators of private wells and tanks were the owners themselves rather than the Police. If the owners knew that these sources of supply were to be taken away from them in two or three months, the care which they now gave to the preservation of the water in them, would be left untaken. He found that, in these seasons of scarcity, water was sold at a great price, and water sellers reaped a considerable harvest. In an expected water-famine, therefore, as in an expected corn-famine, the best thing that the Government could do was to encourage people to take care of their private stores, so that they might have an abundance to dispense when the season of want should arrive, and, while thus relieving the public, earn a profit for themselves.

It had been urged upon the Council that the water resources of Bombay were so small and low, that, the last monsoon having failed, a regular water-famine would be experienced in the Island during the ensuing hot season. But he found from Mr. Conybeare's Report on the Water-supply of Bombay, that, at the close of the worst dry season, there was no part of the Old Town and New Town Districts more distant than four hundred yards in a direct line from some abundant and unfailing source of supply.

He had understood the Honorable Mover of the Bill to give some reason why water was not being taken into Bombay by rail now. The Honorable Member had stated the reason to be, that there were no reservoirs for the reception of water. He (Mr. Allen),

however, found, at page 9 of the Annexures of the Bill, that there was a reservoir at Pydownee, from which a great number of the towns-people obtained their supplies of water, and which was fed from a tank on the verge of the Esplanade ; but that, latterly, the supply from this tank had almost entirely failed. Why had not this reservoir been used for the reception of water per rail ?

MR. LEGEYT remarked, it would take as much time and money to convey the water in carts from the Railway terminus to the reservoir at Pydownee, as to bring it from Salsette by the rail.

MR. ALLEN replied, if the thing could be done, why had not the Government done it, rather than come up with a proposition to be authorized to take possession of private property ? Why had not Government, the moment they perceived that there would be a scarcity, begin to bring in 100,000 gallons a day by rail, and as much more as they could in boats from Elephanta ?

He had also learnt that, on former occasions, no ships in the harbor were permitted to water at Bombay. It did not appear that this precaution had been taken in this instance. Why had not all precautionary measures, adopted in former years, been likewise adopted in this, before the Legislature was asked to pass a measure of so stringent and exceptional a nature ? If he were asked what precautionary measure he should propose, he should reply—that which was proposed to the Government in 1845, by the Committee appointed to report on the state of the wells and tanks in Bombay and Colaba ; namely, “that the use of private wells in Girgaum, where the supply never fails, and in Mazagon, be secured for the Public, by affording compensation to the owners for the loss they would suffer by the discontinuance of their irrigation for a time.” He would buy up the rights of irrigation in all private wells and tanks, and particularly in the Nuwab's Tank, about which there appeared to have been so much difficulty. He would pass an Act to enable the Government or the Municipal Commissioners to purchase this right, the compensation to be fixed by arbitration if necessary. But to take possession of private wells and tanks wherever they might be, subject only to the very loose mode of compensation provided by this Bill, would, in his opinion, be highly objectionable.

Moreover, he would allow Buffaloes to be removed to a distance from the wells near which they were now located ; but he would give compensation to the owners of the

cattle. Under this Bill, Buffaloes might be removed without any compensation to the owners.

With both the measures to which he had referred—the buying up of the rights of irrigation in private wells and tanks, and the removal of cattle from the neighbourhood of wells—added to the other measure, which Government could take of their own motion, namely, the bringing in of 100,000 gallons a day by rail, and as much more as could be brought in boats from Elephanta—the want apprehended would, as far as he could see, be sufficiently met. Judging from the information furnished by Mr. Conybeare in his Report, the absolute necessity for passing without delay this measure, as urged upon the Council, did not appear to exist; and he thought that, if the Bill were referred to a Select Committee, a less stringent but an effectual measure might be prepared within the next week, and that Bill could then be passed at once.

SIR JAMES COLVILE said, the only question now before the Council was, whether the Bill should be read a second time. He freely conceded to the Honorable Member opposite (Mr. Allen) that this legislation was exceptional; and that, from the manner in which the measure was brought before the Council, it must perforce be hasty. He also thought that Honorable Members might plausibly, if not reasonably, complain that the Council was urged to legislate on this subject so hastily. He did not see any good reason why the Government of Bombay, or those who had put it in motion, should not have come to the Council earlier, for those extraordinary powers which they now sought. The failure of the last monsoon must have been known long ago; and no great amount of prudence was required to foresee the necessity which had arisen for this measure. But however that might be, it did not relieve this Council from the obligation of doing for the inhabitants of Bombay, that which would best protect them from the calamities of a water-famine, which was said, and he believed truly said, to be impending over them.

With regard to the exceptional character of this legislation, he further conceded that there were great and sound objections to interfering with the rights of private property, and that it was the duty of the Council not to do so unnecessarily. Still, having read the papers that were annexed to this Bill, he had come to the conclusion that the Council ought not so rigidly to insist on

Mr. Allen

the principle referred to as to refuse to grant to the Government of Bombay any of the extraordinary powers for which it asked. He would not now pledge himself by saying more precisely what powers he would grant; but he thought that the Council would incur a most serious responsibility if, by rejecting the Bill altogether, it ran the risk of aggravating a pestilence which was said already to exist, or of generating pestilence which did not yet exist, or of bringing in greater intensity upon the inhabitants of Bombay any of the sufferings that were too likely to fall on so large a community in consequence of an insufficient supply of water. Without pledging himself, therefore, to any vote on the further motion which the Honorable Member for Bombay proposed to make, or to the adoption of every Section of the Bill as it stood, he would urge upon the Council the propriety of allowing the Bill to be read a second time; after which, it would be free to consider how far its provisions required to be modified. If the Council should reject the Bill at once, in the hope that another might be framed which would meet the views of the Honorable Member opposite (Mr. Allen), it would occasion at least a week's delay, and the consequences even of that might be most serious. Most of the Honorable Member's arguments against the Bill were based on the hypothesis that the Government of Bombay might have done this, and might have done that; but he forgot that the Council was now asked to legislate in circumstances of great urgency for a community on the other side of India; and he (Sir James Colville) did not see how the Honorable Member proposed to obtain, within a reasonable time, the necessary explanations of the difficulties which he had thus created—except, indeed, such explanations as he had already received, or might receive, from the Honorable Member for Bombay—unless he meant to conduct his enquiries by standing at one end of the Electric Telegraph in the hope of obtaining the answers to his questions from Lord Elphinstone at the other.

MR. LEGEYTS motion for the second reading was then put and carried, and the Bill was read a second time accordingly.

MR. LEGEYTS moved that the necessary Standing Orders be suspended to enable him to pass the Bill through its subsequent stages. He said, in urging this motion upon the Council, he should take the opportunity of saying how far, and for what particular reasons, the great necessity for urging it existed.

The Hon'ble Member opposite (Mr. Allen) had suggested that the Bombay Government might have done this, and might have done that. He had assumed that all the precautions that had been taken in years of much less urgency, had been overlooked on this occasion, and that the resolution to ask for the extraordinary powers conferred by this Bill, had been precipitately arrived at. He (Mr. LeGeyt) would not do the Government of Bombay such an injustice as to suppose that this was really the case. He felt confident he could pledge himself that this was not the case. He firmly believed that the Bombay Government had well considered, for the present emergency, all those precautions which had been adopted in former years, and that, after full and mature deliberation, it had found that they would not be sufficient. The communication which he had received from the Secretary to the Government of Bombay, expressly and emphatically disclaimed any wish or intention on the part of the Government to resort to the stringent measures which the Bill provided, unless it was compelled to do so for the public safety. He, therefore, thought this Council might safely and fairly assume that all ordinary and all extraordinary means that it was in the power of the Bombay Government to adopt for the purpose of averting the evils of the expected scarcity, had already been adopted by it. Very soon after the close of the rains, a Water-supply Committee, consisting of the Chief Magistrate of Bombay and an Engineer Officer of great local experience, had been appointed to consider by what means a sufficient supply of water could be preserved for the people during the year. The Reports of that Committee appeared amongst the annexures to the Bill; and it would be seen from them that the Committee urgently recommended the measures which the Government of Bombay now asked this Council to empower it to adopt. Neither of the gentlemen on that Committee was a man who would take any thing for granted. Both were perfectly well aware of the resources of the Island, and he was certain, from the knowledge that he had of them, that they never would have recommended these measures if they were not satisfied that the supply of water this year would fall fearfully short of the supply in previous years, and that former precautions alone would be quite inadequate on this emergency. At present, as he had said before, the population of Bombay was not much less

than 700,000. In 1824, it was under 250,000. If, then, the distress in Bombay in 1824 occasioned by a short supply of water, was great, how much greater would it be this year, when the supply was considerably shorter, and the population was trebled? It was true that there was now a larger number of wells and tanks in Bombay than in 1824; but that there would still be an insufficient supply of water was proved by the proceedings which had lately taken place in regard to the proposed water-works at Salsette, where the community had consented to be taxed to the extent of 25 lakhs for increasing the public sources of supply of this necessary article of life. Unfortunately, no water had been dammed up in Bombay in eligible sites during the last year. Land-springs there were in abundance; but these dry up as the season advances. Bombay and its neighbourhood were entirely and wholly dependent for their supply of water on the rains of June, July, August, and September; during which months in 1855, less than one-half of the average quantity had fallen, and only 9.17 inches after the 31st of July. In 1824, when the aggregate fall of rain was less than the aggregate fall last year, the major quantity of water fell much later in the season. He, therefore, had very little doubt that the actual dearth at this moment was much greater than it was in March 1825, when the population was only one-third of what it now was.

The Honorable Member for the North-Western Provinces had asked why watering the roads had not been stopped. He could reply by stating that, since 1845, the roads had been watered with sea water, and never with any that could be used for drinking purposes.

The Honorable Member had also asked why the precaution had not been taken of prohibiting ships to water at Bombay. He (Mr. LeGeyt) believed that, since 1845, no ships had been allowed to water from Bombay itself after the dry season had advanced, but were restricted to Elephanta and other places on the east of the harbour; which fact would be a sufficient reply to the Honorable Member's question why water for the inhabitants was not brought from Elephanta. It was obviously necessary that the shipping in the harbour should have supplies of water; but the stock of water in Elephanta was not by any means inexhaustible, and its quantity depended on the fall of rain.

The Council might rest confident that the Government of Bombay had looked to every

side of the question, and that they now asked for this exceptional legislation only because they were driven to ask for it by a sense of stern and dire necessity. From all that he had seen in connection with this subject, he considered that a delay of one day in passing the Bill was objectionable—that of one week might be extremely injurious. If the Bill were to be left to drag its course according to the ordinary mode of procedure, it would not be passed until the end of the hot season. It was not a very long Bill. If the Council went into Committee upon it now, it would have to consider only four Sections; and, as he had said before, he was prepared to make any alterations which would not interfere with the principle of the measure. He was not prepared to abandon any of its stringent provisions; but if it was found that the Bill proposed to delegate legislative powers to the Government, and was objectionable upon that ground, he was ready to modify the Section to which such objection might apply.

MR. CURRIE seconded the motion.

MR. GRANT said, he did not rise to oppose the suspension of the Standing Orders. He was quite prepared to agree that they should be suspended, and that the Bill should be passed as rapidly as possible, if its provisions were modified. He thought that the Honorable Member for Bombay had made out his case of urgent necessity; and he had no doubt that the Honorable Member was right in his belief that the Government of Bombay had used all the legal means in its power to husband the water resources of the Island. Supposing, however, that it had not done so, that would not exonerate this Council from the duty of passing quickly this Bill or some Bill of this kind, at such a juncture. On the contrary, it would only be an additional reason why this Council ought speedily to pass some measure of this nature. But if the Honorable Member for Bombay thought it would not be unsafe for the inhabitants of Bombay to postpone the passing of the Bill for only a few days, he (Mr. Grant) should very much prefer the Bill being referred to a Select Committee, who might present to the Council their Report upon it on the next regular day of Meeting; or, if the Honorable Member thought that a week's delay would be too long, the Council might meet on an early day next week—Tuesday or Wednesday—to receive the Report. He thought that this was a sort of Bill which could be much better revised in the first

Mr. LeGeyt

instance by a Select Committee than by a Committee of the whole Council.

As the Bill stood, it appeared to him to be open to two objections. In the first place, he strongly disapproved of the 1st Section, which proposed to enable the Governor in Council of Bombay to make such rules for an economical use of water in the tanks, wells, and reservoirs throughout the Town and Islands of Bombay and Colaba, as he might think fit. The Section did not say what these rules were to be. Not only did it not do that, but it did not indicate the character of the rules. The Governor in Council, therefore, might make any rules he pleased. He (Mr. Grant) felt convinced that the Governor in Council would make none but reasonable rules; but still, that would not justify him in giving any Government the power to make unreasonable rules if it should think fit to do so. No doubt, rules for the purpose required could not be made without some expenditure of time and thought; but this time and thought must be given to the rules sooner or later. Why had not the Government of Bombay, or the Water-supply Committee, expended the requisite time and thought upon the rules, before coming up with the Bill? The Select Committee would not be able to prepare in detail the rules that should be adopted; but they might be able so to define the nature of the rules, and so to restrict their operation, that the main point of his objection would be removed.

The other objection which he felt to the Bill as prepared related to Section IV. In his Statement of Objects and Reasons, the Honorable Member for Bombay said—

“It will be perceived that the Bill provides for compensation from the Municipal Fund for any loss or injury which may accrue to individuals from any measures adopted under its provisions”;

and it, doubtless, was his intention to insert such a provision. But the Bill, as framed, provided for compensation only in the case of private tanks and wells, the use of which was taken for the public. He had no doubt that the Honorable Mover would agree in thinking that it would be but right to provide for compensation also to owners of cattle, whose cattle might be removed to a distance; and, indeed, to any individual who might suffer injury or loss in consequence of the operation of the rules which might be introduced.

It was not his intention to press his suggestion that the Bill should be referred to a Select Committee before being submitted to

a Committee of the whole Council, if the Honorable Member for Bombay should object to it ; but if the Honorable Member thought that the loss of one week, or of two or three days, would not be of vital importance, he should recommend him to concede so far.

MR. PEACOCK said, he also felt some objections to the Bill ; but as they related to matters of detail which might be considered in Committee, he had not spoken in the debate on the motion for the second reading.

His principal objection was to Section I, which proposed to empower the Governor of Bombay in Council to make rules from time to time for preventing waste of water in the Island during the present year. He doubted whether this Council had authority to give such a power ; because it would be a power to make laws. The letter from the Secretary to the Government of Bombay which was annexed to the Bill, said—" His Lordship in Council considers it indispensable for the public good that an enactment should be at once passed for this object"—that is to carry out effectual measures for husbanding the supply of water in Bombay. It proceeded to say—

" Whilst now applying for such an enactment, however, this Government pledge themselves that no interference with private rights shall be permitted, except in case of inevitable necessity."

But if the Council should pass this Bill with Section I as it stood, it would give the Government of Bombay the power of making laws which might interfere with private rights. He had no fear that the Government of Bombay would use that power for the purpose of interfering with private rights unnecessarily : he was satisfied that they had no greater desire to do so than the Legislative Council ; and, seeing that the public safety was concerned, he should wish to give it to them ; but he thought that the Law under which the Council sat, prohibited the delegation of such power. By a Section in the Charter Act of 1833, the Governor General in Council had the power of making Laws and Regulations for India, provided they did not vary any of the provisions of that Act. Another Section of the same Act provided that no local Government should have the power of making any Laws or Regulations in any case whatever, unless in cases of urgent necessity. The Legislative Council was now the Council for the purpose of making Laws and Regulations

for India ; and it could not delegate its power to any local Government, because the Charter Act declared that no local Government should make Laws and Regulations, and the Council could do nothing in violation of that Act.

He thought that the objects contemplated by Sections I and II (which latter provided penalties for a breach of the rules which, it was proposed, the Government of Bombay should be authorized to prepare) might be secured by the substitution of a provision to enable the Government of Bombay to take possession, for the season, of private tanks and wells for the public use. He saw no greater objection in authorizing them to do so than there was in authorizing the temporary occupation of lands for public purposes. The Council was assured by the Local Government that it was absolutely necessary for the safety of the Public in Bombay that some such Law as the one proposed, should be passed ; and, that being the case, he thought that the Government of Bombay ought to be authorized to take possession of private wells and tanks for the public benefit during the season of want.

He thought, however, that a provision should be made for granting compensation to all who should suffer injury or loss by such appropriation. Section IV of the Bill did make a provision for compensation, but for compensation only to owners of wells or tanks. There might be persons other than owners who had rights in private wells or tanks ; and if the rights of such persons were interfered with, they would have as fair a claim to compensation as the absolute owners.

He was not aware whether there was any absolute necessity for giving the Government of Bombay power to remove cattle to a distance from the parts in which they were now located. If there was such a necessity, and the power should be given, he thought that compensation should be allowed to the owners of such cattle for any damage they might sustain by the removal. A man who lived by selling milk, for instance, might have acquired a right to water his Buffaloes at a private tank. If his Buffaloes were removed four or five miles away from that spot, he would be subjected to great inconvenience, and perhaps expense, in bringing his supply of milk to the market. His would be a case for compensation. He might not be the owner of the tank from which his Buffaloes had been sent away ; but if he had a private right to water them at it,

he would be just as much entitled to compensation for the removal of his cattle, as the owner of the tank would be for the appropriation of the water.

He (Mr. Peacock) therefore thought that the Section ought to provide that compensation should be allowed wherever the proceedings of the Government under the Act should interfere with any private rights.

He did not mean to oppose the Motion of the Honorable Member for Bombay or the suggestion of the Honorable Member opposite (Mr. Grant). He merely threw out these observations that, if the Bill should be referred to a Select Committee, and he should not be on the Committee, they might be taken into consideration as suggestions which might further the views proposed by the Bill.

MR. LEGEYT said, in deference to what had been said by the Honorable Members who had spoken last, he should not object to the Bill being referred to a Select Committee before it was submitted to a Committee of the whole Council, provided the early day named by the Honorable Member to his left (Mr. Grant) could be fixed for receiving the Report of the Select Committee. He had no doubt that, by the course proposed, the Bill would be put into a form in which the Council would consent to pass it into Law.

The Honorable Member's Motion for the suspension of the Standing Orders was then put and carried.

MR. LEGEYT moved that the Bill be referred to a Select Committee consisting of Mr. Peacock, Mr. Elliott, Mr. Currie, and the Mover, with instructions to report thereon to the Council at the next Meeting.

Agreed to.

INSPECTOR OF PRISONS (FORT ST. GEORGE AND BOMBAY).

On the Order of the Day being read for the third reading of the Bill "for the better control of the Gaols within the Presidencies of Fort St. George and Bombay"—

MR. ELIOTT moved that the Bill be recommitted, for the correction of an error.

Agreed to.

MR. ELIOTT said, the error he referred to, was in the 1st Section, which proposed to repeal, among other enactments, "Section XLIX of Act VII of 1843." This went farther than was necessary or expedient; and he, therefore, proposed to repeal only so much of the Section as authorized Session Judges to visit the Gaols therein mentioned, and to pass orders regarding the treatment,

Mr. Peacock

or accommodation, or security of the prisoners. If the whole of the Section referred to were repealed, the provision for placing Gaols, in stations where there were European subordinate Judges, under the charge of those Judges, would be repealed.

The amendment was agreed to, and the Section passed.

The Council having resumed its sitting, the Bill was reported.

MR. LEGEYT then moved that the Bill be read a third time and passed.

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

COURT OF WARDS AND GUARDIANSHIP OF MINORS.

MR. CURRIE moved that a communication received by him from the Secretary to the Government of Bengal, be laid upon the table and referred to the Select Committees on the Bill "to explain and amend Regulation X of 1793 and Regulation LII of 1803," and the Bill "for making better provision for the care of the persons and property of minors, lunatics, and other disqualified persons in the Presidency of Fort William in Bengal."

Agreed to.

INSPECTOR OF PRISONS (FORT ST. GEORGE AND BOMBAY).

MR. LEGEYT moved that Mr. Grant be requested to carry the Bill "for the better control of the Gaols within the Presidencies of Fort St. George and Bombay" to the Right Honorable the Governor General for his assent.

Agreed to.

MUNICIPAL TAXES (BOMBAY).

MR. LEGEYT moved that a communication received by him from the Secretary to the Government of Bombay be laid upon the table, and referred to the Select Committee on the Bill "to alter and amend the laws relating to certain of the Municipal Taxes in the Presidency Town of Bombay, and to legalise certain proceedings connected with the collection of the shop and stall tax."

Agreed to.

CONSERVANCY (PRESIDENCY TOWNS, &c).

Also that a communication received by him from the same 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."

ADJOURNMENT.

SIR JAMES COLVILLE moved the adjournment of the Council. In doing so, he said the Council would recollect that it had determined to meet on an earlier day than usual, for the further discussion of the Bill relating to the supply of water at Bombay. He had been asked to name Tuesday, for that purpose. He was afraid he could not pledge himself to attend on that or any other day but Saturday; but he believed there would be a sufficient quorum without him; and he had no doubt that the Bill would receive such consideration by the Select Committee to whom it had been referred that his presence would not be necessary.

The Council accordingly adjourned until Tuesday.

Tuesday, March 11, 1856.

PRESENT :

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

Hon. Sir J. W. Colville, D. Elliott, Esq.,
Hon. Major G. J. Low, C. Allen, Esq.,
Hon. J. P. Grant, P. W. LeGeyt, Esq. and
Hon. B. Peacock, E. Currie, Esq.

SUPPLY OF WATER (BOMBAY AND COLABA).

MR. LEGEYT presented the Report of the Select Committee on the Bill "to enable the Bombay Government to provide for a due supply of water for public use in the Islands of Bombay and Colaba;" and moved that it be now read.

Agreed to.

The Report having been read—

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill, and that the Committee be instructed to consider the Bill in the amended form in which it was recommended by the Select Committee to be passed.

Agreed to.

Section I empowered the Governor of Bombay in Council, at any time before the 1st of August next, to authorize the Police to take charge of private tanks and wells, "to deepen and improve the same, and to retain possession thereof until the said 1st of August, and during such period to superintend the distribution of the water thereof, &c."

MR. GRANT said, he had an amendment to propose in this Section. He proposed to add the words "prohibit the consumption of the water thereof otherwise than as drinking water, and to," after the word "to" and before the word "superintend." The principal object of the Law was to prohibit the consumption of drinking water for other purposes than drinking, and especially to prevent its being used for the irrigation of land, for which purpose, he observed, one Parsee had the right to use the water of one of the public tanks. He thought it would be better to specify that object in the Bill.

MR. LEGEYT asked if the words proposed by the Honorable Member would not imply that any unlimited quantity of water might be taken from private wells or tanks for drinking purposes.

MR. GRANT replied, he had not understood that it was intended that there should be a limit prescribed to the supply for drinking purposes. If that was the intention—if it was meant that the Governor in Council should have the power of putting the inhabitants upon an allowance of water for drinking—he thought that this power should be given by the Bill in so many words; for the measure would be a very stringent one, and should not be provided for in general terms.

MR. LEGEYT said, it certainly was his impression that it was intended that the Government of Bombay should have the power of restricting, if necessary, the supply of water even for drinking purposes. In the Telegraphic Message which he had received from Bombay, and which was one of the annexures to the Bill, the Secretary to the Government said—

"I have laid your Message before Government, who do not think the restricted enactment you propose will be sufficient. It may be necessary, in order to save life, to place each inhabitant on an allowance of water."

MR. CURRIE said, he thought it was quite apparent from Section III of the Bill, that the intention was that the Bombay Government should have the power of limiting the supply for drinking purposes. That Section, after providing penalties for obstructions, said—

"whoever wilfully does any act whereby the water of such well or tank shall be rendered unfit for drinking, or takes water in excess of the quantity allowed, &c., shall be liable, on conviction, &c."

MR. GRANT said, if it was intended that the Governor of Bombay in